CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 19
on the case-law of the Court
June 2000

Statistical information

		June	2000
I. Judgments delivered			
Grand Chamber		5	17
Chamber I		4	28(30)
Chamber II		123(127)	185(189)
Chamber III		10	88(92)
Chamber IV		5	40(50)
Total		**147(151)**	**358(378)**
II. Applications declared admissible			
Section I		15	109(255)
Section II		27	117
Section III		6	102(112)
Section IV		39	103(106)
Total		**87**	**431(590)**
III. Applications declared inadmissible			
Section I	- Chamber	6	46(60)
	- Committee	110	481
Section II	- Chamber	12	59(65)
	- Committee	104	569
Section III	- Chamber	4	61(66)
	- Committee	103	704(737)
Section IV	- Chamber	6	50(53)
	- Committee	150	997
Total		**495**	**2967(3028)**
IV. Applications struck off			
Section I	- Chamber	1	3
	- Committee	4	9
Section II	- Chamber	4	29
	- Committee	1	6
Section III	- Chamber	1	6
	- Committee	2	12
Section IV	- Chamber	2	8
	- Committee	2	17
Total		**17**	**90**
Total number of decisions[1]		**599**	**3488(3708)**
V. Applications communicated			
Section I		18	143(152)
Section II		13	140(143)
Section III		18	211(214)
Section IV		43	127
Total number of applications communicated		**92**	**621(636)**

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

Judgments delivered in June 2000					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	4	1	0	0	5
Section I	3	1	0	0	4
Section II	2	121	0	0	123
Section III	8	1	1	0	10
Section IV	2	3	0	0	5
Total	**19**	**127**	**1**	**0**	**147**

Judgments delivered January - June 2000					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	15	1	0	1[1]	17
Section I	23	5	1	1[2]	30
Section II	38	145	0	0	183
Section III	74	11	3	0	88
Section IV	28	10	1	1[1]	40
Total	**178**[3]	**172**	**5**	**3**	**358**

[1] Just satisfaction.
[2] Revision request.
[3] Of the 163 judgments delivered by Sections, 44 were final judgments.

[* = not final]

ARTICLE 2

LIFE
Disappearance and lack of effective investigation: *violation*.

TIMURTAS - Turkey (N° 23531/94)
Judgment 13.6.2000 [Section I]
(See Appendix I).

LIFE
Death in custody and lack of effective investigation: *violation*.

SALMAN - Turkey (N° 21986/93)
Judgment 27.6.2000 [Grand Chamber]
(See Appendix II).

LIFE
Life-threatening assault by security forces: *no violation*.

ILHAN - Turkey (N° 22777/93)
Judgment 27.6.2000 [Grand Chamber]
(See Appendix III).

LIFE
Death in police custody: *admissible*.

ANGUELOVA - Bulgaria (N° 38361/97)
Decision 6.6.2000 [Section IV]

The applicant's 17-year old son was arrested on suspicion of stealing car parts. He was taken to a police station just before 1 a.m. He had been drinking heavily. According to a report, his health suddenly deteriorated at 4.30 a.m. and he was taken to hospital, where he died at about 5.15 a.m. Criminal proceedings were instituted. The statements given to the investigator indicated that the boy had initially been arrested by an off-duty policeman after a chase, during which the boy had fallen several times. None of the five policemen who subsequently attended had seen any injuries, although at the police station a bruise on his eyebrow was noticed. An autopsy report stated that death was caused by a brain haemorrhage resulting from an abrupt and strong blow which had fractured the back of the left eye bone. The applicant stated that there were other marks of injury on his son's body. The case was then transferred to a military investigator. A further report by five medical experts confirmed the cause of death, but indicated, contrary to the autopsy report, that the haematoma had been in place for at least 10 hours before death. It stated that the injury, and also the other injuries, could have been caused by a kick or a fall. The investigation was discontinued and the case returned to the regional prosecutor, who decided to suspend the criminal proceedings.
Admissible under Articles 2, 3, 5, 13 and 14.

ARTICLE 3

TORTURE
Torture in custody: *violation*.

SALMAN - Turkey (N° 21986/93)
Judgment 27.6.2000 [Grand Chamber]
(See Appendix II).

TORTURE
Life-threatening assault by security forces: *violation*.

ILHAN - Turkey (N° 22777/93)
Judgment 27.6.2000 [Grand Chamber]
(See Appendix III).

TORTURE
Procedural obligations under Article 3: *examination under Article 13*.

ILHAN - Turkey (N° 22777/93)
Judgment 27.6.2000 [Grand Chamber]
(See Appendix III).

INHUMAN TREATMENT
Mental suffering due to disappearance of applicant's son: *violation*.

TIMURTAS - Turkey (N° 23531/94)
Judgment 13.6.2000 [Section I]
(See Appendix I).

ARTICLE 5

Article 5(1)

SECURITY OF PERSON
Unacknowledged detention: *violation*.

TIMURTAS - Turkey (N° 23531/94)
Judgment 13.6.2000 [Section I]
(See Appendix I).

Article 5(3)

BROUGHT PROMPTLY BEFORE JUDGE OR OTHER OFFICER
Detainee brought before judge without power to order release: *violation*.

SABEUR BEN ALI - Malta (N° 35892/97)
*Judgment 15.6.2000 [Section II]

Facts: The applicant was arrested on 17 March 1995 on suspicion of a drug-related offence. He was brought before a single judge of the Court of Magistrates on 19 March and remanded in custody. He was committed for trial following the conclusion of the investigation on 4 April. On 29 July he applied to the Court of Magistrates for provisional release. The request was communicated to the Attorney General, who was given 24 hours to reply. The parties were heard on 31 July and the request was rejected the following day. The applicant was acquitted on 5 February 1997.
Law: Article 5(3) - The applicant's appearance before the Court of Magistrates on 19 March 1995 was not capable of ensuring respect for Article 5(3) because, as established in the Aquilina v. Malta judgment (29 April 1999), that court had no power to review automatically the merits of the detention. Moreover, since the provision guarantees an automatic right to be brought before a judge, the fact that the national law gave the applicant the possibility, which he did not use, of lodging an application challenging the lawfulness of his detention and a bail application (the latter after the conclusion of the inquiry) was not sufficient to satisfy its requirements.
Conclusion: violation (unanimously).
Article 5(4) - Section 137 of the Criminal Code is aimed primarily at the punishment of officials who fail to deal with complaints about the lawfulness of detention, and while in some instances courts have relied on it as a basis for ordering release, the Government did not refer to any instances in which it had been successfully invoked to challenge the lawfulness of arrest or detention on suspicion of a criminal offence. They have therefore not shown that the applicant could have obtained a review of the lawfulness of his detention by relying on that provision. As for a constitutional application, this involves a referral to the Civil Court and the possibility of an appeal to the Constitutional Court, a cumbersome procedure in which the proceedings are invariably longer than what would qualify as "speedy" for the purposes of Article 5(4). Finally, the applicant could not have obtained a review of the lawfulness of his detention by lodging a bail application, the question of bail coming into play only when the detention is lawful. Consequently, it has not been shown that the applicant had at his disposal under domestic law a remedy for challenging the lawfulness of his detention.
Conclusion: violation (unanimously).

Article 41 - The Court considered that there was no causal link between the violation and the pecuniary damage claimed by the applicant. It awarded him 1,000 Maltese liras (MTL) in respect of non-pecuniary damage and also made an award in respect of costs.

LENGTH OF DETENTION ON REMAND
Length of detention on remand: *friendly settlement*.

MIKULSKI - Poland (N° 27914/95)
Judgment 6.6.2000 [Grand Chamber]

The case concerns the length of detention on remand and the length of criminal proceedings. The parties have reached a friendly settlement providing for payment to the applicant of the sum of 20,000 PLN, covering any pecuniary and non-pecuniary damage as well as costs.

LENGTH OF DETENTION ON REMAND
Length of detention on remand: *non-exhaustion*.

CASTILLON - France (N° 35348/97)
*Judgment 6.6.2000 [Section III]

The case concerns the length of detention on remand. The Court noted that while the applicant had lodged an appeal to the Court of Cassation against a decision of the Indictments Chamber, the appeal had been rejected as inadmissible because of its novelty. The Court concluded that the applicant had not exhausted domestic remedies (see the Civet v. France judgment of 28 September 1999). It therefore upheld the Government's preliminary objection.

LENGTH OF DETENTION ON REMAND
Length of detention on remand: *violation*.

CESKY - Czech Republic (N° 33644/96)
*Judgment 6.6.2000 [Section III]

Facts: The case concerns the length of the applicant's detention on remand. He was arrested in Italy in February 1991, having been released on probation after serving part of a prison sentence in the Czech Republic. His detention on remand was prolonged several times and numerous requests for release were unsuccessful. He was convicted on five occasions, but each time the conviction was quashed. An appeal is pending.
Law: Article 5(3) - The periods of detention on remand to be examined total 3 years, 3 months and 7 days. There was reasonable suspicion of an offence and the reasons given by the domestic courts concerning the risk of absconding were sufficient and relevant, making it unnecessary to examine the other grounds invoked. However, in view of various delays, special diligence was not displayed in the conduct of the proceedings.
Conclusion: violation (unanimously).
Article 41 - As an appeal is pending, it cannot be said that the length of the detention on remand has been deducted from the sentence. Even assuming the applicant did not have permanent employment at the time of his arrest, there is a certain causal link between the violation and the sums he claims in respect of loss of earnings. The Court therefore awarded him 100,000 CZK in that respect. It considered that the finding of a violation constituted just satisfaction in respect of non-pecuniary damage. Finally, it made an award in respect of costs.

Article 5(4)

REVIEW OF LAWFULNESS OF DETENTION
Review of detention "at Her Majesty's pleasure": *settlement between parties*.

DOWNING - United Kingdom (N° 36525/97)
Judgment 6.6.2000 [Section III]

The case concerns the absence of review of detention "at Her Majesty's pleasure" following expiry of the "tariff" period.
The parties have reached an agreement providing for payment to the applicant of £500 in respect of non-pecuniary damage and legal costs.

TAKE PROCEEDINGS
Absence of proceedings for effective review of lawfulness of detention: *violation*.

SABEUR BEN ALI - Malta (N° 35892/97)
*Judgment 15.6.2000 [Section II]
(See Article 5(3), above).

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Dispute over employment by the State: *Article 6 applicable*.

FRYDLENDER - France (N° 30979/96)
Judgment 27.6.2000 [Grand Chamber]
(See Appendix IV).

ACCESS TO COURT
Refusal of legal aid on grounds of nationality and residence abroad: *communicated*.

BOUDRAHAM - Spain (N° 49881/99)
[Section IV]

The applicant, who is a Moroccan national residing in Morocco, is the widow of a former regular soldier of Moroccan nationality, who served in the Spanish army from 1937 until 1954, the year in which he retired. Until he died in 1965 he received an army retirement pension from the Spanish State. The applicant applied without success for a pension from the Spanish authorities in her capacity as the widow of a retired soldier. She lodged an administrative appeal before the High Court of Justice against the authorities' refusal. She was then refused legal aid without a contribution on the ground that such aid could not be granted to aliens not residing in Spain, except in asylum matters. The applicant brought a *súplica* action before the same court in respect of that refusal. The High Court of Justice established that she was not legally represented and ordered that the action be struck from the list.
Communicated under Articles 6(1) (access to court) and 14.

ACCESS TO COURT
Conditions for lodging an appeal against an administrative court decision: *inadmissible*.

VINCENT - France (N° 48332/99)
Decision 22.6.2000 [Section IV]

The applicant's application for annulment of a judgment of the administrative court was dismissed by the President of the Administrative Court of Appeal pursuant to Article R.87 of the Code of the Administrative Courts and Administrative Courts of Appeal on the ground that he had failed to state the facts and grounds of appeal and had failed to remedy that defect within the prescribed period. The applicant complained that he had not first been invited to remedy the defect in his application.
Inadmissible under Article 6(1): It follows clearly from Article R.87 of the Code of Administrative Courts and Administrative Courts of Appeal and from the case-law of the Council of State that if an appeal is not to be declared inadmissible, each appellant must in principle set out the facts and his grounds of appeal within the period prescribed for lodging an appeal. Having regard to the margin of appreciation which the Contracting States have in such matters, and having further regard to the fact that the applicant was legally represented, neither the abovementioned rules nor the way in which they were applied in the present case

disclose an excessive adherence to formalities incompatible with the present article: manifestly unfounded.

RIGHT TO A COURT
Failure of authorities to comply with court judgment: *striking out (matter resolved)*.

RAIF OGLU - Greece (N° 33738/96)
Judgment 27.6.2000 [Section III]

The applicant, a teacher in a minority primary school in Thrace, was suspended for one year as a disciplinary sanction for having printed and distributed a document in which he had used the term 'Turkish teachers' and old Turkish names of villages. His appeal was dismissed. At the end of the suspension, he was informed that no posts were available. He lodged an application for judicial review, which resulted in the decision being quashed. The Prefect later decided to dismiss the applicant on the ground that "he had engaged in activities which could harm the interests of the State". The applicant lodged a further application for judicial review and the Administrative Court of Appeal quashed the Prefect's decision. The applicant was subsequently re-employed at the same school and the Government deposited the sum of GRD 7,108,572, corresponding to his salary and social security contributions for the period in question with the Fund of Deposits and Loans.
As a result of the successful proceedings brought by the applicant, he has been reinstated and has received compensation in respect of loss of salary and related benefits. The matter has therefore been resolved.

RIGHT TO A COURT
Failure to execute a judgment: *communicated*.

KHOMIAK - Russia (n° 49783/99)
[Section IV]

The applicant, who is a Ukrainian national, contracted a disease while working in certain Russian and Ukrainian mining complexes managed and controlled by an establishment based in Moscow. In 1994 the Ukrainian authorities recognised that his ailment was of an occupational nature. In 1997 a decision of a Ukrainian court ordered the employer to pay the applicant the arrears of his invalidity pension. In September 1998 the Moscow District Court authorised enforcement of the judgment in Russia. To date, and in spite of the steps taken by the applicant and the Ukrainian authorities, the judgment of the Moscow District Court has not been enforced.
Communicated under Article 6(1).

FAIR HEARING
Exequatur of ecclesiastical court judgment despite alleged infringement on rights of defence: *admissible*.

PELLEGRINI - Italy (Nº 30882/96)
Decision 29.6.2000 [Section II]

The applicant was married in 1962 in a religious ceremony which was also valid in the eyes of the law. In 1987 she applied for judicial separation. The same year, she was summoned to appear before an ecclesiastical court. At the hearing, she was informed for the first time that her husband had applied for the marriage to be annulled on the grounds of consanguinity. In accordance with the Code of Canon Law, the court dealt with the matter under a summary

procedure and decided to annul the marriage. The applicant appealed to the Rota Romana, arguing, *inter alia*, that her right to a fair hearing had been breached in that she had not been notified in advance of the reason for summoning her and, accordingly, had not been able either to prepare her case or to appoint a lawyer to assist her. The Rota upheld the decision annulling the marriage. Its judgment was referred to an Italian court of appeal for a declaration that it could be enforced under Italian law. The applicant requested the court of appeal to quash the Rota's judgment on the ground that the ecclesiastical courts had breached the right to a fair hearing. In a judgment of 1991, the court of appeal declared the Rota's judgment enforceable. The applicant's appeal on points of law was equally unsuccessful.
Admissible under Article 6(1) (fair hearing).

EQUALITY OF ARMS
Non-communication of *juge commissaire*'s report to the parties: *no violation*.

MOREL - France (Nº 34130/97)
*Judgment 6.6.2000 [Section III]

Facts: The applicant lodged a notice with the commercial court that construction companies of which he was the head were unable to pay their debts. Judicial reorganisation proceedings were commenced and an insolvency judge, judicial administrator and creditors' representative were assigned to the case by the commercial court. The court ordered a six-month period of observation to allow the administrator to draw up a report on the companies' finances and workforce and to make proposals as to whether or not they should continue to trade; the observation period was extended twice. The insolvency judge made a number of orders during that period regarding the management of the business. In the light of the report prepared by the insolvency judge and the judicial administrator, the court made orders for the liquidation of the companies. The insolvency judge remained in office and was appointed president of the court chamber dealing with the liquidation. After an unsuccessful appeal, the applicant lodged a further appeal, on points of law. The Court of Cassation held that the fact that the insolvency judge was one of the three judges that had delivered judgment was consistent with the relevant domestic law and did not contravene Article 6 of the Convention. The applicant had further argued that the insolvency judge's report had not been served on him by the commercial court. The Court of Cassation dismissed that ground of appeal, too, holding that the report could be and had been presented orally and that there had therefore been no violation of Article 6. The applicant was subsequently unable to obtain a copy of that report, which was deemed "secret, being part of the deliberations".
Law: Article 6(1) (fair hearing): The right to an *inter partes* hearing implies, in principle, that the parties to a trial, whether criminal or civil, are to have the opportunity to peruse any document or observation presented to the court, even by a judge, with a view to influencing its decision, or to discuss it. The principle of equality of arms requires that each party be given a reasonable opportunity to state his case in conditions which do not place him at a distinct disadvantage in comparison with his opponent. In the course of the hearing before the Court, the Government relied on a clerical error in the drafting of the judgment, without being contradicted by the applicant's lawyer. The procedure followed by the commercial court was that laid down in Article 61 of the Law of 25 January 1985, not Article 36 thereof; the course taken by the proceedings confirmed that argument. The Article 61 procedure made no provision for a written report to be filed by the insolvency judge, unlike the Article 36 procedure. The reference to such a report in the citations of the judgment therefore proved to be incorrect. In fact the applicant relied on those references in the judgment as the basis for his complaint; his reasoning was therefore based on incorrect references in the judgment of the commercial court.
Conclusion: no violation (unanimously).
Article 6(1) (impartial tribunal): As regards the personal impartiality of the insolvency judge, there was insufficient evidence to establish that he had acted with personal prejudice. As

regards the impartiality of the bench, it was necessary to ascertain whether, independently of the personal attitude of its members, certain facts were able to cast doubt on the impartiality of the bench. In the present case the insolvency judge adopted a number of measures concerning the companies during the observation stage and subsequently presided over the court which determined the fate of those companies; such a situation could lead the applicant to doubt the impartiality of the commercial court. However, the mere fact that the insolvency judge had adopted certain decisions during the observation stage could not in itself justify the applicant's concerns as to its impartiality. It is apparent that during the observation stage the insolvency judge made a number of orders concerning the management of the economic and financial survival of the companies and the management of their staff. Under domestic law, he was responsible for ensuring that the matter proceeded expeditiously and that the interests concerned were protected. Following an application under Article 61 of the Law of 25 January 1985, the court over which he presided was required to assess the more or less long-term viability of the proposal that the companies should continue to trade which the applicant had submitted at the end of the observation stage. The court therefore had to examine the financial guarantees and other evidence produced by the applicant at the hearing and also the state of the companies at that date (staff, real assets, business sector in difficulties). The court also relied on evidence provided by the administrator. The insolvency judge was therefore faced with two quite separate issues. There was therefore no objective reason to believe that the nature and scope of the insolvency judge's role during the observation stage implied any prejudice on the part of the court in its assessment of the viability of the proposal that the companies should continue to trade submitted by the applicant at the end of the observation period and the financial guarantees produced at the hearing. In short, the applicant's concerns were unfounded.
Conclusion: no violation (unanimously).

REASONABLE TIME
Length of proceedings concerning access to a child and of related enforcement proceedings: *violation*.

NUUTINEN - Finland (N° 32842/96)
Judgment 27.6.2000 [Section I]
(See Appendix V).

REASONABLE TIME
Length of administrative proceedings: *violation*.

SERRA - France (N° 34206/96)
*Judgment 13.6.2000 [Section III]

The case concerns the length of administrative proceedings (10 years, 3 months and 17 days for five levels of jurisdiction, including more than 4½ years for the examination of the applicant's first cassation appeal).
Conclusion: violation (unanimously).
Article 41 - The Court considered that in the absence of a causal link between the pecuniary damage claimed and the violation, it was not appropriate to award damages in that respect. It awarded the applicant 30,000 francs (FRF) in respect of non-pecuniary damage.

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

GARCIA FARIA - Portugal (N° 36776/97)
BACELAR DE SOUSA MACHADO - Portugal (N° 37308/97)
BACELAR DE SOUSA MACHADO - Portugal (N° 37311/97)
Judgments 22.6.2000 [Section IV]

The cases concern the length of civil proceedings.
In each cases, the parties have reached a friendly settlement providing for payment to the applicant of the following amounts:
Garcia Faria - 800,000 escudos (PTE) in respect of non-pecuniary damage and 200,000 escudos in respect of costs and expenses;
Bacelar de Sousa Machado (no. 1) - 800,000 escudos (PTE) in respect of non-pecuniary damage and 250,000 escudos in respect of costs and expenses;
Bacelar de Sousa Machado (no. 2) - 750,000 escudos (PTE) in respect of non-pecuniary damage and 250,000 escudos in respect of costs and expenses.

REASONABLE TIME
Length of civil proceedings: *violation.*

OLIVEIRA MODESTO and others - Portugal (N° 34422/97)
*Judgment 8.6.2000 [Section IV]

Facts: All 122 applicants were employed by the limited company "F.C.M.E. S.A.", which from 1985 was unable to pay its staff their wages. In October 1986 the company applied to the courts to be placed in judicial administration. The judicial administrator appointed in the administration proceedings delivered his report on the company's situation and recognised the applicants' claims in respect of their unpaid wages. The creditors' meeting took place in February 1988; at that meeting the applicants' claims were recognised by the other creditors. In March 1988 an agreement on the reorganisation of the company was concluded. None the less, the company experienced difficulties in implementing that agreement. The courts initially dismissed the claims of certain creditors, including some of the applicants, that the company should be declared insolvent. On appeal by these creditors, however, the Court of Appeal finally declared the company insolvent in October 1994. In May 1995 an order was made for seizure of the company's assets and the creditors were called upon to prove their claims. In March 1996 the administrator was requested to submit his report on the creditors' claims, which he did in November 1997 after the period initially set had been extended a number of times. In March 2000 the judge delivered a decision determining the rank of several creditors; the judge declared admissible the appeals against that decision lodged by three of the creditors. Some of the assets have still not been put up for sale and the proceedings are still pending.
Law: Article 6(1): Civil rights, in particular the right to remuneration, were at stake in the reorganisation proceedings at least from February 1988, the date on which all the creditors approved the applicants' claims against the company. The two stages of the proceedings therefore had to be considered together. While some periods of inactivity are not attributable to the authorities, others are. Thus, the administrator did not submit his report on the creditors' claims until one year and eight months after the court had requested him to do so. Furthermore, the decision determining the rank of several creditors was not delivered until after two years and five months; however, special diligence was required in the light of what was at stake in the dispute. Finally, five years after the company's assets were seized, some of them have still not been put up for sale.
Conclusion: violation (unanimous).

Article 41: The Court awarded each of the applicants 900,000 escudos (PTE) for non-pecuniary damage and awarded the first applicant costs of 313,840 escudos.

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

120 cases - Italy
Judgments 22.6.2000 [Section II]
(See Appendix VI).

IMPARTIAL TRIBUNAL
Failure of judges to disclose their membership of the freemasons in a case where one of the parties is also a freemason: *inadmissible*.

SALAMAN - United Kingdom (Nº 43505/98)
Decision 15.6.2000 [Section I]

The applicant was appointed executor and beneficiary under the will of B., a freemason, who died in 1992. The will, drawn up professionally in June 1991, left a large part of the estate to the applicant, subject to a life interest in the residuary estate to the deceased's brother, allegedly also a freemason. In August 1991, B. had made a manuscript codicil endorsed on the back of a photocopy of the will by which he purported to revoke the will. The High Court found, upon the deceased's brother's application, that the will had been validly revoked. The applicant appealed against this decision. The Court of Appeal concluded that there was no substance to the appeal. The applicant was refused leave to appeal to the House of Lords. He claims that he later learned that the trial judge and one of the Court of Appeal judges were freemasons. He claimed that there was no means of discovering this at the time of the hearing. *Inadmissible* under Article 6(1): The applicant in fact knew of the appeal court judge's membership of the freemasons before seeking leave to appeal to the House of Lords but failed to include it as a ground. He has therefore failed to exhaust domestic remedies in this respect. As to the trial judge, it is undisputed that both he and the deceased were freemasons, although it is less clear whether the deceased's brother also was, but whether he was or not there is no evidence that the judge was aware that he was. Nor does there appear to be any element in the case which rendered the judge's membership of the freemasons of relevance to the issues to be decided. There is thus no objective element present which would give rise to any appearance of a risk of bias and it has been shown that a judge's membership of the freemasons in the United Kingdom in itself raises doubts as to his impartiality where a witness or a party is also a freemason; there is no reason to doubt that a judge would not regard his oath on taking judicial office as taking precedence over any other social commitments or obligations: manifestly ill-founded.

ACCESS TO COURT
Administrative criminal proceedings: *violation*.

MAUER - Austria (no. 2) (N° 35401/97)
*Judgment 20.6.2000 [Section III]

Facts: The applicant was instructed to inform the police who had parked his car in a particular place. He failed to provide the information and was fined 2,000 schillings (ATS) for the failure. The penal notice was confirmed by the Regional Government. The applicant's administrative complaint to the Administrative Court was ultimately dismissed. The court found that the correct provisions of the Motor Vehicles Act had been applied and that the reasons given by the applicant for not having supplied the required information were inadequate.
Law: Article 6(1) - The issue is the same as in the applicant's two previous cases, as well as in the cases of Schmautzer, Umlauft, Gradinger, Pramstaller, Palaoro and Pfarrmeier v. Austria (Series A nos. 328A-C and 329A-C), in all of which the Court found a violation of the right of access to a court, given the limited review by the Administrative Court of the decisions of the administrative authorities. There is no reason to follow a different approach in the present case.
Conclusion: violation (unanimously).
Article 41 - The judgment in itself constitutes just satisfaction in respect of any non-pecuniary damage. As regards the pecuniary damage claimed by the applicant, the Court cannot speculate as to what the outcome of the proceedings might have been if the violation of the Convention had not occurred and thus no award is made in that respect. The Court made an award in respect of costs.

FAIR HEARING
Self-incrimination - drawing of adverse inferences from accused's silence: *violation*.

AVERILL - United Kingdom (N° 36408/97)
*Judgment 6.6.2000 [Section III]

Facts: The applicant was stopped by police in Northern Ireland shortly after an armed attack in which two people were killed. The applicant told the police that he had been helping with sheep on a farm at the time. He was arrested and taken to army barracks for questioning; access to a lawyer was deferred for 24 hours. The applicant was cautioned that adverse inferences could be drawn from his failure to mention facts later relied on in his defence, but remained silent throughout 37 interviews over several days. He had daily access to a lawyer after the initial 24 hours. He was also cautioned that adverse inferences could be drawn from his failure to explain the presence of fibres on his clothing and person. He was charged with murder and tried by a single judge sitting without a jury. The prosecution case was based on forensic evidence linking the applicant to a balaclava and gloves found in the car which had been used in the attack. The applicant claimed that he had worn a balaclava and gloves when working on the farm. He was convicted, the judge having regard to the forensic evidence and also relying on "very strong adverse inferences" from the applicant's failure to provide explanations during questioning. The applicant's appeal was rejected.
Law: Article 6(1) - The extent to which adverse inferences may be drawn from an accused's failure to respond to police questioning must necessarily be limited. There may be reasons why an innocent person would not be prepared to cooperate with the police, in particular before having an opportunity to consult a lawyer. Considerable caution is therefore required when attaching weight to the fact that a person arrested for a serious crime and denied access

to a lawyer does not provide detailed responses to incriminating evidence. In this case, the judge exercised a discretion in drawing inferences and also gave detailed reasons, which were scrupulously reviewed and endorsed by the appeal court. The applicant was not convicted solely or mainly on account of his silence: there was a considerable body of forensic evidence and the applicant's oral testimony did not advance his defence of alibi, since the judge found him to be dishonest and unreliable. Moreover, the judge dismissed the evidence of defence witnesses as lies. It cannot be said that the judge exceeded the limits of fairness, since he could properly conclude that the applicant could have been expected to provide explanations to the police. The presence of incriminating fibres called for an explanation and his failure to provide one allowed the drawing of adverse inferences, all the more so since he had access to a lawyer after 24 hours. The applicant was fully apprised of the implications of remaining silent and was therefore aware of the risks.
Conclusion: no violation (6 votes to 1).
Article 6(2) - The issue raised under this provision is a restatement of the applicant's arguments under Article 6(1).
Conclusion: no violation (6 votes to 1).
Article 6(1) and (3)(c) - The scheme permitting the drawing of adverse inferences makes it of paramount importance for an accused to have access to a lawyer at the initial stages of police questioning, since the accused is confronted with the fundamental dilemma of whether to remain silent or not. Although the period in this case is shorter than that in John Murray v. the United Kingdom (*Reports* 1996-I), a refusal to allow access to a lawyer during the first 24 hours must still be seen as incompatible with Article 6. In that period the rights of the defence may well be irretrievably prejudiced and in this case the judge in fact invoked the applicant's silence during the initial period against him. As a matter of fairness, access to a lawyer should have been guaranteed before the applicant's interrogation began.
Conclusion: violation (unanimously).
Article 41 - The Court cannot speculate on the outcome of the applicant's trial had he had access to a lawyer earlier. The finding of a violation in itself constitutes just satisfaction. The Court made an award in respect of costs.

FAIR HEARING
Use in criminal proceedings of recordings made by one of the parties without the other knowing: *communicated*.

TURQUIN - France (N° 43467/98)
[Section IV]

The applicant reported the disappearance of his young son to the police. An inquiry into the applicant's family circumstances revealed that he and his wife had commenced divorce proceedings and that relations between them were strained. The theory of a family kidnapping emerged during the investigation and a judicial investigation was therefore opened against persons unknown on a charge of kidnapping. The applicant's wife, who had joined the proceedings as the party claiming civil damages, handed over to the investigating judge recordings of conversations with the applicant made without his knowledge, during which he claimed to have killed their son. The transcript of the recordings was placed on the file. The applicant was then accused of murder and remanded in custody. He claimed that the incriminating recording was a fraudulent montage; this was denied by an expert. The applicant then admitted having said the words in question but justified them by the course taken by the conversation with his wife, implying that they did not represent the truth but were a ruse to make her agree to resume married life. He was committed for trial before an assize court charged with premeditated murder by the indictments division of the court of appeal, which dismissed his application for annulment of the decisions relating to the recordings made by the party claiming damages. The applicant's appeal on a point of law against the judgment was dismissed. He unsuccessfully lodged a complaint against his wife

in respect of the recordings made without his knowledge and handed over to the judicial authorities. In the meantime, and although the child's body was never discovered, he was sentenced to a twenty-year term of imprisonment. He appealed without success, relying in particular on the fact that the assize court had refused to produce at the hearing certain cassettes relating to separate proceedings which would none the less have assisted the arguments of the defence.
Communicated under Article 6(1).

FAIR HEARING
Effect of extensive adverse media reporting on fairness of trial: *inadmissible*.

PULLICINO - Malta (N° 45441/99)
Decision 15.6.2000 [Section II]
(See below).

FAIR HEARING
Fairness of proceedings as a whole despite breach of the right to a fair hearing: *inadmissible*.

PULLICINO - Malta (N° 45441/99)
Decision 15.6.2000 [Section II]
(See below).

EQUALITY OF ARMS
Confiscation of notes taken by the defence during the prosecution's presentation of its case: *inadmissible*.

PULLICINO - Malta (N° 45441/99)
Decision 15.6.2000 [Section II]

The applicant was formerly Chief Police Commissioner. In 1987, the Government ordered the reopening of a criminal investigation into the circumstances surrounding a death which had occurred at police headquarters in 1981, when the Government was in opposition. Following the close of the investigation, the applicant was charged with various offences, including wilful homicide. A few days before the trial, the applicant's bail was revoked on the ground that he had approached a prosecution witness in an attempt to influence him. The trial attracted intense and sustained media coverage and political comment. The trial judge was the same one who had revoked the applicant's bail. He gave leave to the prosecution to call the witness who had testified at the bail revocation proceedings and ordered confiscation of extensive notes which the applicant had taken during the presentation of the case for the prosecution. The applicant was represented by counsel throughout the whole of the proceedings. In his summing-up to the jury, the trial judge emphasised that the jurors should not let themselves be influenced by extraneous matters. After deliberating, the jury found the applicant not guilty of wilful homicide but guilty of being an accomplice to the crime of causing grievous bodily harm resulting in death. He was sentenced to 15 years' imprisonment. The Court of Criminal Appeal, while recognising that confiscation of a defendant's notes was illegal, found that there had been no miscarriage of justice. It considered that the balance between the applicant's right to a fair trial and press freedom had not been disturbed to a point where the press coverage would have had a negative influence on the jury's verdict. Finally, the court ruled that it was no longer open to the applicant to raise the issue of the trial judge's impartiality on appeal. Thus, the court upheld the conviction and sentence. Further appeals to the First Hall of the Civil Court and to the Constitutional Court were unsuccessful. The latter

found that the right to a fair trial had been breached as a result of the confiscation but that the proceedings as a whole had been fair.

Inadmissible under Article 6(1) (confiscation of the notes) - The participation of an accused in his criminal trial includes the right to compile notes in order to facilitate the conduct of his defence, irrespective of whether he is represented by counsel. In the present case, the Court of Criminal Appeal roundly criticised the decision to confiscate the applicant's reference materials and the Constitutional Court ruled that the applicant's right to a fair hearing before the trial court had been breached from the standpoint of both domestic constitutional law and Convention law. As to whether the defect in the original trial was rectified on appeal, the Court of Criminal Appeal delivered a lengthy judgment in which it found that there was in any case a sufficiently strong case against the applicant. The Constitutional Court, applying the correct Convention test, looked at the fairness of the proceedings as a whole and concluded that the irregularity at first instance had not prejudiced his right to a fair trial. Moreover, any disadvantage the applicant may have suffered was offset by the fact that he was effectively represented throughout the proceedings by experienced counsel. Overall, the proceedings afforded him a fair and effective opportunity to present his defence in an adversarial procedure and respected the principle of equality of arms: manifestly ill-founded.

Inadmissible under Article 6(1) (impartiality of trial judge) - The issue determined in the bail revocation proceedings was entirely distinct from the question of the applicant's guilt or innocence: the determination of that question lay ultimately in the hands of the jurors and the judge's summing-up to them was in no way unfair to the defence. As to the decision to give leave to the prosecution to call the witness who had testified in the bail revocation proceedings, the trial judge's decision on the issue cannot be construed as a measure which was intentionally hostile to the defence: firstly, the applicant did not impugn the judge's subjective impartiality in his conduct of the trial and secondly the defence had every opportunity to discredit the evidence of these witnesses before the jury. Although the applicant's lawyer challenged the judge's participation only on appeal, the courts of appeal reviewed the merits of the complaint and ruled that it was unfounded: manifestly ill-founded.

Inadmissible under Article 6(1) (adverse media reporting and other statements) - Journalists' comments on pending criminal proceedings should not extend to statements which are likely to prejudice, intentionally or not, an accused's chances of receiving a fair trial or to undermine the confidence of the public in the role of the courts in the administration of criminal justice. In this case, the applicant's trial ensued from events which were a matter of intense and divisive political debate and it could not be expected that the trial itself would be conducted with any degree of serenity. Domestic courts were attentive to the possible risks caused to the fairness of the trial by prejudicial comment in the media and took steps to ensure that a balance was struck between press freedom and the applicant's right to a fair trial. Moreover, the direction which the trial judge gave to the jury could be considered as a safeguard against the possible intrusion of extraneous and biased reporting into the jury's own assessment of the issues raised by the trial. Further, the applicant did not make out a case that there was a media campaign against him of such virulence as to sway the outcome the jurors' deliberations. Significantly, the applicant was in any case acquitted of the principal charge against him, wilful homicide: manifestly ill-founded.

PUBLIC HEARING
Hearing held in prison: *admissible*.

RIEPAN - Austria (N° 35115/97)
Decision 15.6.2000 [Section III]

The applicant is serving a prison sentence for murder and burglary. Following serious threats he made against members of the prison staff, criminal proceedings were initiated against him. The Regional Court held a hearing in the "closed area" of the prison, although according to the minutes the hearing was public. The applicant was convicted of dangerous menace and sentenced to 10 months' imprisonment. He filed an appeal on both facts and law and against his sentence. He argued, *inter alia*, that the hearing had not been public since it had taken place in the "closed area" of the prison where only people with a special permit were allowed and that it had been held in a room too small for anyone to attend it. The Court of Appeal rejected his appeal.
Admissible under Article 6(1).

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

CONSTANTINESCU - Romania (N° 28871/95)
Judgment 27.6.2000 [Section I]
(See Appendix VII).

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

GROSSE - Denmark (N° 30285/96)
Judgment 8.6.2000 [Section II]

The case concerns the length of criminal proceedings. The parties have reached a friendly settlement providing for payment to the applicant of 50,000 kroner (DKK), covering any pecuniary and non-pecuniary damage as well as costs.

IMPARTIAL TRIBUNAL
Judge presiding over trial after having previously revoked bail: *inadmissible*.

PULLICINO - Malta (N° 45441/99)
Decision 15.6.2000 [Section II]
(See above).

TRIBUNAL ESTABLISHED BY LAW
Special procedure for Ministers before the Court of Cassation applied to others: *violation*.

COEME - Belgium (Nº 32492/96)
MAZY - Belgium (Nº 32547/96)
STALPORT - Belgium (Nº 32548/96)
HERMANUS - Belgium (Nº 33209/96)
JAVEAU - Belgium (Nº 33210/96)
*Judgment 22.6.2000 [Section II]

Facts: In 1989 criminal proceedings were opened against Mr Javeau, who was suspected of fraud and corruption between 1981 and 1989, when he ran the association "I", whose activities included carrying out market surveys and opinion polls. During the judicial investigation both Mr Javeau and Mr Stalport were heard. In 1994 the prosecution requested the Chamber of Representatives to lift Mr Coëme's parliamentary immunity, since he was implicated in certain of that association's illegal activities while occupying a post as minister. Pursuant to Article 103 of the Constitution on judicial proceedings against ministers, the Chamber of Representatives decided that Mr Coëme should be prosecuted before the Court of Cassation sitting as a full court, which under that article was the only court with jurisdiction to try a minister. The other applicants were dealt with under the same procedure, before the Court of Cassation, by virtue of the connected offences principle provided for in the Code of Criminal Investigation, although none of them was a minister. At the hearing before the Court of Cassation on 5 February 1996, it was announced that the procedure to be followed would be the ordinary criminal procedure. On 12 February 1996 an interlocutory judgment was read out, in which the Court of Cassation declared that the matter had been properly brought before it and that it had jurisdiction to deal with it; in the same judgment the court stated that the rules governing ordinary criminal procedure would be applied only in so far as they were compatible with the provisions governing the procedure before the Court of Cassation sitting as a full court. The Court of Cassation also refused to request the Administrative Jurisdiction and Procedure Court to give a preliminary ruling on two questions submitted by two of the applicants, one concerning the connected offences principle taken from the Code of Criminal Investigation and applied to the instant proceedings and the other referring to the application to those proceedings of a new statute, the Law of 24 December 1993, which extended from three to five years the period after which prosecution for minor offences (*délits*) became time-barred. The Court of Cassation delivered its judgment on 5 April 1996, finding the applicants guilty and imposing various penalties.
Law: Article 6: The absence of an implementing law: (a) the situation of Mr Coëme: There was no law implementing Article 103 of the Constitution in force when the applicants were summoned to stand trial before the Court of Cassation for the offences with which they were charged. However, Mr Coëme, who was legally represented, could not fail to be aware that the ordinary criminal procedure would probably followed; that, moreover, was confirmed by the Principal President of the Court of Cassation at the opening of the hearing of 5 February 1996. In its interlocutory judgment of 12 February 1996, however, the Court of Cassation stated that the rules governing ordinary criminal proceedings would be applied only in so far as they were compatible with the provisions governing proceedings before the Court of Cassation sitting as a full court. Thus the parties were unable to ascertain in advance precisely what procedure would be followed or to foresee in what way the Court of Cassation would deem it necessary to amend or modify the provisions that determine the normal course of a criminal trial. The Court of Cassation therefore introduced an element of uncertainty which rendered the defence's task difficult. The primary reason for having rules of procedure is to protect the person charged against the risks of misuse of power; the defence is therefore more particularly likely to suffer from any lacunae and imprecision in those rules. Thus Mr Coëme was placed in a situation in which he was in a clear disadvantage in comparison with the prosecution, which deprived him of a fair trial.

(b) The situation of the other applicants: The applicants recalled that neither the Constitution nor the law conferred jurisdiction on the Court of Cassation in criminal proceedings against persons other than a minister. Although Article 103 of the Constitution provides, exceptionally, that ministers are to be tried by the Court of Cassation, there was no provision under which its jurisdiction might be extended to accused persons other than ministers in respect of offences connected with those with which the ministers were charged. Although the application of the connected offences rules laid down in the code of Criminal investigations was foreseeable in the light of academic opinion and the case-law, those indications could not justify the conclusion in the instant case that the rule on connection was provided for by law, especially since the Court of Cassation, the supreme judicial authority, decided that the summoning of persons who had never held ministerial office was based on Article 103 of the Constitution rather than on the Code of Criminal Investigation or the Judicial code. Since it was established that the connection rule was not provided for by law, the Court of Cassation could not be regarded as a tribunal established by law to try the four applicants.
Conclusion: violation (unanimously).
The questions referred to the Administration and Jurisdiction Court for a preliminary ruling: The Convention does not guarantee as such that a case must be referred by a national court, as a preliminary issue, before another national or international court or tribunal. The right to have a preliminary issue determined by a court is not absolute, even where the law confers exclusive jurisdiction in a particular legal area on one court and provides that the other courts are to refer to it, without exception, all questions relating thereto. However, it is not excluded that, in certain circumstances, a refusal to do so by a national court sitting at last instance may infringe the principle of a fair procedure, especially if such a refusal appears to be arbitrary. That was not the case here, since the Court of Cassation took into account the applicants' complaints and their request that the questions be referred to the Administrative Jurisdiction and Procedure Court and then determined the case by giving decisions which were sufficiently reasoned and did not appear to be arbitrary.
Conclusion: no violation (four votes to three).
The independence and impartiality of the Court of Cassation: There was no justification for the applicants' concerns as to the lack of independence and impartiality of the Court of Cassation.
Conclusion: no violation (4 votes to 3).
The hearing of Mr Stalport: Mr Stalport's complaint referred essentially to the fact that statements taken while he was being examined were used at his trial. In the light of the statements referred to by the Court of Cassation, that court apparently relied on the statements reported in the record of his examination and not on an admission which emerged from the record of the applicant's examination. It cannot therefore be concluded that the Court of Cassation found Mr Stalport guilty on the basis of evidence obtained against his will, by constraint or by bringing pressure to bear on him.
Conclusion: no violation (4 votes to 3).
The reasonable length of the proceedings as regards Mr Hermanus: The period to be taken into consideration lasted four years, seven months and eight days. The case was manifestly complex and examination of it in the light of the parties' observations has not disclosed any period of inactivity attributable to the judicial authorities. In the exercise of their discretion, the judicial authorities decided to examine the facts alleged against the applicant together with those alleged against the other applicants. They took the risk that the applicant's committal for trial would be delayed, but did so in the interest of the proper administration of justice. The judicial authorities were thus able to strike a fair balance between the requirements of dispatch and those of the proper administration of justice.
Conclusion: no violation (unanimously).
Article 7: In its judgment of 5 April 1996 the Court of Cassation held that, as regards Mr Coëme and Mr Hermanus, the offences of fraud and uttering forged documents, which it classified not as serious offences (*crimes*), as provided for in the Criminal code, but, owing to what were deemed to be extenuating circumstances, as less serious offences (*délits*). In

Belgian law the classification of an offence is determined according to the penalty imposed and not to the penalty applicable. The date of the judgment therefore had to be taken into account for the purpose of determining the point at which a prosecution became time-barred. The Court of Cassation therefore took into consideration the limitation period applicable to less serious offences. In applying the Law of 24 December 1993 immediately, the court held, after noting that the offences found to have been made out were not time-barred on the date on which the law entered into force, that the prescription period was five years from a measure causing time to begin to run anew that was lawfully taken before the first five-year period had expired. The solution adopted by the Court of Cassation was based on its case-law, according to which laws which alter its case-law are regarded as legislation on jurisdiction and procedure; it thus followed the generally recognised principle that, in the absence of express provisions to the contrary, laws on procedure apply immediately to proceedings that are under way. In the present case, the extension of the limitation period introduced by the Law of 24 December 1993 and its immediate application by the Court of Cassation had the effect of extending the period during which prosecutions could be brought in respect of the offences and were detrimental to the applicants. However, Article 7 cannot be interpreted as preventing the extension of limitation periods, by the effect of the immediate application of a law on procedure, when the offences have never been time-barred. The applicants were convicted for acts in respect of which the prosecution never became time-barred. Those acts constituted offences when they were committed and the penalties imposed were no heavier than those applicable at the material time. Nor had the applicants suffered, on account of the Law of 24 December 1993, greater harm than they would have faced at the time when the offences were committed.
Conclusion: no violation (unanimously).
Article 41: The court awarded 300,000 Belgian francs for non-pecuniary damage to Mr Mazy, Mr Hermanus and Mr Javeau, and to the heirs of Mr Stalport. It also awarded 400,000 Belgian francs to Mr Coëme and 760,000 Belgian francs to Mr Mazy, Mr Hermanus and Mr Javeau, and to the heirs of Mr Stalport, for costs and expenses.

Article 6(2)

PRESUMPTION OF INNOCENCE
Statements by the authorities indicating that a father is guilty of sexual abuse of his daughter despite the discontinuation of criminal proceedings against him: *friendly settlement*.

LINDELÖF - Sweden (N° 22771/93)
Judgment 20.6.2000 [Section I]

The third applicant, born in 1979, is mentally retarded. The first two applicants are her parents. In 1992 she was placed in public care, her father being suspected of having abused her. However, the public prosecutor decided not to initiate proceedings, on the ground that the allegations were unsubstantiated. The child nevertheless remained in public care. The Social Council rejected the parents' request for additional access to their child and the County Administrative Court, examining the parents' appeal, found that the access restrictions were justified in order to protect the child from being improperly exploited by her father again. In the meantime, the parents had requested that the public care be terminated, which the Social Council also refused. They appealed to the County Administrative Court which, despite a number of expert opinions submitted by them in respect of the child's illness, decided that the child should stay in public care. In 1995 the parents eventually obtained from the Administrative Court of Appeal a judgment according to which the care should come to an end, there being nothing to suggest that the child's development would be disrupted if she were returned to her parents.

The parties have reached a friendly settlement providing for an *ex gratia* payment of 2,100,000 kronor (SEK) to the applicants. The Government expressed regret for the distress caused to the applicants.

Article 6(3)(c)

DEFENCE THROUGH LEGAL ASSISTANCE
Denial of access to lawyer during initial stages of interrogation: *violation*.

MAGEE - United Kingdom (N° 28135/95)
*Judgment 6.6.2000 [Section III]

Facts: The applicant was arrested in Northern Ireland in connection with an attempted bombing. Access to a lawyer was delayed under the relevant legislation and the applicant was cautioned that adverse inferences could be drawn from his failure to mention facts later relied on in his defence. He was interviewed on several occasions and the following morning he complained to a doctor that he had been ill-treated. During subsequent interviews, the applicant broke his silence and gave detailed answers admitting his involvement in the bombing. The next day, he told a doctor that he had no further allegations of ill-treatment. He was later allowed to consult a lawyer. Further medical examinations disclosed no signs of injury. The applicant was tried before a judge sitting without a jury. The prosecution case was based on his confession and his application to have this excluded on the basis of the alleged ill-treatment was rejected after evidence had been taken in that respect. The applicant, although cautioned that adverse inferences could be drawn from his failure to give evidence at his trial, declined to do so. He was convicted and sentenced to 20 years' imprisonment. His appeal was unsuccessful.
Law: Article 6(1) and (3)(c) - The trial judge was not called on to exercise his discretion to draw inferences and no inferences were drawn from the applicant's decision not to give evidence. Thus, his silence was not an issue before the domestic courts. The administration of a caution concerning the implications of remaining silent may place an accused in a dilemma at the beginning of an interrogation and fairness requires that he have the benefit of legal assistance at that stage. However, the applicant in this case chose to break his silence and no adverse inferences were drawn from his earlier silence. The central issue is therefore the applicant's complaint that he was prevailed upon in a coercive environment to incriminate himself without the benefit of legal advice. He was denied access to a lawyer for over 48 hours, during which he was interviewed for extended periods and kept incommunicado apart from contacts with doctors. This, together with the austerity of the conditions (as reported in particular by the Committee for the Prevention of Torture), was intended to be psychologically coercive and conducive to breaking down the applicant's resolve to remain silent. As a matter of procedural fairness, he should therefore have been given access to a solicitor at the initial stages as a counterweight to the intimidating atmosphere. Denial of access for such a lengthy period and in a situation where defence rights were irretrievably prejudiced is incompatible with the rights of an accused under Article 6.
Conclusion: violation (unanimously).
Article 14 in conjunction with Article 6: In the constituent parts of the United Kingdom there is not always a uniform approach to legislation in particular areas. Whether or not an individual can assert a right derived from legislation may accordingly depend on the geographical reach of the legislation at issue and the individual's location at the time. In so far as there exists a difference in treatment of detained suspects in Northern Ireland and those in England and Wales, that difference is not to be explained in terms of personal characteristics but on the geographical location. This permits legislation to take account of regional differences and characteristics of an objective and reasonable nature.

Conclusion: no violation (unanimously).
Article 41 - The Court cannot speculate on the outcome of the applicant's trial had he had access to a lawyer earlier. The finding of a violation in itself constitutes just satisfaction. The Court made an award in respect of costs.

DEFENCE THROUGH LEGAL ASSISTANCE
Denial of access to lawyer during initial stages of interrogation: *violation*.

AVERILL - United Kingdom (N° 36408/97)
*Judgment 6.6.2000 [Section III]
(See Article 6(1), above).

Article 6(3)(d)

EXAMINATION OF WITNESSES
No questioning of the victim in proceedings concerning sexual abuse: *admissible*.

P.S. - Germany (N° 33900/96)
Decision 6.6.2000 [Section IV]

The applicant was convicted of having sexually abused an 8-year old girl and given a suspended sentence of seven months' imprisonment. The court relied on statements made by the girl's mother and the police officer who heard her shortly after the incident. The court refused to call an expert to examine the veracity of the girl's accusations as requested by the applicant and decided not to hear the girl herself, considering that the recollection of the event could have traumatising effects on her. The Regional Court dismissed the applicant's appeal on the basis not only of the statements of the girl's mother and the police officer but also of an expert opinion in which the girl's credibility was established. In the light of the expert opinion, which stated that the girl's state of health would deteriorate if she were to be heard, the court concluded that she should be considered as being a witness out of reach. The Court of Appeal dismissed the applicant's appeal on points of law and the Federal Constitutional Court refused to entertain his constitutional complaint.
Admissible under Article 6(3)(d).

ARTICLE 7

RETROACTIVITY
Application of new law extending longer prescription period for less serious crimes to proceedings started before its entry into force: *no violation*.

COEME - Belgium (Nº 32492/96)
MAZY - Belgium (Nº 32547/96)
STALPORT - Belgium (Nº 32548/96)
HERMANUS - Belgium (Nº 33209/96)
JAVEAU - Belgium (Nº 33210/96)
*Judgment 22.6.2000 [Section II]
(See Article 6(1), above).

ARTICLE 8

FAMILY LIFE
Alleged failure of authorities to take sufficient measures to ensure exercise of a father's right of access to his child: *no violation.*

NUUTINEN - Finland (N° 32842/96)
Judgment 27.6.2000 [Section I]
(See Appendix V).

CORRESPONDENCE
Opening and copying of bankrupt's mail by the trustee in bankruptcy: *violation*.

FOXLEY - United Kingdom (N° 33274/96)
*Judgment 20.6.2000 [Section III]

Facts: The applicant was convicted of corruption and sentenced to imprisonment. A confiscation order for over £1.5 million was made, with provision for a further three years' imprisonment in the event of non-payment. A receiver was appointed to realise the applicant's assets. The applicant was declared bankrupt and the same person was appointed the trustee in bankruptcy. She obtained an order that all postal packets addressed to the applicant should be re-directed to her so that she could identify his assets and sources of income. The order was valid for three months, during which over 70 letters were re-directed, including letters from his legal advisers concerning proceedings before the European Commission of Human Rights and affidavits and drafts made for use in the receivership proceedings. Each of the letters was copied to file before being forwarded to the applicant. Two deliveries of mail occurred after expiry of the order but a number of the items were nevertheless copied to file.
Law: Article 8 - There was an interference by a public authority with the applicant's right to respect for his correspondence. There was a legal basis for the interception of the correspondence up until the expiry of the order, as well as for the perusal and copying; the trustee's discretion was not open-ended but was confined to particular items which might assist her in locating the applicant's assets. However, the interference continued after expiry of the order and, regardless of the alleged breakdown in the administrative arrangements, the trustee opened mail and retained copies, although she must have known that there was no longer a legal basis for doing so. Her actions after expiry of the order were therefore not in accordance with the law.

As for the interference before expiry of the order, it pursued the legitimate aim of protecting the rights of others, namely the applicant's creditors. The authorities may consider it necessary to have recourse to the interception of a bankrupt's correspondence in order to identify and trace the sources of his income, but there must be adequate and effective safeguards to ensure minimum impairment of the right to respect for correspondence, especially when correspondence with legal advisers may be intercepted. It may be difficult to identify from an envelope whether the contents attract legal professional privilege, but the Government have not contested the applicant's allegation that letters from his legal advisers were read and copied to file. There is no justification for this procedure, which was not in keeping with the principles of confidentiality and professional privilege. The Government did not argue that the privileged channel of communication was being abused or invoke any other exceptional circumstances which would serve to justify the interference with reference to their margin of appreciation. The fact that the trustee was also the receiver made it even more compelling to forward, unread, the applicant's correspondence from his legal adviser in connection with the receivership proceedings. Consequently, the interference was not necessary.
Conclusion: violation (unanimously).
Article 34: In view of the above conclusion, it is unnecessary to examine whether the applicant's exercise of the right of petition has been hindered.
Conclusion: not necessary to examine (unanimously).
Article 6: Where a lawyer is involved, an encroachment on professional secrecy may have repercussions on the proper administration of justice and hence on the rights guaranteed by this provision. However, the applicant has not provided any information on the conduct and outcome of the receivership proceedings. In these circumstances, and having regard to the finding of a violation of Article 8, it is unnecessary to examine the applicant's complaint under Article 6.
Conclusion: not necessary to examine (unanimous).
Article 41 - The Court considered that the finding of a violation constituted in itself just satisfaction for any non-pecuniary damage. It made an award in respect of costs.

ARTICLE 9

FREEDOM OF RELIGION
Refusal to renew residence permits of Jehovah's Witnesses: *communicated*.

LOTTER - Bulgaria (N° 39015/97)
[Section IV]

The applicants, Austrian nationals, are Jehovah's Witnesses. They went to Bulgaria, where they started a private business and obtained residence permits valid from October 1994 until November 1995. In October 1995 they requested an extension of their residence permits. However, the director of the police department refused their request and ordered them to leave Bulgaria. Their appeal was dismissed by the Ministry of the Interior, which noted that an investigation showed that their company was not engaged in commercial activities but used by the Jehovah's Witnesses, whose activities were at that time prohibited in Bulgaria. The Regional Court held that it did not have jurisdiction to deal with the applicants' appeal against the administrative orders refusing to extend their residence permits, since measures relating to national security could not be subject to judicial review. The applicants' further appeal was rejected by the Supreme Administrative Court.
Communicated under Articles 9 and 14.
MANIFEST RELIGION OR BELIEF

Refusal of permit to carry out ritual slaughters in accordance with the strict requirements of an Orthodox Jewish association: *no violation*.

CHA'ARE SHALOM VE TSEDEK - France (N° 27417/95)
Judgment 27.6.2000 [Grand Chamber]
(See Appendix VIII).

ARTICLE 10

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

ERDOGDU - Turkey (N° 25723/94)
Judgment 15.6.2000 [Section IV]
(See Appendix IX).

FREEDOM OF EXPRESSION
Conviction for defamation: *no violation*.

CONSTANTINESCU - Romania (N° 28871/95)
Judgment 27.6.2000 [Section I]
(See Appendix VII).

FREEDOM OF EXPRESSION
Order by court to publish statement admitting defamatory character of allegations against Minister: *admissible*.

FELDEK - Slovakia (N° 29032/95)
Decision 15.6.2000 [Section II]

A newspaper published a poem composed by the applicant in which, according to journalists, he implicitly made reference to the Minister for Culture and Education, D.S., and portrayed him as a fascist. Several newspapers later published a statement in which the applicant overtly accused D.S. of having a fascist background. D.S. sued the applicant for defamation and on appeal obtained an order that a declaration be published at the applicant's expense in several newspapers, in which the latter would admit that the allegations made in his statement and transpiring from his poem represented "gross slander". The applicant, who was also ordered to pay the costs of the proceedings and the other party's legal expenses, lodged a cassation appeal. The Court of Cassation upheld the appeal decision insofar as it entitled D.S. to the publication of the aforementioned declaration but quashed it as regards the poem, the non-pecuniary damages and the costs of the proceedings. The first instance court to which the case was referred back decided in favour of the applicant and D.S.'s following appeal was turned down.
Admissible under Articles 9, 10 and 14.

ARTICLE 11

FREEDOM OF ASSOCIATION
Obligation to belong to notary association in order to be allowed to practise as private notary: *communicated*.

O.V.R. - Russia (N° 44319/98)
[Section III]

The applicant was authorised by the authorities to open her own private notary practice. In order to comply with the Notary Act which provides that private practising notaries should become members of a notary association, the applicant applied for membership of such an association. She withdrew her application after having been informed that membership was subject to the payment of a fee which she deemed unacceptably high. As a result, the notary association requested the City Court to divest her of the right to practise as a private notary. The City Court issued an interim decision whereby she was prevented from practising until her case was decided on the merits. She appealed to the Regional Court, which quashed the interim decision and referred the case back to the City Court. The proceedings were adjourned to allow the Constitutional Court to examine the constitutionality of the impugned provisions of the Notary Act. However, the City Court reopened the proceedings before the Constitutional Court's decision and suspended the applicant's right to practise. On the applicant's appeal, the Regional Court adjourned the proceedings pending the Constitutional Court's decision. The Constitutional Court finally held that the compulsory membership of the notary association was not unconstitutional. Consequently the Regional Court confirmed the City Court's decision suspending the applicant's right to practise as a private notary.
Communicated under Article 11 taken alone and together with Article 14.

ARTICLE 13

EFFECTIVE REMEDY
Absence of effective remedy in respect of disappearance: *violation*.

TIMURTAS - Turkey (N° 23531/94)
Judgment 13.6.2000 [Section I]
(See Appendix I).

EFFECTIVE REMEDY
Absence of effective remedy in respect of death in custody: *violation*.

SALMAN - Turkey (N° 21986/93)
Judgment 27.6.2000 [Grand Chamber]
(See Appendix II).

EFFECTIVE REMEDY

Absence of effective remedy in respect of life-threatening assault by security forces: *violation*.

ILHAN - Turkey (N° 22777/93)
Judgment 27.6.2000 [Grand Chamber]
(See Appendix III).

ARTICLE 14

DISCRIMINATION
Different treatment of detained suspects in different parts of the United Kingdom: *no violation*.

MAGEE - United Kingdom (N° 28135/95)
*Judgment 6.6.2000 [Section III]
(See Article 6(3)(c), above).

RELIGION
Refusal of permit to carry out ritual slaughters in accordance with the strict requirements of an Orthodox Jewish association: *no violation*.

CHA'ARE SHALOM VE TSEDEK - France (N° 27417/95)
Judgment 27.6.2000 [Grand Chamber]
(See Appendix VIII).

LANGUAGE
Double checking of fluency in official language imposed only on certain candidates in election: *communicated*.

PODKOLZINA - Latvia (N° 46726/99)
[Section II]
(See Article 3 of Protocol No. 1, below).

ARTICLE 30

RELINQUISHMENT OF JURISDICTION IN FAVOUR OF THE GRAND CHAMBER
Expulsion of foreigner from the country where he had lived for most of his life*: suspension of relinquishment procedure.*

ABDOUNI - France (N° 37838/97)
[Section III]

The applicant, an Algerian national, arrived in France at the age of six months. In 1997 he married a Portuguese national with whom he had previously lived and had had two children. In 1996 he was found guilty of drug trafficking by the Regional Court and sentenced to a thirty-month prison term and exclusion from French territory for five years. The decision was upheld on appeal and the applicant abandoned an appeal on points of law since it would have

deprived him of the opportunity to pursue an application for pardon which he had made concurrently. An application for discharge of the exclusion order was dismissed by the Court of Appeal. The expulsion order has been annulled by the administrative courts and the parties have been requested to provide fuller information and observations.

ARTICLE 34

VICTIM
Continuing status of victim after acquittal.

CONSTANTINESCU - Romania (N° 28871/95)
Judgment 27.6.2000 [Section I]
(See Appendix VII).

VICTIM
Application lodged on behalf of brother incapacitated by assault by security forces.

ILHAN - Turkey (N° 22777/93)
Judgment 27.6.2000 [Grand Chamber]
(See Appendix III).

HINDER THE RIGHT OF PETITION
Intimidation of applicant by police: *failure to comply with obligations*.

SALMAN - Turkey (N° 21986/93)
Judgment 27.6.2000 [Grand Chamber]
(See Appendix II).

ARTICLE 44

Article 44(2)(b)

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

KRMČÁŘ - Czech Republic (Nº 35376/97)
Judgment 3.3.2000 [Section III]

JORDAN - United Kingdom (Nº 30280/96)
Judgment 14.3.2000 [Section III]

PAPADOPOULOS - Cyprus (N° 39972/98)
Judgment 21.3.2000 [Section III]

CASTELL - France (N° 38783/97)
Judgment 21.3.2000 [Section III]

GERGOUIL - France (N° 40111/98)
Judgment 21.3.2000 [Section III]

GUICHON - France (N° 40491/98)
Judgment 21.3.2000 [Section III]

BOUDIER - France (N° 41857/98)
Judgment 21.3.2000 [Section III]

ASAN RUSHITI - Austria (N° 28389/95)
Judgment 21.3.2000 [Section III]

CONDE - Portugal (N° 37010/97)
Judgment 23.3.2000 [Section IV]

GEORGIADIS - Greece (N° 41209/98)
Judgment 28.3.2000 [Section II]

PROTOPAPA and MARANGOU - Greece (N° 38971/97)
Judgment 28.3.2000 [Section III]

ZANATTA - France (N° 38042/97)
Judgment 28.3.2000 [Section III]

CURLEY - United Kingdom (N° 32340/96)
Judgment 28.3.2000 [Section III]

GERBER - France (N° 33237/96)
Judgment 28.3.2000 [Section III]

JACQUIE and LEDUN - France (N° 40493/98)
Judgment 28.3.2000 [Section III]

Article 44(2)(c)

On 29 June 2000 the Panel of the Grand Chamber rejected requests for revision of the following judgments, which have consequently become final:

DELICATA - Italy (Nº 41821/98)
SCUDERI - Italy (Nº 41822/98)
PARISSE - Italy (Nº 41825/98)
GHEZZI - Italy (Nº 41826/98)
BERRETTARI - Italy (Nº 41827/98)
CAMPOMIZZI - Italy (Nº 41829/98)
RAGLIONE - Italy (Nº 41830/98)
PIO - Italy (Nº 41831/98)
Judgments 8.2.2000 [Section II]

QUINCI - Italy (Nº 41819/98)
CHIERICI - Italy (Nº 41835/98)
TROTTA - Italy (Nº 41837/98)
Judgments 8.2.2000 [Section IV]

VERO - Italy (N° 41818/98)
SINAGOGA - Italy (N° 41820/98)
CARDILLO - Italy (N° 41833/98)
DI ANTONIO - Italy (N° 41839/98)
VAY - Italy (N° 41841/98)
Judgments 28.4.2000 [Section IV]

These cases concern the length of proceedings in the Audit Court.

PADERNI - Italy (Nº 35994/97)
Judgment 25.1.2000 [Section III]

L.G.S. S.p.a. - Italy (N° 40980/98)
Judgment 5.4.2000 [Section II]

These cases concern the length of civil proceedings.

GARCIA MANIBARDO - Spain (Nº 38695/97)
Judgment 15.2.2000 [Section IV]

This case concerns the dismissal of an appeal due to non-consignation, despite the fact that the applicant's legal aid request had not been dealt with.

ARTICLE 57

RESERVATION
Requirements for valid reservation.

SHESTJORKIN - Estonia (N° 49450/99)
Decision 15.6.2000 [Section I]

The applicant made numerous unsuccessful attempts to have returned to him nationalised property which had previously belonged to his father.
Inadmissible under Article 1 of Protocol No. 1: At the time of ratification, Estonia made a reservation excluding from the scope of this provision a series of named property laws then in force and relating to a specific area of law. Moreover, the reservation is not couched in terms that are too vague or broad for it to be possible to determine their exact meaning and it is therefore not "of a general character". Finally, the requirement that a reservation contain a brief statement of the law is satisfied, the laws having been attached to the text of the reservation. However, the reservation does not cover any later amendments to the laws and it concerns only substantive and not procedural questions: incompatible *ratione materiae*.

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Impossibility for Greek-Cypriots to recover property located in northern Cyprus: *admissible*.

LORDOS and others - Turkey (N° 15973/90)
Decision 27.6.2000 [Section III]

The applicants were permanent residents in northern Cyprus where they had their homes and immovable properties. In 1974, when Turkish armed forces took possession of northern Cyprus, the applicants had to flee to the southern part of the island, leaving behind all their possessions. They have been prevented from recovering their properties since. The application raises similar issues to the Loizidou case (judgment of 18 December 1996, *Reports* 1996-VI).
Admissible under Article 1 of Protocol No. 1, and Articles 1, 8, 13 and 14.

CONTROL THE USE OF PROPERTY
Control by the State of the right to dispose of sums deposited with the national savings bank: *communicated*.

GAYDUK - Ukraine (N° 45526/99)
[Section IV]

The applicant entered into a savings agreement with the Savings Bank of Ukraine, whose deposits were guaranteed by the State. With a view to obtaining repayment of part of the sums he had deposited, the applicant initiated proceedings against the bank in the District Court. His application was dismissed: the court held that he did not satisfy one of the conditions for repayment laid down by the Government, namely that entitlement to repayment did not arise until the person concerned had reached the age of forty-five. The Regional Court upheld that decision.
Communicated under Article 1 of Protocol No 1, on its own or in conjunction with Article 14, and Article 13.

[Cases raising a similar problem presented before the Section and also communicated: Nos 4609/99, 47088/99, 47176/99, 47177/99, 48018/99, 48043/99, 48071/99, 48580/99, 48624/99, 49426/99, 50354/99, 51934/99, 51938/99, 53423/99, 53424/99, 54120/00, 54124/00, 54136/00, 55542/00 and 56019/00]

ARTICLE 3 OF PROTOCOL No. 1

LEGISLATURE
Right to stand for election to local council: *inadmissible*.

XUEREB - Malta (N° 52492/99)
Decision 15.6.2000 [Section II]

The applicant stood as an independent candidate in local council elections. He was elected mayor. Both he and another independent candidate were later charged with having failed to submit a declaration of their election expenses, although none of the other 200 candidates, all of whom represented the governing or opposition parties, was charged, despite having also failed to submit the declaration. The applicant's appeal was rejected on the ground that he and the other independent candidate had committed additional electoral offences. His appeal to the Constitutional Court was also rejected. The criminal proceedings remain pending.
Inadmissible under Article 14 in conjunction with Article 6: There has not yet been a determination of the criminal charge against the applicant and his complaints of discrimination are in this respect incompatible *ratione materiae*.
Inadmissible under Article 14 in conjunction with Article 3 of Protocol No. 1: Local councils in Malta are entrusted with administrative functions; their regulatory powers are defined by statute and they remain subordinate to the central Parliament. When operating and providing local services, they may only do what is expressly or impliedly authorised by statute or delegated legislation. By virtue of the subordinate nature of their powers and functions, they cannot be considered part of the legislature. Consequently, neither Article 3 of Protocol No. 1 nor Article 14 is applicable: incompatible *ratione materiae*.

STAND FOR ELECTIONS
Obligation of judge standing as candidate in parliamentary election to resign: *inadmissible*.

BRIKE - Latvia (N° 47135/99)
Decision 29.06.00 [Section II]

The applicant, a District Court judge, decided to stand in a parliamentary election. Her candidature was registered. However, she was subsequently struck from the list of candidates on the ground that she had not left office, whereas the electoral legislation stipulated that judges were ineligible.
Inadmissible under Article 3 of Protocol No 1: The rights set forth in that article are not absolute; the wording of the provision is such that it may be seen to incorporate limitations which permit States to attach conditions to those rights. The latitude allowed to States is particularly extensive when they determine cases of ineligibility, since these are linked to the particular historical and political characteristics of each State. The ineligibility of civil servants is a proportionate response to the requirement for independence in the civil service. The same applies *a fortiori* to the ineligibility of judges, the purpose of which is to guarantee to litigants the rights protected by Article 6(1). There is no interference with the actual substance of the rights guaranteed, since the applicant could have resigned from office in order to stand in the elections: *manifestly ill-founded*.

STAND FOR ELECTIONS
Double checking of fluency in official language imposed only on certain candidates in election: *communicated*.

PODKOLZINA - Latvia (N° 46726/99)
[Section II]

The applicant stood as a candidate in the parliamentary elections. When being registered on the list of candidates she provided, *inter alia*, a "certificate of knowledge of the language of the State". After registration, the Centre for the State Language subjected the applicant and ten other candidates to a second test of their knowledge of Latvian. Twelve other candidates who, like the applicant, had produced certificates of knowledge of the language of the State, were not required to take this test. Following the test, the Centre for the State Language decided that the applicant's knowledge of the language was insufficient and informed the Electoral Committee, which struck her from the list of candidates. In the action which she brought, the applicant claimed, *inter alia*, that the Electoral Committee which decided to strike her from the list of candidates had based its decision solely on the attestation provided by the Centre for the State Language, to the exclusion of the certificate which she had produced upon registration. The domestic courts ruled solely on the procedural lawfulness of the decision of the Electoral Committee and held that the law empowered that committee to strike from the lists candidates not having a sufficient level of knowledge of the official language.
Communicated under Article 13 in conjunction with Article 3 of Protocol No 1 and Article 14 in conjunction with Article 3 of Protocol No 1.

ARTICLE 2 OF PROTOCOL No. 4

FREEDOM OF MOVEMENT
Municipal order prohibiting drug addicts from entering specified area for fourteen days: *admissible*.

OLIVIEIRA - Netherlands (N° 33129/96)
LANDVREUGD - Netherlands (N° 37331/97)
Decision 6.6.2000 [Section I]

The Burgomaster of Amsterdam, relying on the Municipality Act and his power to preserve public order in exceptional circumstances, imposed prohibition orders on both applicants to the effect that they were not allowed for a period of fourteen days to enter specific areas of the town by reason of their reprehensible behaviour in relation to drugs in these areas. They were ordered to leave these areas for eight hours on four occasions and were expressly warned by the police that if they commited any similar reprehensible acts again in the near future, the Burgomaster would be asked to impose on them prohibition orders for fourteen days, as practice permitted it after the fifth eight-hour order. Despite this warning, the applicants carried on using hard drugs openly in the specified areas; they were accordingly ordered to leave the areas for eight hours once more and the police requested then the intervention of the Burgomaster. The applicants unsuccessfully filed an objection with the Burgomaster against the fourteen-day prohibition orders and their further legal actions were to no avail.
Admissible under Article 2 of Protocol No. 4 and Article 8 of the Convention.
Inadmissible under Article 6(1): The formal classification under Netherlands law did not place prohibition orders such as the ones imposed in the present cases within the sphere of

criminal law. Moreover, the purely preventive nature of the measures concerned was not affected by the fact that the applicants' actions could have led to criminal prosecution. As to the severity of the measures, a comparison could be drawn with the Raimondo case (judgment of 22 February 1994); the constraints imposed on him were more severe than those imposed on the applicants in the present cases. Taking into consideration these elements, the proceedings in the present cases did not involve the determination of criminal charges: incompatible *ratione materiae*.

ARTICLE 2 OF PROTOCOL No. 7

REVIEW OF CONVICTION
Cassation appeal as only appeal against judgments of the Assize Court: *inadmissible*.

DEPERROIS - France (N° 48203/99)
Decision 22.6.2000 [Section IV]

The applicant, who was suspected of having introduced cyanide into a bottle of medication, causing the death of a child, was investigated and accused of premeditated poisoning. The Assize Court found the applicant guilty and sentenced him to a twenty-year term of imprisonment and a ten-year suspension of his civil, civic and family rights. The applicant appealed on a point of law against that judgment. The Court dismissed his appeal.
Inadmissible under Article 2 of Protocol No 7: The applicant was unable to lodge an appeal on the "merits" of the judgment convicting him since in French law the only remedy available against a judgment of an Assize Court is a cassation appeal, and the Court of Cassation's power of review is then limited to questions of law. For the purposes of the present article, however, the States Parties retain the option to decide the procedures for the exercise of the right of review and may restrict its scope: manifestly ill-founded.

APPENDIX I

Case of Timurtas v. Turkey – Extract from press release

Facts: The applicant, Mehmet Timurtaş, a Turkish national, was born in 1928 and lives in Istanbul. The applicant alleged that his son, Abdulvahap Timurtaş, born in 1962, was taken into custody by security forces on 14 August 1993 near the village of Yeniköy in the Silopi district of Şırnak province and has since disappeared. He filed a complaint with the Turkish authorities but on 3 June 1996 the Şırnak public prosecutor issued a decision not to instigate a prosecution in view of the abstract character of the applicant's allegations and the likelihood that Abdulvahap Timurtaş was a member of the Kurdistan Workers' Party (PKK). In support of his account the applicant submitted a photocopy of a document said to be a post-operation report drawn up by security forces in which the apprehension of Abdulvahap Timurtaş was recorded. According to the Government, the applicant's son was not taken into custody. They relied on the custody records of the police and district gendarmerie headquarters in Silopi, the Şırnak provincial central gendarmerie headquarters and the interrogation centre at the Şırnak provincial gendarmerie headquarters, none of which contained entries concerning Abdulvahap Timurtaş. Moreover, the Government disputed the authenticity of the document mentioned above since the reference number that featured on this photocopied document in reality belonged to a different document. The Government submitted that they were not, however, in a position to provide this last document as it had been classified as secret.

The applicant complained that his son was taken into custody by security forces and deprived of the guarantees pertaining to the protection of the right to life contrary to Article 2 of the European Convention on Human Rights and the right to liberty and security of person contrary to Article 5. He also complained that his son's disappearance caused him such anguish as to amount to inhuman and degrading treatment, in breach of Article 3 of the Convention. Further, he alleged that the lack of an effective official investigation into the disappearance deprived him of an effective remedy as guaranteed by Article 13. Finally, the applicant invoked Articles 18 and 34 of the Convention, claiming that the conspiracy on the part of the security forces to conceal from him the unlawful detention of his son was incompatible with the rule of law and frustrated the effective exercise of his right of individual petition.

Law:

The Court's assessment of the facts - The Court noted that the Commission had carried out a hearing of witnesses in this case but that it had not been presented with any eye-witness evidence of the apprehension of the applicant's son or his alleged subsequent detention. However, the applicant's allegations of the apprehension of his son were confirmed in the document submitted on his behalf. The question whether this document was a photocopy of an authentic post-operation report was therefore of overriding importance to the establishment of the facts and their assessment.

The Court considered that a photocopied document should be subjected to close scrutiny before it could be accepted as a true copy of an original, the more so as modern technological devices could be employed to forge or tamper with documents. At the same time, it was of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications. It was inherent in proceedings relating to cases where an individual applicant accused State agents of having violated his rights under the Convention, that in certain instances solely the respondent Government had access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information which was in their hands without a satisfactory explanation might give rise to the drawing of inferences as to the well-foundedness of those allegations. It was for these reasons that the Court was of the opinion that the Government had been in a pre-eminent position to assist the Commission in its task of establishing the facts by providing access to the document which they claimed was the genuine document bearing the reference number which featured on the photocopy. It was insufficient for the

Government to rely on the allegedly secret nature of that document. Consequently, the Court found it appropriate to draw an inference from the Government's failure to produce the document without a satisfactory explanation. Having regard, furthermore, to a number of factors which pointed in favour of the document's authenticity, the Court agreed with the Commission that it was indeed a photocopy of a genuine post-operation report.
The Court accepted the facts as established by the Commission. It was accordingly established that Abdulvahap Timurtaş had been apprehended on 14 August 1993 by gendarmes attached to the Silopi district gendarmerie and taken into detention. The Court further noted the lack of any satisfactory or convincing explanation by the Government as to the non-attendance of an importance official witness at the hearing before the Commission's delegates as well as their failure to provide specific detention records. It confirmed the finding reached by the Commission in its report that in this case the Government had fallen short of their obligations under former Article 28 § 1 (a) of the Convention to furnish all necessary facilities to the Commission in its task of establishing the facts.
Article 2 -
(a) Alleged failure to protect life: The Court examined whether, in the absence of a body, an issue could arise under Article 2 of the Convention from the failure by the authorities to provide a plausible explanation as to a detainee's fate. It held that this would depend on all the circumstances of the case, and in particular on the existence of sufficient circumstantial evidence, based on concrete elements, from which it could be concluded to the requisite standard of proof that the detainee must be presumed to have died in custody. In this respect the period of time which has elapsed since the person has been placed in detention, although not decisive in itself, is a relevant factor to be taken into account, since the more time that goes by without any news of the detained person, the greater the likelihood that he or she has died. The passage of time may therefore to some extent affect the weight to be attached to other elements of circumstantial evidence before it can be concluded that the person concerned is to be presumed dead.
Noting that more than six and a half years has gone by since Abdulvahap Timurtaş' apprehension and having regard to all the other circumstances of the case, the Court found that the disappearance of Abdulvahap Timurtaş after he had been taken into detention led, in the circumstances of this case, to a presumption that he had died. No explanation having been provided by the Government as to what had happened to him during his detention, the Government were liable for his death and there was a violation of Article 2 of the Convention.
Conclusion: violation (6 votes to 1).
(b) Alleged inadequacy of the investigation: The Court noted the length of time it took before an official investigation into the disappearance of Abdulvahap Timurtaş was started and before statements from witnesses were obtained, the inadequate questions put to the witnesses and the manner in which relevant information was ignored and subsequently denied by the investigating authorities. The Court was further struck by the fact that it was not until two years after the applicant's son had been taken into detention that enquiries were made of the gendarmes in Şırnak despite the fact that the applicant had apprised the authorities long before then of the information he had obtained to the effect that his son had been transferred to Şırnak. Moreover, there was no evidence to suggest that the public prosecutors involved in the investigation had made an attempt to inspect custody records or places of detention themselves, nor that the Silopi district gendarmerie alleged by the applicant to have apprehended his son were asked to account for their actions on the day of his apprehension.
Accordingly, the Court found that the investigation carried out into the disappearance of the applicant's son was inadequate and therefore in breach of the State's procedural obligations to protect the right to life. The Court concluded that there had also been a violation of Article 2 of the Convention on this account.
Conclusion: violation (6 votes to 1)
Article 3 - The Court found that the disappearance of the applicant's son amounted to inhuman and degrading treatment contrary to Article 3 in relation to the applicant. Apart from the close family connection, the Court had particular regard to the reactions and attitudes of the authorities when the disappearance of Abdulvahap Timurtaş was brought to their

attention: not only did the investigation into the applicant's allegations lack promptitude and efficiency, certain members of the security forces also displayed a callous disregard from the applicant's concerns by denying, to the applicant's face and contrary to the truth, that Abdulvahap Timurtaş had been taken into custody. In addition, the applicant's anguish concerning his son's fate continued to the present day.
Conclusion: violation (6 votes to 1).
Article 5 - The Court held that the disappearance of Abdulvahap Timurtaş during an unacknowledged detention disclosed a particularly grave violation of the right to liberty and security of person guaranteed by this provision. It referred in particular to the lack of a prompt and effective enquiry into the circumstances of Abdulvahap Timurtaş' disappearance and the lack of accurate and reliable records of detention of persons taken into custody by gendarmes.
Conclusion: violation (unanimous).
Article 13 - Referring to its reasoning in, among other things, its judgment of 25 May 1998 in the case of Kurt v. Turkey, the Court considered that the national authorities had been under an obligation to carry out an effective investigation into the circumstances of the disappearance of Abdulvahap Timurtaş. Reiterating its findings under Articles 2 and 5 of the Convention that no such effective investigation had been conducted, the Court concluded that there had been a violation of Article 13.
Conclusion: violation (6 votes to 1).
Article 18 - Having regard to its other findings in respect of the disappearance of Abdulvahap Timurtaş the Court did not consider it necessary to examine this complaint separately.
Conclusion: not necessary to examine (unanimous).
Article 34 - The Court did not consider that the circumstances of the present case disclosed a failure to comply with the obligation of Article 34 *in fine* on the part of the respondent Government.
Conclusion: no failure to comply with obligations (unanimous).
Article 41 - As regarded non-pecuniary damage the Court awarded GBP 20,000 in respect of the Abdulvahap Timurtaş, to be held by the applicant for his brother's heirs, and GBP 10,000 for the applicant himself. For costs and expenses, it awarded GBP 20,000 less the amount awarded for legal aid by the Council of Europe.
Judge Gölcüklü expressed a dissenting opinion and this is annexed to the judgment.

APPENDIX II

Case of Salman v. Turkey – Extract from press release

Facts: The applicant, Behiye Salman, a Turkish citizen, was born in 1942 and lives in Adana, Turkey. On 28 April 1992, shortly after midnight, the applicant's husband Agit Salman was taken in to detention by police on suspicion of aiding and abetting the Kurdistan Workers' Party (PKK). He was held at Adana Security Directorate until about 1.00 a.m. on 29 April 1992, when he was taken to Adana State Hospital. He was declared dead on arrival. The autopsy, which was carried out by a forensic doctor, disclosed marks and bruises, including a bruise on the chest and a broken sternum. He did not determine the cause of death but referred the case to the İstanbul Forensic Institute which concluded, in its report, that Agit Salman had died of cardiac arrest brought about by pressure of the incident together with a pre-existing heart disease. On 13 November 1992, the applicant appealed against the public prosecutor's decision not to prosecute police officers for causing the death of her husband by torture. She claimed, among other things, on the basis of photographs taken of the body by the family, that he had been beaten on the soles of the feet ("falaka"). The case was eventually referred to the Adana Aggravated Felony Court, which on 26 December 1994 acquitted ten police officers of homicide on the basis that there was inadequate evidence that they had used any force or torture on Agit Salman.

The applicant complains principally that her husband died as a result of torture under interrogation in violation of Articles 2 and 3 of the European Convention on Human Rights and that she did not have any effective remedy, in violation of Article 13, due to the defects in the investigation and judicial procedures. She further invoked former Article 25 of the Convention (now Article 34), alleging that she was victim of intimidation by the authorities concerning her application.

Law: Government's preliminary objections - The Government objected that the applicant had not exhausted domestic remedies as she had failed to appeal to the Court of Cassation against the acquittal of the police officers on charges of torturing her husband and as she had not brought any civil or administrative court proceedings claiming damages.

The Court found that an action in administrative law was based on strict liability and did not involve an investigation which might lead to the identification and punishment of those responsible for a fatal assault. The applicant was not required therefore to bring administrative proceedings and this aspect of the preliminary objection was unfounded. As regarded the criminal proceedings, the Court noted that the applicant alleged that an appeal had had no reasonable prospect of success due to the lack of evidence provided by the investigation and that civil proceedings were pointless as the investigation had not identified the perpetrators of the fatal assault. The Court observed that these issues were closely linked to the complaints about the ineffectiveness of the investigation into the death raised by the applicant under Articles 2, 3 and 13. It therefore joined this aspect of the preliminary objection to the merits.

Article 2 - The Court observed that, in the light of the importance of the protection afforded by Article 2, the deprivation of life had to be subjected to the most careful scrutiny. In particular, where a person was taken into custody in good health and died, the obligation on the authorities to account for his treatment was particular stringent. The burden of proof was on the authorities to provide a satisfactory and convincing explanation for the death.

In this case Agit Salman was taken into custody in apparent good health, without any pre-existing injuries or active illness. No plausible explanation had been provided by the Government for the injuries to his left ankle, bruising and swelling of the left foot, a bruise to the chest and a broken sternum. The evidence did not support the Government's contention that Agit Salman had died from a heart attack brought on by the stress of being taken into custody. As the Government had not accounted for his death during his detention and their responsibility for his death was engaged.

Conclusion: violation (16 votes to 1).

The Court also found that the authorities had failed to carry out an effective investigation into the circumstances of Agit Salman's death as required by Article 2. While a proper autopsy investigation was of critical importance in determining the facts surrounding the death, this procedure was defective. In particular, no proper forensic photographs were taken of the body, there was no dissection or histopathological analysis of the injuries and marks on the body and the autopsy report made an unqualified assumption that the broken sternum had been caused by a resuscitation attempt. These defects undermined any attempt to determine police responsibility for the death of Agit Salman. Furthermore, no efforts appeared to have been made to identify those officers who did, or could have ill-treated Agit Salman prior to his death. In those circumstances, the Court found that an appeal to the Court of Cassation against the acquittal of the ten officers on the indictment had no effective prospect of clarifying or improving the evidence available, either for the purposes of securing the conviction of those responsible for the death or for obtaining damages in civil proceedings. The applicant therefore had not failed to comply with the requirement to exhaust domestic remedies and the preliminary objections were dismissed.

Conclusion: violation (unanimous).

Article 3 - The Court found that the Government had not provided a plausible explanation for the marks and injuries found on Agit Salman after entering custody in good health. The bruising and swelling on his left foot, combined with grazes on the ankle, were consistent with the application of "falaka". The bruise to the chest overlying the broken sternum was also more consistent with a blow to the chest than a fall. These injuries, unaccounted for by the Government, were attributable to a form of ill-treatment for which the authorities were

responsible. Having regard to the nature and degree of this ill-treatment and to the strong inferences that it occurred during interrogation for suspected PKK activities, the Court found that it involved very serious and cruel suffering that could be characterised as torture.
Conclusion: violation (unanimous).
Article 13 - The Government had been found responsible under Articles 2 and 3 of the Convention for the death and torture in custody of Agit Salman and accordingly the authorities had been under an obligation to carry out an effective investigation into the circumstances of his death. Due to the defective autopsy procedure and lack of evidence adverted to above (see under Article 2), no criminal investigation could be considered as having been conducted. The applicant had therefore been denied an effective remedy in respect of the death of her husband and thereby access to any other available remedies at her disposal, including a claim for compensation.
Conclusion: violation (16 votes to 1).
Former Article 25 - The Court recalled that in previous cases it had held that the questioning of applicants about their application by the authorities may amount to a form of illicit and unacceptable pressure, hindering the exercise of the right of individual petition in breach of former Article 25 of the Convention. The applicant in this case had been questioned by police officers from the Adana Anti-Terror Department on two occasions concerning her application to the Convention organs, purportedly about her legal aid application to the Commission. She had been blindfolded at the time. This would have caused her anxiety and distress and constituted oppressive treatment. Nor was there any plausible reason as to why the applicant was questioned twice about her declaration of means and why the questioning had been conducted by officers at the Anti-Terror Department, where her husband had been ill-treated and died. She must have felt intimidated by these contacts with the authorities and therefore had been subject to undue interference with her petition to the Convention organs.
Article 41 - The applicant was awarded GBP 39,320.64 for pecuniary damage in respect of the loss of earnings previously provided by her husband. As regarded non-pecuniary damage for the violations found of Articles 2, 3, 13 and 25, the Court awarded GBP 25,000 for the damage suffered by Agit Salman to be held by the applicant as surviving spouse and GBP 10,000 for the damage suffered by the applicant in her personal capacity. The sum of GBP 21,544.58 (less the 11,195 French francs received by way of legal aid) was awarded to the applicant for legal costs and expenses.
Judge Greve expressed a concurring opinion and Judge Gölcüklü a partly dissenting opinion. These are annexed to the judgment.

APPENDIX III

Case of Ilhan v. Turkey – Extract from press release

Facts: The applicant, Nasır İlhan, a Turkish citizen, was born in 1950 and lives in Işılar, Urfa in Turkey. On 26 December 1992 gendarmes carried out an operation at Aytepe village. Abdüllatif İlhan, the applicant's brother, and another villager saw the soldiers approaching the village and ran to hide. A team of gendarmes was sent to apprehend them. The applicant claimed that when the gendarmes found the men hiding in the garden they beat and kicked them. His brother Abdüllatif İlhan was allegedly hit with rifle butts, at least one blow hitting his head. The gendarmes took Abdüllatif İlhan into custody. As Abdüllatif İlhan was having difficulties in walking and talking, he was placed on a donkey for the journey to the local gendarme station. Later that night, he was taken in a truck to Mardin central provincial gendarme station, where he was placed in the cafeteria. The gendarme captain took a statement from him during the day of 27 December 1992, probably at around 17.00 to 17.30 hours.
At 19.10 hours on 27 December 1992, some thirty-six hours after his apprehension, Abdüllatif İlhan was admitted for treatment at Mardin State Hospital, where he was found to be suffering

from left hemiparesis and to be in a life-threatening condition. He was taken to Diyarbakır State Hospital, where his condition was found to be fair, though risk to life remained, with symptoms of concussion and left hemiplegion. CAT scans disclosed, among other things, cerebral oedema and left hemiparesis. On 11 June 1993, a medical report stated that he was suffering from 60% loss of function on his left side.

On 11 February 1993, the public prosecutor issued a decision not to prosecute anyone in respect of Abdüllatif İlhan's injuries, as they had resulted from an accident for which no-one was at fault, either intentionally or negligently. On the same day, the public prosecutor drew up an indictment charging Abdüllatif İlhan with the offence of resistance to officers contrary to Art. 260 of the Turkish Penal Code (TPC), namely, that during an operation Abdüllatif İlhan had run away from the security forces, ignoring their orders to stop.

On 30 March 1993, Abdüllatif İlhan appeared before the Mardin Justice of the Peace Court. which found that he had failed to comply with an order to stop and had thus resisted the officer contrary to Art. 260 of the TPC. He was sentenced to a fine of 35,000 Turkish lira, which was suspended.

The applicant complains principally that his brother was the victim of a life-threatening assault and torture in violation of Articles 2 and 3 of the European Convention on Human Rights and that he did not have any effective remedy, in violation of Article 13, due to the defects in the investigation.

Law: Government's preliminary objections - The Government submitted that the application should be dismissed as incompatible *ratione personae* as the applicant, Nasır İlhan, could not himself claim to be a victim under the Convention of the violations alleged.

The Court recalled that the rules of admissibility must be applied with some degree of flexibility and without excessive formalism and that the Convention generally must be interpreted and applied so as to make its safeguards practical and effective. While in the present case Abdüllatif İlhan was the immediate victim of the alleged assault and ill-treatment, the application introduced by the applicant made it clear that he was complaining on the behalf of his brother and that his brother due to his health was not in a position to pursue the application himself. The fact that Nasır İlhan placed his own name as that of the applicant rather than that of his brother did not disclose an abuse of the Convention system, as Abdüllatif İlhan consented to and participated in the proceedings. Nor was there any apparent conflict of interest arising from the applicant's involvement on behalf of his brother. Having regard therefore to the special circumstances of this case, where Abdüllatif İlhan could claim to have been in a particularly vulnerable position, the Court finds that the applicant may be regarded as having validly introduced the application on his behalf. Accordingly, it dismissed the Government's preliminary objection in this respect.

The Government also objected that the applicant had not exhausted domestic remedies, as required by Article 35 of the Convention, by not instituting criminal proceedings, or by bringing claims in the civil or administrative courts. They referred in particular to the fact that neither Abdüllatif İlhan or the applicant complained to the public prosecutor.

The Court observed that an action in administrative law under Article 125 of the Constitution was based on the authorities' strict liability. As the obligation on the Contracting State under Articles 2 and 13 to conduct an investigation capable of leading to the identification and punishment of those responsible in cases of fatal assault or torture might be rendered illusory if an applicant were to be required to exhaust an administrative-law action leading only to an award of damages, the applicant was not required to bring the administrative proceedings in question and the preliminary objection was in that respect unfounded.

As regarded a civil action for redress for damage sustained through unlawful conduct on the part of State agents, the Court recalled that, in this case, the public prosecutor took no investigative steps to identify who was present or involved in the incident when Abdüllatif İlhan was apprehended. None of the documents provided by the gendarmes enabled such persons to be identified. Furthermore, the public prosecutor had taken no steps to find any evidence confirming or contradicting the account given by the gendarmes as to the allegedly accidental nature of the injuries. In this situation, it is not apparent that there was any basis on which Abdüllatif İlhan could have pursued a civil claim with any reasonable prospect of

success. With regard to the criminal-law remedies, the Court noted that the public prosecutor had been informed that Abdüllatif İlhan had suffered serious injuries when he was apprehended by the gendarmes at his village and had been under the duty, imposed by Art. 153 of the Code of Criminal Procedure, to investigate whether an offence had been committed. The Court is satisfied in these circumstances that the matter was sufficiently drawn to the attention of the relevant domestic authority. The public prosecutor chose however not to make any enquiry as to the circumstances in which those injuries were caused. Consequently, the Court also dismissed the Government's preliminary objections as regards civil and criminal law remedies.

Article 2 - The Court recalled that in the present case the force used against Abdüllatif İlhan was not in the event lethal. Though this did not exclude an examination of the applicant's complaints under Article 2, it considered that it was only in exceptional circumstances that physical ill-treatment by State officials which did not result in death would disclose a breach of Article 2. While the criminal responsibility of those concerned in the use of force was not in issue in the proceedings under the Convention, the degree and type of force used and the unequivocal intention or aim behind the use of force was, amongst other factors, relevant in assessing whether in a particular case the State agents' actions in inflicting injury short of death was incompatible with the object and purpose of Article 2. In almost all cases where a person was assaulted or maltreated by police or soldiers, their complaints would fall to be examined rather under Article 3. The Court recalled that Abdüllatif İlhan suffered brain damage following at least one blow to the head by a rifle butt inflicted by gendarmes who had been ordered to apprehend him during an operation and who kicked and beat him when they found him hiding. The seriousness of his injury, which caused permanent brain damage, was therefore not in doubt. However, the Court was not persuaded in the circumstances of this case that the use of force applied by the gendarmes when they apprehended Abdüllatif İlhan was of such a nature or degree as to breach Article 2. Nor did any separate issue arise in this context concerning the alleged lack of prompt medical treatment for his injuries. It did however examine these aspects further under Article 3 below.

Conclusion: no violation (12 votes to 5).

Article 3 - The Court found that Abdüllatif İlhan had been kicked and beaten and struck at least once on the head with a G3 rifle. This resulted in severe bruising and two injuries to the head, which caused brain damage and long term impairment of function. Notwithstanding the visible injuries to his head and the evident difficulties which Abdüllatif İlhan had in walking and talking, there was a delay of some 36 hours in bringing him to a hospital. Having regard to the severity of the ill-treatment suffered by Abdüllatif İlhan and the surrounding circumstances, including the significant lapse in time before he received proper medical attention, the Court found that he was a victim of very serious and cruel suffering that may be characterised as torture.

While the applicant also claimed that there was a breach of Article 3 due to the lack of an effective investigation, the Court considered that the requirement under Article 13 of the Convention for a person with an arguable claim of a violation of Article 3 to be provided with an effective remedy would generally provide both redress to the applicant and the necessary procedural safeguards against abuses by state officers. The Court's case-law established that the notion of effective remedy in this context included the duty to carry out a thorough and effective investigation capable of leading to the identification and punishment of those responsible for any ill-treatment and permitting effective access for the complainant to the investigatory procedure. Whether it was appropriate or necessary to find a procedural breach of Article 3 would depend on the circumstances of the particular case, such as where the lack of investigation had prevented the facts of the case being determined under the substantive aspect of Article 3. In the present case, the Court had found that the applicant had suffered torture at the hands of the security forces. His complaints concerning the lack of any effective investigation by the authorities into the cause of his injuries fell to be dealt with in this case under Article 13.

Conclusion: violation (unnaimous).

Article 13 - The Government had been found responsible under Article 3 for the torture of Abdüllatif İlhan and accordingly the authorities had been under an obligation to carry out an effective investigation into the circumstances of his death. However, although the public prosecutor was aware that Abdüllatif İlhan had suffered serious injuries which had required hospitalisation, the public prosecutor took no independent investigative step, accepting without question the inconsistent and dubiously accurate version of events produced by the gendarmes. He did not seek to hear Abdüllatif İlhan's or İbrahim Karahan's version of events nor did he obtain clarification from the relevant doctors about the extent and nature of the injuries.
Furthermore, the medical report issued on Abdüllatif İlhan's arrival in the emergency ward was deficient in that it gave no reference to the cause of the injuries as explained by the victim and did not refer to the other injuries and marks on his body. This was not satisfactorily explained by the perceived need for urgent referral to specialist care in Diyarbakır and highlighted the importance of adequate follow-up by the public prosecutor in ascertaining the cause and extent of Abdüllatif İlhan's injuries. For these reasons, no effective criminal investigation could be considered as having been conducted in accordance with Article 13. Therefore no effective remedy has been provided in respect of Abdüllatif İlhan's injuries and thereby access to any other available remedies, including a claim for compensation, had also been denied.
Conclusion: violation (unanimous).
Article 41 - The applicant was awarded, on behalf of his brother Abdüllatif İlhan GBP 80,600 in respect of medical expenses and the loss of earnings resulting from his injuries. As regarded non-pecuniary damage for the violations found of Articles 3 and 13, the Court awarded GBP 25,000 for the damage suffered by Abdüllatif İlhan. It made no award in respect of the applicant himself. The sum of GBP 17,000 (less the 11,300 French francs received by way of legal aid) was awarded to the applicant for legal costs and expenses.
Partly dissenting opinions were expressed by Judge Tulkens, joined by Judges Bonnello, Casadevall, Greve and Vajic, and by Judge Gölcüklü. These are annexed to the judgment.

APPENDIX IV

Case of Frydlender v. France – Extract from the press release

Facts: The applicant was recruited in July 1972 as an *agent contractuel* (under an individual contract) by the Economic Development Department of the Ministry for Economic Affairs. He worked for the Ministry in Rome, Athens and, at the time when his contract was terminated, in New York. On 27 December 1985 the Minister for Economic Affairs informed Mr Frydlender by a letter dated 10 December 1985 that, owing to his professional incompetence, his contract would not be renewed when it expired on 13 April 1986. By a letter of 9 January 1986, served on the applicant on 21 January 1986, the Minister informed him of his final decision not to renew the contract.
The applicant lodged three applications for judicial review of this decision with the Paris Administrative Court, complaining that it was *ultra vires*. In a judgment of 6 January 1989, the Administrative Court, having joined all three applications, dismissed them. On 24 October 1989 the applicant gave notice of an appeal to the *Conseil d'Etat* on points of law. He lodged a statement of the grounds of appeal on 23 February 1990. In a judgment of 10 May 1995, which was served on the applicant on 26 October 1995, the *Conseil d'Etat* dismissed the appeal, holding that it had been lawful for the Minister to dismiss the applicant on the grounds of professional incompetence.
The applicant complained that his case had not been heard within a reasonable time, contrary to Article 6 § 1 of the Convention.
Law: Applicability of Article 6 - After examining whether, on account of the nature of his duties and the level of his responsibilities, the applicant might in practice have participated in

activities designed to safeguard the general interests of the State, the Court noted that the documents in the file showed that the applicant, a graduate of the National Agronomic Institute in Paris, had been posted to the New York economic development office as head of an autonomous section, to handle more specifically the promotion of French wines, beers and spirits.
In view of the nature of the duties performed in the present case by the applicant and the relatively low level of his responsibilities, the Court considered that he was not carrying out any task which could be said to entail, either directly or indirectly, duties designed to safeguard the general interests of the State.
The Court further observed that the Pellegrin judgment of 8 December 1999 had been intended to restrict cases in which public servants could be denied the practical and effective protection afforded to them, as to any other person, by the Convention, and in particular by Article 6. The Court had to adopt a restrictive interpretation, in accordance with the object and purpose of the Convention, of the exceptions to the safeguards afforded by Article 6 § 1. But such a restrictive interpretation would be too seriously weakened if, as the Government wished in the present case, the Court were to find, by analogy or by extension, that the activities of the staff of the economic development offices as a whole, whatever the nature of their duties and their level of responsibility, entailed the exercise of powers conferred by public law.
In the light of the above considerations, the Court considered that Article 6 of the Convention was applicable in the present case to the dispute over a civil right between Mr Frydlender and the French State.
Compliance with Article 6 - The Court noted that the length of the proceedings complained of, which had begun on 28 February 1986 with the first application to the Paris Administrative Court and ended on 26 October 1995 when the *Conseil d'Etat*'s judgment was served on the applicant, had been nearly nine years and eight months.
The Court noted, like the Commission, that neither the complexity of the case nor the applicant's conduct explained the length of the proceedings. It pointed out that the *Conseil d'Etat* had given judgment nearly six years after the case was referred to it and that the Government had not supplied any explanation of this delay, which seemed manifestly excessive.
In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court considered that the length of the proceedings complained of had been excessive and had failed to satisfy the reasonable-time requirement. There had accordingly been a violation of Article 6 § 1.
Conclusion: violation (unanimous).
Article 41 - The applicant claimed the sum of 240,000 French francs (FRF) for non-pecuniary damage. He submitted that his dismissal on the ground of inadequate performance and the length of the proceedings he had brought to challenge it had caused him substantial non-pecuniary damage. Because he was a specialist in the field of international trade in agri-foodstuffs products and the foreign regulations governing it, and on account of his career up to that point and his age, he had been unable to find a job for nearly six years, since the fact that the proceedings were still pending had barred him in practice from applying to public bodies or establishments, which were the only employers likely to give him a job. The length of the proceedings had also impinged on his family life, both financially and in other ways. The Government did not comment on the applicant's claim.
The Court considered that in the present case the prolongation of the proceedings beyond a reasonable time had undoubtedly caused the applicant considerable difficulties and a lengthy period of uncertainty which justified the award of compensation. Having regard to the judicial authorities' obligation to determine employment disputes with special diligence and making an assessment on an equitable basis, as required by Article 41, the Court awarded the applicant the sum of FRF 60,000 in respect of non-pecuniary damage.
The applicant claimed the sum of FRF 50,000 net of tax in respect of the costs he had incurred for his representation before the Convention institutions and produced a copy of the relevant bill of costs. The Government did not comment on this claim. Having regard to the

work done by the applicant's lawyer, the Court considered that this amount was reasonable and awarded it in full.
Judge Tulkens expressed a concurring opinion and this is annexed to the judgment.

APPENDIX V

Case of Nuutinen v. Finland – Extract from press release

Facts: The applicant, Pekka Nuutinen, a Finnish national, was born in 1965 and lives in Rovaniemi. In September 1993 the applicant requested that his paternity in respect of I, a child born in 1992, be confirmed, that custody of I be shared with the mother, H, and that the child be granted access rights in respect of the applicant. In January 1994 the Kuopio City Court adjourned the case until May 1994 but due to the mother's failure to deliver blood samples it had to be adjourned until September 1994. The proceedings were then further adjourned until December 1994, the City Court having decided to seek opinions on the question of access from the Kuopio and Helsinki social welfare authorities. In December 1994 the Helsinki authority's time limit was extended until May 1995 but the applicant's paternity was confirmed and interim access rights were granted. In June 1995 custody of I was awarded solely to H and the child was granted the right to meet with the applicant for two hours every other month. H consistently refused to comply with the access arrangements, allegedly fearing for her and the child's safety and referring to the applicant's assault of H in 1991, when she had been pregnant with I. Conciliation attempts were fruitless. In February 1996 the Chief Bailiff ordered the mother to comply with the access order on pain of an administrative fine. In October 1996 this fine was upheld and a further fine was imposed in respect of any future non-compliance. In December 1996 the applicant brought fresh proceedings before the Helsinki District Court, again seeking to obtain shared custody of the child and extended access rights. H objected and sought to have the access rights revoked. In January 1997 the applicant requested that the child be fetched for enforcement purposes.
In April 1997 the District Court found that enforcement would not be contrary to the interests of the child, bearing in mind the limited access and the neutral meeting premises. It nonetheless declined to order that the child be fetched to the meetings. Having regard to the mother's attitude, the District Court found it most likely that access would not take place despite any changes in the access arrangements. The fact that the child had never met the applicant could therefore be seen as a weighty reason for ordering I to be fetched. On the other hand, such a measure could not be the right way for I to get to know the applicant. Instead she was to be given a possibility to get to know him gradually on a voluntary basis. The District Court modified the terms of implementation of the access largely according to the mother's wishes. It waived the previously imposed fine but imposed an automatically staggered one for any future non-compliance. In March 1998 the District Court, having taken fresh evidence, dismissed the applicant's further request that the child be fetched to the meetings. It upheld the earlier fine and imposed a further one on the mother.
Meanwhile, in April 1997, the second set of substantive proceedings regarding custody and access had been adjourned until October 1997, the Helsinki District Court having requested fresh opinions from the social welfare authorities of Helsinki and Kuopio. The Helsinki authority was granted an extension until the end of 1997. In April 1998 the District Court dismissed the applicant's request for joint custody and revoked the access arrangements. Having heard the mother in the applicant's absence, it had become convinced that her fear of him had not been dispersed and would inevitably be passed on to the child. Any access at I's age would therefore produce distress and confusion which could lead to her permanent depression and anxiety. Moreover, the District Court's hearing of the applicant had strengthened the view that he was unable to distinguish between the child's interests and his own and was perceiving I's access right as an obligation of hers.

In May 1998 the Helsinki Court of Appeal relieved H of paying the administrative fine upheld in March 1998 and declined to uphold the further fine imposed at that time. In December 1998 the Court of Appeal refused the applicant's appeal in the second set of substantive proceedings, noting that he had refused to provide detailed information on his own situation at the time of the social authorities' fresh investigation in 1997. The Supreme Court refused him leave to appeal in February 1999.

The applicant complained that his rights under Articles 6 and 8 of the Convention had been infringed in that the court proceedings for the determination of the paternity, custody and access rights of his daughter had been excessively lengthy. Moreover, the authorities had failed to make sufficient efforts to enforce the access orders, with the result that the applicant and his daughter had never been able to meet.

Law: Article 6 of the Convention - The Court detected certain delays imputable to the first-instance courts in the two sets of substantive proceedings, in particular as regards the written hearing of the Helsinki social welfare authority on the access question. In the first set of proceedings this authority had been afforded a total of nine months to prepare its opinion. In the second set of proceedings it had been granted eight months to submit a fresh opinion in a matter which was no doubt complex but certainly not new to the authority. These periods had to be considered strikingly long in a case of this kind and the responsibility for ensuring compliance with the requirements of Article 6 rested ultimately with the courts. The Court recalled that what was at stake for the applicant was not only his right to obtain a speedy court confirmation of his biological and legal ties with I. Those ties had been confirmed already in December 1994 when access rights had been granted. At the time the applicant had not yet seen his daughter, then almost two years old. She was almost seven years old when the ensuing proceedings eventually ended with the revocation of the access rights without the applicant ever having seen his child. In the light of the criteria laid down in its case-law and having regard to the particular circumstances of the case, the Court concluded that the length of the overall substantive and enforcement proceedings (five years and five months) had exceeded a "reasonable time". Accordingly, there had been a violation of Article 6 § 1 of the Convention.

Conclusion: violation (unanimous).

Article 8 of the Convention - The Court noted that the access rights had been in force for over three years before being revoked without ever having been enforced. The applicant's enforcement requests had led to the imposition on the mother of various administrative fines, although these had with one exception been waived after the revocation of the access rights in April 1998. The applicant's two requests that his daughter be fetched to meetings with him had been dismissed, the second request even after the mother had refused to comply with access arrangements which had been modified largely according to her wishes. The Court saw no reason to question the Helsinki District Court's finding that such a drastic measure would not have been in the child's best interests. Nor could the waiver of the various fines imposed on the mother be given any decisive significance in the assessment of whether the authorities could, at the time of imposing those fines, reasonably consider them to be sufficient as a means of enforcement. Moreover, the applicant himself had contributed to the delays at the enforcement stage by not co-operating sufficiently with the social authorities and by repeatedly behaving in an inappropriate and even aggressive manner towards conciliators and other officials investigating the matter.

The Court concluded that in the continuous re-assessment of the child's best interests the Helsinki social authority could, notably in the light of the applicant's more recent unwillingness to co-operate, reasonably formulate a recommendation that the access rights should be revoked until the child had reached a more mature age. Likewise the Helsinki District Court's decision to revoke the access rights in April 1998 could not be considered unreasonable. Having regard to the margin of appreciation afforded to the State, the national authorities had therefore taken all necessary steps with a view to enforcing the access rights as could reasonably be demanded in the very difficult conflict at hand. Accordingly, there had been no violation of Article 8 of the Convention on account of the non-enforcement of the access rights.

Conclusion: no violation (4 votes to 3).
Article 41 of the Convention - The Court awarded the applicant FIM 20,000 as compensation for non-pecuniary damage and FIM 10,000 in respect of costs and expenses incurred in the proceedings before the Commission and the Court less the amount awarded for legal aid by the Council of Europe.
Judges Türmen, Zupančič and Panţîru expressed a dissenting opinion which is annexed to the judgment.

APPENDIX VI

120 cases v. Italy

On 22 June, judgments were delivered in the following 120 cases, in which the parties had reached a friendly settlement:

- Borrillo v. Italy (N° 38973/97)
- Angelina Gioia v. Italy (N° 38975/97)
- Ada Ascierto v. Italy (N° 40363/98)
- Marotta v. Italy (N° 40722/98)
- Marucci v. Italy (N° 42988/98)
- Costantini v. Italy (N° 42989/98)
- Manganiello v. Italy (N° 42990/98)
- Falzarano v. Italy (N° 42991/98)
- Del Grosso v. Italy (N° 42992/98)
- Mascolo v. Italy (N° 42994/98)
- Mirra v. Italy (N° 42995/98)
- Cocca v. Italy (N° 42996/98)
- Squillace v. Italy (N° 42997/98)
- Iannotta v. Italy (N° 42998/98)
- Cacciacarro v. Italy (N° 42999/98)
- Maselli v. Italy (N° 43000/98)
- Masuccio v. Italy (N° 43001/98)
- Nicola Giorgio v. Italy (N° 43002/98)
- De Fiore v. Italy (N° 43003/98)
- Verzino v. Italy (N° 43004/98)
- Bianchi v. Italy (N° 43005/98)
- La Vista v. Italy (N° 43006/98)
- Capasso v. Italy (N° 43007/98)
- Catillo v. Italy (N° 43008/98)
- Maria Di Biase v. Italy (N° 43009/98)
- Mannello v. Italy (N° 43010/98)
- Palumbo v. Italy (N° 43012/98)
- De Nunzio v. Italy (N° 43013/98)
- D'Errico v. Italy (N° 43014/98)
- Zollo v. Italy (N° 43015/98)
- Truocchio v. Italy (N° 43016/98)
- D'Ambrosio v. Italy (N° 43017/98)
- Meoli v. Italy (N° 43018/98)
- Rubortone v. Italy (N° 43019/98)
- Pasquale Ciaramella v. Italy (N° 43020/98)
- Iapalucci v. Italy (N° 43021/98)
- Di Mella v. Italy (N° 43022/98)
- Pozella v. Italy (N° 43023/98)

- Cardo v. Italy (N° 43024/98)
- Fiore v. Italy (N° 43025/98)
- Tedesco v. Italy (N° 43026/98)
- Ricci v. Italy (N° 43027/98)
- Lignelli v. Italy (N° 43028/98)
- Palmieri v. Italy (N° 43029/98)
- Di Libero v. Italy (N° 43030/98)
- Antonio d'Addona v. Italy (N° 43031/98)
- Paradiso v. Italy (N° 43032/98)
- Bianco v. Italy (N° 43033/98)
- Parrella v. Italy (N° 43034/98)
- Antonietta Ciaramella v. Italy (N° 43035/98)
- Santoro v. Italy (N° 43036/98)
- Febbraro v. Italy (N° 43037/98)
- Mariniello v. Italy (N° 43038/98)
- Lombardi v. Italy (N° 43039/98)
- Ranaldo v. Italy (N° 43040/98)
- Viscusi v. Italy (N° 43041/98)
- Raccio v. Italy (N° 43042/98)
- D'Angelo v. Italy (N° 43043/98)
- De Cicco v. Italy (N° 43044/98)
- Forgione v. Italy (N° 43045/98)
- Masella v. Italy (N° 43046/98)
- Del Vecchio v. Italy (N° 43047/98)
- Bernardo v. Italy (N° 43048/98)
- Fusco v. Italy (N° 43049/98)
- Filomena Gioia v. Italy (no. 2) (N° 43050/98)
- Leonardo Di Biase v. Italy (N° 43051/98)
- Panzanella v. Italy (N° 43052/98)
- Del Buono v. Italy (N° 43054/98)
- Sabatino v. Italy (N° 43055/98)
- Fallarino v. Italy (N° 43056/98)
- Mongillo v. Italy (N° 43057/98)
- Foschini v. Italy (N° 43058/98)
- D'Antonoli v. Italy (N° 43059/98)
- Pizzi v. Italy (N° 43060/98)
- Patuto v. Italy (N° 43061/98)
- Di Blasio v. Italy (N° 43062/98)
- Bello v. Italy (N° 43063/98)
- Nicolella v. Italy (N° 43064/98)
- Lanni v. Italy (N° 43065/98)
- Zullo v. Italy (N° 43066/98)
- Izzo v. Italy (N° 43067/98)
- Luciano v. Italy (N° 43068/98)
- Mercone v. Italy (N° 43069/98)
- Vignogna v. Italy (N° 43070/98)
- Narciso v. Italy (N° 43071/98)
- Guarino v. Italy (N° 43072/98)
- Camerlengo v. Italy (N° 43073/98)
- Grasso v. Italy (N° 43074/98)
- Gallo v. Italy (N° 43075/98)
- Tufo v. Italy (N° 43076/98)
- Silvestre v. Italy (N° 43077/98)
- Zillante v. Italy (N° 43078/98)
- Calandrella v. Italy (N° 43079/98)

- Parisi v. Italy (N° 43080/98)
- Tozzi v. Italy (N° 43081/98)
- Sbrocchi v. Italy (N° 43082/98)
- Simone d'Addona v. Italy (N° 43083/98)
- Tontoli v. Italy (N° 43084/98)
- Silvio Cesare v. Italy (N° 43085/98)
- Cosimo Cesare v. Italy (N° 43086/98)
- Cosimo Rotondi v. Italy (N° 43087/98)
- Coppolaro v. Italy (N° 43088/98)
- Pellegrino Rossi v. Italy (N° 43089/98)
- Perugini v. Italy (N° 43090/98)
- Pietro Ascierto v. Italy (N° 43092/98)
- Pengue v. Italy (N° 43093/98)
- Barbato v. Italy (N° 43094/98)
- M.C. v. Italy (N° 43095/98)
- Autore v. Italy (N° 43096/98)
- Nicoli v. Italy (N° 43097/98)
- Santillo v. Italy (N° 43099/98)
- Orsini v. Italy (N° 43100/98)
- Iannotti v. Italy (N° 43101/98)
- Lombardi and others v. Italy (N° 43103/98)
- Galietti v. Italy (N°43104/98)
- Intorcia v. Italy (N° 43105/98)
- Lina Rossi v. Italy (N° 43106/98)
- Circelli v. Italy (N° 43107/98)
- Selvaggio v. Italy (N° 43108/98)
- Zeoli v. Italy (N° 43109/98)

APPENDIX VII

Case of Constantinescu v. Romania – Extract from press release

Facts: The applicant, Mihail Constantinescu, a Romanian national, was born in 1945 and lives in Bucharest (Romania). The case concerns the applicant's conviction for criminal defamation. He was the president of a teachers' trade union and was prosecuted following the publication in the press of comments he had made regarding internal disputes in the union and the functioning of the judicial system. He had referred to three teachers, all members of the previous trade-union leadership who had refused to return money belonging to the union after the election of new leaders, as "*delapidatori*" (receivers of stolen goods). The union had lodged a criminal complaint against them.

The applicant was acquitted by the Bucharest Court of First Instance on 18 March 1994. On appeal, he was convicted on 10 October 1994 by the Bucharest District Court, which held that he had had a defamatory intent since he must have been aware when making his remarks in the presence of journalists that the prosecution had dropped the charges against the three teachers concerned.

The applicant alleged a violation of Article 10 (freedom of expression) of the European Convention on Human Rights. He maintained that he had not been allowed to prove that his comments were true and had not been informed that the charges had been dropped by the prosecution when the article appeared. He also complained that he was denied a fair hearing before the Bucharest District Court and alleged a violation of Article 6 § 1 of the Convention. He maintained that he had not been allowed to give oral evidence by that court, which had relied solely on the file before the first-instance court, and complained that the district court had made no reference in its decision to the statements of the defence witnesses.

Law: Government's preliminary objections - Whether the applicant was a "victim": The Court observed that on 4 February 2000 the Supreme Court of Justice had allowed the prosecution's application for review and quashed the conviction that was the subject-matter of the applicant's complaints under Articles 6 and 10. It noted that the decision to acquit the applicant – made after the proceedings had been reopened more than five years after his conviction in a final decision – was based solely on the absence of a defamatory intent. No reference was made in the decision to the manner in which the proceedings before the Bucharest District Court had been conducted or to the applicant's complaints on that point. In the Court's view, the Supreme Court of Justice's decision of 4 February 2000 could not be regarded as having expressly or implicitly acknowledged the alleged violation of Article 6 § 1 of the Convention and, in any event, did not constitute adequate reparation, as that expression had been defined by the Court in its case-law. Even if the decision could be regarded as implicitly acknowledging a violation of Article 10, the Court came to a like conclusion with regard to the issue of reparation as, firstly, the applicant had not been awarded any compensation for his conviction and, secondly, the sums he had paid to the three teachers for non-pecuniary damage had not been paid back. With regard to the fine, the Court noted that even though it had been five years since the applicant paid it, the Bucharest Court of First Instance had failed to take into account inflation over that period in its of letter of 6 March 2000 to the Bucharest Third District Tax Office requesting restitution of that amount.
The Court concluded that the applicant could claim to be a "victim" within the meaning of Article 34 of the Convention.
Article 6 § 1 - In order to determine whether there had been a violation of Article 6 it was necessary to consider the role of the Bucharest District Court and the nature of the issues before it. The procedure before the Bucharest District Court was a full one that followed the same rules as proceedings on the merits, the court being required to examine issues of both fact and law. The district court was empowered either to uphold the applicant's acquittal or to find him guilty after carrying out a thorough review of the issue of his guilt or innocence allowing, if appropriate, the admission of new evidence. The Court noted that after overturning the first-instance court's decision to acquit, the Bucharest District Court had ruled on the merits of the accusation against the applicant and found him guilty of defamation without hearing evidence from him. The Court could not accept the respondent Government's argument that the fact that the accused was last in turn to address the Court offered him sufficient protection. While the accused's right to be the last to address the Court was important, it was not to be confused with his right to give evidence at the trial before the Court.
The Court accordingly found that the Bucharest District Court had ruled on the merits of a criminal accusation against the applicant and found him guilty of defamation without affording him an opportunity to give evidence and defend his case. It considered that the applicant should have been heard by the Bucharest District Court, especially as it was the first court to convict him in proceedings aimed at establishing whether he was guilty of a criminal offence. As that requirement had not been satisfied, the Court held that there had been a violation of Article 6 § 1.
Conclusion: violation (unanimous).
Article 10 - The Court noted that it was common ground that the applicant's conviction for defamation constituted an interference by the public authorities in the exercise of his freedom of expression within the meaning of Article 10 of the Convention. The issue was whether that interference could be justified under paragraph 2 of that provision. It was therefore necessary to examine whether the interference was "prescribed by law", pursued a legitimate aim under that paragraph and was "necessary in a democratic society".
The Court found (the point was not in issue) that the interference was "prescribed by law". It pursued a legitimate aim under paragraph 2 of Article 10, namely the protection of the reputation or rights of others. The Court's settled case-law therefore required it to determine whether the interference met a pressing social need, whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it

were relevant and sufficient. The Court therefore had to examine de comments in issue in context, having regard to the circumstances of the case.
The Court noted that there were two aspects to the applicant's comments: his criticism of the police and the prosecution, whom the applicant accused of not wanting to complete the investigation into the complaint made against A.P., R.V. and M.M., and the applicant's assertion that the latter three were "*delapidatori"*. The Court noted that the infringement of the applicant's freedom of expression related to the second aspect only. The Bucharest District Court had based its conviction on the word – held to be defamatory – used by Mr Constantinescu to describe the three teachers and not on the fact that he had expressed opinions criticising the functioning of the system of justice in trade-union disputes.
Even though the applicant's remarks had been made in the context of a debate on the independence of trade unions and the functioning of the judicial system and were therefore of public interest, there were limits on freedom of expression. Notwithstanding the applicant's special role as a trade-union representative, he was required to remain within the limits set, in particular, in the interest of "the protection of the reputation or rights of others", including the right to be presumed innocent. The Court therefore had to determine whether he had overstepped the bounds of acceptable criticism.
In the Court's view, the use of the word "*delapidatori*" to describe people found guilty of the offence of receiving stolen goods was apt to offend the three teachers, as they had not been convicted by a court. The Court considers that the applicant could quite easily have voiced his criticism and contributed to a free public debate on trade-union problems, without using the word "*delapidatori"*.
Accordingly, the State's legitimate interest in protecting the reputation of the three teachers did not conflict with the applicant's interest in contributing to the aforementioned debate. The Court was therefore persuaded that the reasons relied on by the national authorities were "relevant and sufficient" for the purposes of paragraph 2 of Article 10. It also found that in the circumstances of the case the resulting interference had been proportionate to the legitimate aim pursued. The Court also found that the penalty imposed, namely, a fine of 50,000 lei and an award of 500,000 lei to each teacher for non-pecuniary damage, was not disproportionate. Accordingly, it did not appear that the Bucharest District Court had overstepped the margin of appreciation left to the national authorities and there had been no violation of Article 10.
Conclusion: no violation (6 votes to 1).
Article 41 - The Court, clearly, could not speculate on what the outcome would have been if the applicants had had a fair trial, but it was not unreasonable to suppose that he had suffered the loss of a real chance at such a trial. Ruling on an equitable basis, it awarded him FRF 15,000 to be converted into Romanian lei (ROL).
As regards costs and expenses, the Court, ruling on an equitable basis, awarded the applicant FRF 20,000 less the amounts which had already been paid by the Council of Europe by way of legal aid, the balance to be converted into ROL.
Judge Casadevall expressed a dissenting opinion and this is annexed to the judgment.

APPENDIX VIII

Case of Cha'are Shalom ve Tsedek v. France - Extract from press release

Facts: In 1987 the applicant association asked the Minister of the Interior to submit a proposal to the Minister of Agriculture recommending that it be given the official approval it needed in order to be able to perform ritual slaughter in accordance with the very strict religious prescriptions of its members, for whom meat is not kosher unless it is "*glatt*". Meat from slaughtered animals cannot be "*glatt*" if an examination of their lungs reveals the slightest blemish. The application was refused at final instance by the *Conseil d'Etat* in a judgment of 25 November 1994 on the ground that the applicant could not be considered a "religious body" within the meaning of Article 10 of the Decree of 1 October 1980, which permits

exemption from the obligation to stun animals before they are slaughtered only in the case of ritual slaughter carried out by ritual slaughterers authorised by an approved religious body.
The applicant association complained that the refusal of its application for approval infringed its freedom to manifest its religion through observance, guaranteed by Article 9 of the European Convention on Human Rights. It further complained, under Article 14 of the Convention, that it was the victim of discrimination contrary to that Article in that the approval it sought, which was needed to obtain access to slaughterhouses, was granted only to the Paris Central Consistory ("the ACIP"), the association which represented the vast majority of Jews in France, whose ritual slaughterers, in the applicant's submission, did not carry out a sufficiently thorough examination of the meat which they certified as kosher.
Law: Article 9 of the Convention taken alone - In the Court's opinion, there would have been interference with the freedom to manifest one's religion only if the illegality of performing ritual slaughter had made it impossible for ultra-orthodox Jews to eat meat from animals slaughtered in accordance with the religious prescriptions they considered applicable. But that was not the case. It was not contested that the applicant association could easily obtain supplies of "*glatt*" meat in Belgium. Furthermore, it was apparent from the written depositions and bailiffs' official reports produced by the interveners that a number of butcher's shops operating under the control of the ACIP made meat certified "*glatt*" by the Beth Din available to Jews. It emerged from the case file as a whole, and from the oral submissions at the hearing, that Jews who belonged to the applicant association could thus obtain "*glatt*" meat. In particular, the Government had referred, without being contradicted on the point, to negotiations between the applicant and the ACIP with a view to reaching an agreement whereby the applicant could perform ritual slaughter itself under cover of the approval granted to the ACIP, an agreement which had not been reached, for financial reasons.
On those grounds the Court held that the refusal of approval complained of had not constituted an interference with the applicant association's right to freedom to manifest its religion.
Conclusion: no violation (12 votes to 5).
Article 9 of the Convention taken together with Article 14 - The Court noted that the facts of the present case fell within the ambit of Article 9 of the Convention and that therefore Article 14 was applicable. However, in the light of its findings concerning the limited effect of the measure complained of, findings which had led the Court to conclude that there had been no interference with the applicant association's freedom to manifest its religion, the Court considered that the difference of treatment which had resulted from the measure was limited in scope. The measure complained of had pursued a legitimate aim, and there had been a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Such difference of treatment as there was had therefore had an objective and reasonable justification within the meaning of the Court's consistent case-law.
Conclusion: no violation (10 votes to 7).
Judges Bratza, Fischbach, Thomassen, Tsatsa-Nikolovska, Panţîru, Levits and Traja expressed a dissenting opinion, which is annexed to the judgment.

APPENDIX IX

Case of Erdogdu v. Turkey – Extract from press release

Facts: The applicant, Ümit Erdoğdu, is a Turkish national born in 1970. At the material time he was the editor of the fortnightly review *İşçilerin Sesi* ("The Workers' Voice), published in Istanbul. On 2 October 1992 the review published an article, written by a reader, entitled "*Kürt Sorunu Türk Sorunudur*" ("The Kurdish problem is a Turkish problem").

On 29 December 1992 the Public Prosecutor at the Istanbul National Security Court charged the applicant and the publisher of the review with spreading propaganda against the territorial integrity of the State and the indivisible unity of the Turkish nation, an offence under section 8 (1) and (2) of the Prevention of Terrorism Act (Law no. 3713). On 20 December 1993 the National Security Court convicted the defendant of the offence on the ground that the article had referred to parts of Turkish territory as Kurdistan and applauded acts of violence by the Kurdistan Workers' Party (PKK), which was portrayed as a movement of national resistance against the State. Consequently, it sentenced Mr Erdoğdu to six months' imprisonment and a fine of 50,000,000 Turkish liras (TRL). The judgment became final on 4 May 1994 and the applicant began to pay off the fine, which had been divided into monthly instalments.

On 30 October 1995 Law no. 4126 came into force. It provided for the automatic review of sentences that had been handed down under section 8 of Law No. 3713. Mr Erdoğdu applied for a review of the merits of his case by the National Security Court which ultimately sentenced him to a suspended fine of TRL 50,900,000.

On 24 April 1996 the applicant appealed to the Court of Cassation. On 4 August 1997, while his appeal was still pending, Law no. 4304 was enacted. It provided for the deferral of sentence and its execution for offences committed by editors before 12 July 1997. In the light of that new statutory provision, the Court of Cassation reversed the impugned judgment and remitted the case to the National Security Court. On 10 December 1997, the National Security Court deferred sentencing Mr Erdoğdu, ordering that he would be sentenced if, within three years from the date of deferral, he was convicted in his capacity as editor of an offence with intent.

The applicant complained that his conviction and sentence constituted a violation of his freedom of expression under Article 10 of the European Convention on Human Rights.

Law: Government's preliminary objections - The Government had argued that domestic remedies had not been exhausted on two accounts. As regards the failure to refer the case to State Counsel at the Court of Cassation so that the applicant could apply for rectification of that court's judgment of 4 May 1994, the Court noted that by virtue of Article 322 § 5 of the Code of Criminal Procedure, such an application could be made only by State Counsel's office, either itself or at the request of the convicted person. Such an application did not therefore constitute a legal remedy that was directly accessible to those convicted and, consequently, could not be regarded as a remedy requiring exhaustion under Article 35 of the Convention. As to the Government's argument that the applicant had not at any stage in the proceedings before the domestic courts relied, even in substance, on the provisions of the Convention, the Court observed that when he requested a review of the merits of the case against his client, Mr Erdoğdu's lawyer had challenged the conviction, not only under domestic law but also in the light of Article 10. It could not therefore be said that the Turkish courts had had no opportunity to prevent or redress the violations they were alleged to have committed before those allegations were made to the Court.

Article 10 - For the Court, the applicant's conviction clearly amounted to an "interference" with the exercise of his freedom of expression. Such an interference would infringe Article 10 unless it was "prescribed by law", motivated by at least one of the legitimate aims set out in Article 10 and " necessary in a democratic society" to attain such aim or aims.

The Court noted that it had previously examined the issue of the "lawfulness" and "foreseeability" of a conviction under section 8 of Law No. 3713 and had held that provision to be compatible with the requirements of Articles 7 (no punishment without law) and 10 of the Convention. Furthermore, having regard, in particular, to the sensitivity of the fight against terrorism and to the need for the authorities to be alert to acts capable of fuelling

additional violence, the Court considered that the interference pursued two aims compatible with Article 10, namely the prevention of disorder and the prevention of crime.
The Court observed that in the case before it the author of the article at issue had sought to provide an explanation for developments in south-east Turkey and had expressed his point of view on both the internal and external repercussions. The article had taken the form of a political speech, as regards both content and terminology, and it was clear that the author had intended, if only indirectly, to criticise the dominant political ideology of the State and the way in which the Turkish authorities were dealing with the Kurdish problem.
The Istanbul National Security Court had twice condemned the article, both because it had referred to part of the country as belonging to "Kurdistan" and because it had favoured the breaking up of the nation and glorified the PKK as a national resistance movement. As the Court had previously stated: "...although these are no doubt relevant considerations, they cannot on their own be deemed sufficient to regard the interference as necessary within the meaning of Article 10 § 2". In addition, the Court observed in particular that the four phrases criticised by the Government expressed personal and subjective views which, taken in context, could, at most, be regarded as reflecting the author's fierce opposition to official policy applied in the south-east. In short, while the Court was ready to accept that there were aspects of the article lending a degree of virulence to the political criticism it contained, it found nothing that would, in the words of the Government, have caused readers to gain "the impression that recourse to violence was a necessary and justified measure of self-defence " against Turkey.
Admittedly, the Court could not exclude the possibility that the article might conceal objectives and intentions different from the ones it proclaimed. The Court was conscious, too, of the concerns of the authorities regarding the fight against terrorism and accepted that it was for the domestic courts to determine whether the applicants had published the article with reprehensible motives. However, in the absence of any evidence of action which might prove the contrary, the Court saw no reason to doubt the sincerity of Mr Erdoğdu's motives in publishing the article. Nor was it persuaded that the publication would have highly detrimental consequences in the long-term for the prevention of disorder and crime in Turkey or that young people would be driven by the article into "reluctantly joining the PKK camps", as the Government claimed.
It therefore appeared that by concluding that the applicant had provided the author of the article with a platform for inciting violence and hatred, the national authorities had not taken sufficient account of the freedom of the press or the right of the public to have access to a different perspective on the Kurdish problem.
As to the applicant's benefiting from a deferral of sentence, the Court noted that this order only produced its effects if Mr Erdoğdu committed no further offences with intent as an editor for three years after the order was made, which the Court considered to be akin to a ban effectively censoring the applicant in the exercise of his profession. The extent of the ban was also unreasonable, as it forced Mr Erdoğdu to refrain from publishing any article which could be considered contrary to the interests of the State. Such a limitation on freedom of journalistic expression, which meant that only ideas that were generally accepted, that were welcome or regarded as inoffensive or neutral could be expressed, was excessive.
Consequently, the Court concluded that there had been a violation of Article 10.
Conclusion: violation (unanimous).
Article 41 - The Court noted that the fine imposed on the applicant on 20 December 1993 was a direct consequence of the violation that it had found in the case. The Court awarded the applicant FRF 6,000 for pecuniary damage. He had claimed FRF 20,000 for non-pecuniary damage, which the Court considered reasonable and awarded in full. It also awarded the applicant FRF 20,000 for costs and expenses.
Judge Gölcüklü expressed a separate opinion and this 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