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

INFORMATION NOTE No. 4
on the case-law of the Court
March 1999

Statistical information

			March	1999
I.	Judgments delivered:			
	Grand Chamber		5	18
II.	Applications declared admissible:			
	Section I		3	4
	Section II		15	29
	Section III		21	30
	Section IV		4	18
	Total		43	81
III.	Applications declared inadmissible:			
	Section I	- Chamber	5	21
		- Committee	67	123
	Section II	- Chamber	14	24
		- Committee	33	82
	Section III	- Chamber	22	34
		- Committee	52	146
	Section IV	- Chamber	8	25
		- Committee	124	218
	Total		325	673
IV.	Applications struck off:			
	Section I	- Chamber	4	4
		- Committee	2	9
	Section II	- Chamber	3	4
		- Committee	2	2
	Section III	- Chamber	1	4
		- Committee	0	1
	Section IV	- Chamber	0	0
		- Committee	0	0
	Total		12	24
Total number of decisions[1] :			380	778

V. Applications communicated:

Section I	63	119
Section II	17	64
Section III	49	96
Section IV	40	76
Total number of applications communicated:	169	355

[1] Not including partial decisions.

Note: The summaries contained in this Information Note are prepared by the Registry of the Court and are not binding on the Court.

ARTICLE 2

LIFE
Failure to provide compensation following the death of a close relative of the applicants: *communicated*.

<u>DINC and others - Turkey</u> (N° 32597/96)
[Section I]

The applicants are close relatives of a soldier, R.D., who was shot and killed by another soldier in the course of an operation against smugglers. The applicants joined the criminal proceedings against the soldier who had fired the shot as parties claiming civil damages. The defendant was found guilty of causing R.D.'s death by the use of a firearm and sentenced to 5 years' imprisonment. The applicants then brought an action for compensation for pecuniary and non-pecuniary damage which they lost on the grounds that the State could not be held liable for R.D.'s death. They maintain that R.D. was killed in circumstances not covered by Article 2(2) and that the State is under a duty to compensate the victims of the killing, in respect of which its responsibility is engaged.
Communicated under Article 2 taken alone and together with Article 13.

EXPULSION
Residence permit in Sweden refused to Zambian citizen infected by HIV: *communicated*.

<u>CHINTU - Sweden</u> (Nº 46553/99)
[Section I]

The applicant, a Zambian national, was the wife of a diplomat of the Zambian Embassy in Stockholm and lived in Sweden from 1990 to early 1994. Following the death of her husband in Zambia, she came back to Sweden in November 1994. She applied for a residence permit, alleging that her husband's relatives threatened her life and that she had been offered a job at the Zambian Embassy. Nonetheless, the National Immigration Board rejected her application. She lodged an appeal with the Aliens Appeal Board and stated that she had contracted HIV and should therefore be granted a residence permit on humanitarian grounds. The doctor she had visited several times reported that no treatment could be started unless she was given a long term residence permit. However, this appeal and her further applications were all rejected. Her doctor delivered a certificate acknowledging the fact that her health condition had deteriorated and that consequently a treatment had been started. Her deportation was stayed by the immigration authorities following the Court's indication to the Government.
Communicated under Article 2 and 3.

ARTICLE 3

EXPULSION
Threatened expulsion of applicant suffering from AIDS: *communicated*.

CARDOSO and JOHANSEN - United Kingdom (Nº 47061/99)
[Section III]

The applicants have cohabited in a stable homosexual relationship since 1981. The first applicant is a Brazilian national and in 1984 he entered into a marriage of convenience in an attempt to remain in the United Kingdom with the second applicant, an Australian national who has indefinite leave to remain. In 1995 the first applicant was diagnosed as suffering from HIV and in 1996 as having an AIDS defining illness. He visited Brazil in 1997 on a false Italian passport but discovered that his family did not wish to have any contact with him. His false identity was discovered in 1998 and the Secretary of State ordered that he be removed to France, from where he had entered and where he could make an application for entry. The Secretary of State pointed out that treatment was available in Brazil. Leave to apply for judicial review was refused and the applicant's appeal was rejected. Removal directions were issued on 25 March 1999. The second applicant would not be permitted to join the first applicant in Brazil.
Communicated under Articles 3 (effect of removal on health) and 8. The Section also prolonged the application of Rule 39 of the Rules of Court.

ARTICLE 5

Article 5(1)

LAWFUL ARREST OR DETENTION
Suspected members of a sect held in a hotel against their will in order to undergo "de-programming": *partly admissible (and partly inadmissible)*.

RIERA BLUME and others - Spain (Nº 37680/97)
Decision 9.3.99 [Section IV]

The homes of the applicants, who were suspected of belonging to a sect, were searched. The applicants were taken to the Court of First Instance, where a judge ordered them to be released into the care of members of their families. Later, on police orders, they were taken to a hotel where their personal effects were taken from them and they were shut in their rooms under the guard of staff employed for that purpose, one of whom was always in each room. They were made to undergo "deprogramming" by members of an anti-sect group. After nine days they were questioned by the police and allowed to leave the hotel, whereupon they filed a criminal complaint alleging, *inter alia*, unlawful detention and offences against the exercise of personal rights. State Counsel also applied for a finding of unlawful detention. The defendants were acquitted on the grounds that their motives in acting as they had had been philanthropic, legitimate and well-intentioned, so that the offence of unlawful detention was not made out. Both State Counsel and the applicants lodged an appeal on points of law, which was dismissed. The applicants then lodged an application for the protection of fundamental rights (an *amparo*

appeal) with the Constitutional Court. One of the applicants was deemed to have withdrawn his *amparo* appeal owing to a procedural error on his part; the others' *amparo* appeals were dismissed. The applicants complain that they were treated in a manner contrary to Article 3, that they were unlawfully detained and that their rights to respect for their private life and to freedom of thought, conscience and religion were infringed.
Inadmissible in respect of the first applicant, Mr J.V. Riera Blume, as he was deemed to have withdrawn his *amparo* appeal as a result of failure to comply with a procedural requirement: non-exhaustion of domestic remedies.
Inadmissible with regard to Articles 3 and 8: the applicants expressly relied, at the domestic level, on a number of Articles of the Spanish Constitution, putting forward supporting arguments, but failed to refer to the provisions prohibiting ill-treatment and protecting private life although there was nothing to prevent them from doing so: non-exhaustion of domestic remedies.
Admissible with regard to Articles 5(1) and 9: as to the Government's preliminary objection that domestic remedies had not been exhausted, the Court observed that, throughout the proceedings, the applicants had raised points which tended to demonstrate that they had been detained unlawfully and that their freedom of religion had been infringed. Moreover, the Constitutional Court judgment suggests that the legal avenue pursued by the applicants was, if not the only one available, at all events appropriate in relation to the violations of which they were complaining. Therefore the objection should be dismissed.

LAWFUL ARREST OR DETENTION
Detention on remand ordered after rushed hearing: *communicated.*

FALKAUSKAS and KAMANTAUSKAS - Lithuania (Nº 45012/98)
Decision 2.3.99 [Section III]

Criminal proceedings were instituted against the second applicant on suspicion of theft, the first applicant having been appointed as his counsel. The prosecutor requested the second applicant's arrest and a hearing was held the same day before the District Court. The first applicant contended that he was informed that he had to provide the accused with legal assistance some 10 or 15 minutes before this hearing. No time or facilities were allegedly offered for the examination of either the prosecutor's request or the case-file. Although there had been no time to discuss defence tactics with the accused, the judge restrained the counsel from speaking to the accused during the hearing, which lasted about 10 minutes. The second applicant's detention on remand was ordered. The first applicant claimed, among other procedural irregularities, that the judge did not retire *in camera* to deliberate. No reasons for the arrest were given in the decision ordering the detention on remand. The Regional Court dismissed the appeal lodged by the first applicant, stating that the detention was justified.
Communicated under Article 5(1) and (4) as regards the second applicant's complaints.

LAWFUL ARREST OR DETENTION
Arrest and pre-trial detention without legal basis: *admissible*.

RAIŠELIS - Lithuania (Nº 37195/97)
Decision 2.3.99 [Section III]

On 16 June 1997, the applicant was arrested and placed in detention pursuant to Article 50-1 of the Code of Criminal Procedure on suspicion of belonging to a criminal organisation. The President of the City District Court confirmed his preventive detention; the applicant's counsel

was present, but the applicant was not brought personally before the judge. He lodged an appeal against the preventive detention order, stating it was groundless, given that he had committed no offence and had not to be prevented from committing one. He also contended that he was not informed of the reasons for his arrest. The Regional Court's decision by which this appeal was rejected was final. He was released from custody on 30 June 1997.
Admissible under Article 5(1), (2) and (3).

LAWFUL ARREST OR DETENTION
Delay in transferring detainees to place of compulsory residence: *communicated.*

MANCINI - Italy (Nº 44955/98)
Decision 23.3.99 [Section II]

The two applicants and two other persons were arrested following an armed robbery. The stolen goods were found in a shop owned by the applicants' company. The investigating judge placed the applicants under house arrest, from which they were released in December 1996. Suspicion again fell on them after two further armed robberies and they were detained on remand in December 1997 by order of the investigating judge. They appealed against the order. On 7 January 1998 the *Tribunale della libertà* (the division of the District Court dealing with applications for review of preventive measures) ordered them to be released from detention on remand and placed under house arrest instead, on the grounds that the risk of their committing a similar offence was not high enough to justify detaining them on remand. However, they were not transferred from the prison where they were being held to their homes until 13 January 1998 because of a shortage of police.
Communicated under Article 5(1) in respect of the delay in executing the order placing them under house arrest instead of in detention on remand.

Article 5(2)

INFORMATION ON REASONS FOR ARREST
Lack of information on reasons for arrest: *admissible*.

RAIŠELIS - Lithuania (Nº 37195/97)
Decision 2.3.99 [Section III]
(See Article 5(1), above).

Article 5(3)

BROUGHT PROMPTLY BEFORE JUDGE
Failure to bring a detainee promptly before a judge: *admissible*.

RAIŠELIS - Lithuania (Nº 37195/97)
Decision 2.3.99 [Section III]
(See Article 5(1), above).

JUDGE OR OTHER OFFICER
Detention on remand ordered by an investigator and confirmed by a prosecutor: *violation*.

NIKOLOVA - Bulgaria (Nº 31195/95)
Judgment of 25 March 1999 [Grand Chamber]
(See Appendix I).

Article 5(4)

REVIEW OF LAWFULNESS OF DETENTION
Detention on remand extended by court decision not open to appeal: *admissible*

GRAUŽINIS - Lithuania (Nº 37975/97)
Decision 2.3.99 [Section III]

The applicant was arrested on suspicion of having beaten the owner of a café and threatened to take his property by force. The District Court ordered his detention on remand. He was subsequently indicted of attempting to obtain property by threat, and later of obtaining property by deception. He unsuccessfully appealed against the decision ordering his detention and contended that he had been convicted *de facto* on the basis of the allegations of the complainant. His detention on remand was extended by decision of the District Court, with no appeal possible, pursuant to the Code of Criminal Procedure. The applicant nevertheless appealed but his appeal was not examined. The applicant further claimed that by a subsequent decision he was committed for trial and the term of his detention was extended without the judge having convened a hearing on that occasion. The charges were later replaced by an indictment of affray and he was convicted and sentenced to 1 year and 4 months' imprisonment.
Admissible under Article 5(3) and (4).

PROCEDURAL GUARANTEES OF REVIEW
Limited scope of review of lawfulness of detention and lack of equality of arms: *violation*.

NIKOLOVA - Bulgaria (Nº 31195/96)
Judgment of 25 March 1999 [Grand Chamber]
(See Appendix I).

PROCEDURAL GUARANTEES OF REVIEW
Lack of procedural guarantees of review of extension of detention on remand: *admissible*

GRAUŽINIS - Lithuania (Nº 37975/97)
Decision 2.3.99 [Section III]
(See above).

SPEEDINESS OF REVIEW
Length of time taken to decide on an appeal by a psychiatric detainee: *violation*.

MUSIAL - Poland (Nº 24557/94)
Judgment of 25 March 1999 [Grand Chamber]
(See Appendix II).

ARTICLE 6

Article 6(1) [civil]

FAIR HEARING
Judge deciding on appeal different from the one investigating the appeal - procedure for nomination contrary to the law of San Marino: *communicated*.

BUSCARINI - San Marino (Nº 31657/96)
[Section II]
(See below).

REASONABLE TIME
Length of civil proceedings: *no violation*.

PAPACHELAS - Greece (Nº 31423/96)
Judgment of 25 March 1999 [Grand Chamber]
(See Appendix III).

IMPARTIAL TRIBUNAL
Hearing held before judges not having disclosed their membership of the freemasons in a case where one of the parties is also a freemason: *communicated*.

SALAMAN - United Kingdom (Nº 43505/98)
Decision 9.3.99 [Section I]

The applicant was appointed executor and beneficiary under the will of B., a freemason, who died in 1992. According to the professionally drawn will of June 1991, a large part of his estate was left to the applicant, subject to a life interest in the residuary estate to the deceased's brother, also a freemason. In August 1991, B. 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, composed of three judges, concluded that there was no substance to the appeal. The applicant was refused leave to appeal to the House of Lords. He later learnt that the trial judge and one of the Court of Appeal judges were both freemasons. He claimed that there was no means of discovering it at the time of the hearing.
Communicated under Article 6(1) (impartial tribunal).

TRIBUNAL ESTABLISHED BY LAW
Substitute appeal judge not designated by the competent authority: *communicated*.

BUSCARINI - San Marino (Nº 31657/96)
[Section II]

The applicant brought civil proceedings against S.V. The judge dealing with the case was P.G.P. He found against the applicant, who appealed. The investigative stage of the appeal was dealt with by the judge who had heard the case at first instance, i.e. P.G.P., as required by law. P.G.P. sent the documents in the case to civil appeals the judge so that the case could be decided. However, the civil appeals judge had meanwhile died. The San Marinese Parliament appointed P.G.P. to replace him. P.G.P. applied to the Council of Twelve (which acts as the court of third instance) for permission to withdraw from cases which he had heard at first instance or in which he had carried out the investigation for the purposes of an appeal. The Council granted his application in part and assigned the cases to P.G., the criminal appeals judge. The Bar Council of San Marino expressed doubts as to whether the substitution of P.G. had been made in accordance with the proper procedure. P.G., sitting as the civil appeals judge, dismissed the applicant's appeal.
Communicated under Article 6(1) (tribunal established by law, fair trial) and Article 35(1) (exhaustion of domestic remedies).

Article 6(1) [criminal]

FAIR TRIAL
Effect on fairness of trial of extensive adverse media reporting: *communicated*.

PULLICINO - Malta (Nº 45441/99)
[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 there was sufficient evidence to prove that he had approached a prosecution witness in circumstances which showed an intention to corrupt the witness's evidence. 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. The judge ordered confiscation of extensive notes which the applicant had taken during the two months which the prosecution had taken to present its case, as well as of other documentation which the applicant had gathered for the preparation of his defence. The applicant was found 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 and 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.

Communicated under Article 6(1) (confiscation of notes, impartiality of trial judge, effect of media coverage).

REASONABLE TIME
Length of criminal proceedings: *violation*.

PELISSIER and SASSI - France (Nº 25444/94)
Judgment of 25 March 1999 [Grand Chamber]
(See Appendix IV).

IMPARTIAL TRIBUNAL
Court of Cassation composed of five judges of whom two normally sit in the Court of Appeal, and in this case including three Court of Appeal judges: *communicated*.

THOMA -Luxembourg (N° 38432/97)
[Section II]
(See Article 10, below).

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

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)
Decision 2.3.99 [Section II]

In 1989 criminal proceedings were instituted against the fifth applicant, who was suspected of fraud and corruption between 1981 and 1989 while acting as director of association "I". In 1994 the public prosecutor requested the Chamber of Representatives to lift the parliamentary immunity of the first applicant, who was involved in some of the illegal activities of association "I" while a Minister. According to S. 103 of the Constitution, only the Chamber of Representatives can decide whether a Minister may be prosecuted. It set up a special commission to carry out an investigation. The commission recommended that the applicant be committed for trial before the Court of Cassation, which has jurisdiction as the only instance to try a Minister. This recommendation was adopted by the Chamber. The other applicants were joined in the proceedings before the Court of Cassation, because of the connection between offences, although none of them is a Minister. The applicants complained that no law had ever been adopted regulating the procedure before the court in such cases. As a result, the court had to fix its own rules. The court refused to refer a preliminary question to the Arbitration Court, pointing out that it was applying the Code of Criminal Procedure to the case. It also refused to refer a preliminary question concerning the application of a new law (24 December 1993) to these proceedings, extending the prescription for lesser crime from 3 to 5 years.
Admissible under Articles 6(1) (tribunal established by law) and 7.

Article 6(3)(a)

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

PELISSIER and SASSI - France (Nº 25444/94)
Judgment of 25 March 1999 [Grand Chamber]
(See Appendix IV).

Article 6(3)(b)

ADEQUATE TIME AND FACILITIES
Recharacterisation of charge by appeal court without giving defence a proper opportunity to submit arguments: *violation*.

PELISSIER and SASSI - France (Nº 25444/94)
Judgment of 25 March 1999 [Grand Chamber]
(See Appendix IV).

Article 6(3)(c)

DEFENCE THROUGH LEGAL ASSISTANCE
Non-representation of appellant due to lawyer being on strike: *inadmissible*.

MILONE - Italy (Nº 37477/97)
Decision 23.3.99 [Section II]

The applicant was convicted of abuse of office and tampering with procurement contracts. He appealed unsuccessfully and then lodged a further appeal, on points of law, with the Court of Cassation, in which the first hearing took place on 30 April 1997. The second hearing was scheduled for 5 May 1997, the date of a barristers' strike called by the National Bar Association on 22 April 1997. The applicant's defence counsel chose to take part in the strike and so did not appear at the hearing; he had asked counsel for one of the applicant's co-defendants to apply for an adjournment on his behalf. The Court of Cassation refused that application, which had not been made in accordance with the proper procedure, nor as soon as possible as required by practice. The court held that it could not regard the applicant's lawyer's participation in the strike as unavoidable since it was a matter of personal choice.
Inadmissible under Article 6(3)(c): both in relation to a full appeal and an appeal on points of law, the manner in which paragraphs (1) and (3)(c) of Article 6 are to be applied depends on the particular nature of the proceedings in question; all the levels of domestic jurisdiction involved have to be taken into account, as well as the role played by the appellate court concerned. In the present case, the Court of Cassation's role was to rule on points of law. The applicant's lawyer had been allowed to submit written arguments and had taken part in the hearing of 30 April 1997,

which had been devoted to oral argument. The record of the hearing of 5 May 1997 shows that the court withdrew to deliberate in private immediately on refusing the application for an adjournment, so that there had been no further oral argument. Moreover, the applicant's lawyer had not taken the necessary steps following his decision to take part in the strike. He should have made his intention known to the court as soon as possible – for instance, at the hearing of 30 April 1997 – if he wished to apply for an adjournment. His request for an adjournment made at the second hearing through counsel for one of the other defendants was therefore procedurally flawed. The mere fact that the National Bar Association had called a strike was not enough for the court to infer that he would be taking part in it. Alternatively, he could have arranged for someone to replace him at the May hearing. The State cannot be held responsible for a failure on the part of a lawyer chosen by the applicant: manifestly ill-founded.

Article 6(3)(d)

EXAMINATION OF WITNESSES
Conviction on the basis of statements made by a witness whom the accused was not able to examine or have examined: *admissible*.

LUCA - Italy (N° 33354/96)
Decision 9.3.99 [Section I]

N. and C. were found in possession of cocaine and arrested. Under questioning, N. said he and C. had gone to the home of the applicant, who had agreed to supply them with cocaine. In the police interview, N. was classed as a "person with information concerning the offence", not as a suspect, whereas when he was questioned by the public prosecutor he was classed as a "person suspected of having committed an offence". The applicant was committed for trial on drug-trafficking charges, together with C. and other persons. Separate proceedings were commenced against N. for possession of drugs. N. was called to give evidence against the applicant as a defendant in related proceedings but claimed the right of silence, as he was entitled to under Italian law. As a result, the court ordered the statements made by N. under questioning to be read out. The applicant was convicted and sentenced to over eight years' imprisonment and a fine, with the court noting that the main evidence against him and his co-defendants was N.'s statements to the public prosecutor. The applicant lost his appeal and his appeal on points of law, in both of which he complained, *inter alia*, that his trial had not been truly adversarial. He complains that he was convicted on the basis of statements made by N. without having had the opportunity to examine him or have him examined.
Admissible under Article 6(1) and (3)(d).

ARTICLE 7

RETROACTIVITY
Application of new law extending prescription for lesser crimes to proceedings started before its entry into force: *admissible*.

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)
Decision 2.3.99 [Section II]
(See Article 6(1) [criminal], above).

ARTICLE 8

PRIVATE LIFE
Rejection of request for authorisation to adopt lodged by an unmarried homosexual man, on the ground of his "life-style": *communicated*.

FRETTE - France (N° 36515/97)
[Section III]

As a result of his request for preliminary leave to adopt, the applicant was investigated by social services. His request was refused. He lodged an appeal within social services which was dismissed on the grounds that his “lifestyle” (he is an unmarried homosexual) did not appear to provide the necessary safeguards for him to be entrusted with a child. The applicant applied successfully for the decisions to be quashed, with the administrative court holding that the decision-making authorities had misinterpreted the relevant legislative provisions. The *département* of Paris appealed to the *Conseil d’Etat*. In those proceedings, the opinion of the *commissaire du Gouvernement* (one of the legal staff of the *Conseil d’Etat* acting as an *amicus curiae)* was that the *département* had good grounds for challenging the judgment of the court below but that the applicant had been denied preliminary leave to adopt solely because he was homosexual and, as such, could not provide the safeguards required from someone seeking to be entrusted with a child. The *commissaire du Gouvernement* took the view that this kind of decision amounted to introducing a form of discrimination between prospective adopters which the legislature had not intended – discrimination on the grounds of choice of private lifestyle. The *Conseil d’Etat* quashed the judgment of the court below and substituted its own decision, rejecting the applicant’s request for preliminary leave to adopt. It held that, on the evidence before it, the applicant – despite his personal qualities and aptitude for bringing up children – could not provide the safeguards required of someone adopting a child and that the court below had erred in law in quashing social services’ decisions on the grounds that the refusal of preliminary leave to adopt had been based on an incorrect application of the relevant legislation. The applicant complains, *inter alia*, of interference with his right to respect for his private and family life, of discrimination (on the grounds of his sexual orientation) in relation to that life, and of the lack of an adversarial procedure, in that the *commissaire du Gouvernement*’s opinion was

not communicated to him before the *Conseil d'Etat* hearing, nor was he summoned to attend that hearing, so that he was unable to respond to it.
Communicated under Articles 6(1), 8 and 8 and 14 read together.

PRIVATE LIFE
Threatened expulsion of a homosexual living in a long-term relationship: *communicated*.

CARDOSO and JOHANSEN - United Kingdom (Nº 47061/99)
[Section III]
(See Article 3, above).

FAMILY LIFE
Expulsion after lengthy residence: *inadmissible*.

DJAID - France (N° 38687/97)
Decision 9.3.99 [Section III]

The applicant, an Algerian national, came to France when a few months' old with his parents and brothers and sisters under the arrangements for family reunion. Since then, he has always lived in France. Of his nine siblings, four are French and all live in France. In 1994 he was sentenced to three years' imprisonment for an offence under the misuse of drugs legislation. Both the applicant and the public prosecutor's office appealed against that decision. The court of appeal imposed a heavier sentence of four years' imprisonment and made an order permanently excluding him from French territory. In 1996 he fathered a French child and recognised paternity. His appeal to the Court of Cassation was dismissed. The applicant sought to have the permanent exclusion order rescinded, but his application was declared inadmissible. In 1998 he fathered a second child whose paternity he likewise recognised. The applicant complained in particular of the length of the criminal proceedings and of a breach of his right to respect for his private and family life.
Inadmissible under Article 8. As regards the Government's preliminary objection that domestic remedies had not been exhausted, the Court observed that, although he had failed expressly to invoke Article 8 in his appeal to the Court of Cassation, the applicant had relied on the length of his residence in France and had contended that the permanent exclusion order was prejudicial to him. Furthermore, in his application for rescission of that order he had expressly pleaded Article 8. Consequently, the objection had to be dismissed. As to the merits, the Court considered that the permanent exclusion order amounted to an interference in the applicant's private and family life. However, he was not married and had not shown that he was living with someone as man and wife in France. The evidence did not clearly establish whether the applicant had maintained emotional ties with the children whose paternity he had recognised. However, when the first child was conceived, the applicant was already subject to the permanent exclusion order and therefore could not have been unaware that his position was unsettled. Moreover, the applicant had retained his Algerian nationality and did not appear to have manifested any desire to take up French nationality as he had been entitled to do. Further, in view of the ravages caused by drugs, a scourge of our society, the Court understood the need for authorities to be very firm when dealing with people who, like the applicant, contribute to their spread. It followed that the interference could legitimately be regarded as having been necessary: manifestly ill-founded.
Admissible under Article 6(1): as regards the preliminary objection of non-exhaustion of domestic remedies raised by the Government, which relied on a decision by a court of first instance as proof that an action for compensation would have been effective, the Court pointed out that the Commission had already dismissed like objections in two earlier cases. The Commission had

done so on the basis that it was premature to view the decision as establishing a new precedent as there was an appeal pending by the state's representative so that it might be reversed and, in any event, it had been delivered well after the beginning (and, indeed, the end) of the proceedings brought by the applicants. Article 26 (now Article 35(1)) did not require a domestic remedy to be exhausted if its effectiveness had become apparent only as a result of a subsequent change in the case-law. The Court, which had previously upheld that approach, saw no reason to depart from it.

CORRESPONDENCE
Correspondence of detainee, notably with the Commission, regularly opened and distributed with delay: *admissible*.

SLAVGORODSKI - Estonia (Nº 37043/97)
Decision 9.3.99 [Section I]

The applicant was convicted for murder and sentenced to imprisonment. During his detention, his correspondence was regularly opened by the prison authorities and handed to him after a delay. He referred in particular to letters received open from the Ministry of Interior, the public prosecutor's office, the President, international organisations, including the Commission, and Santa Claus. He further claimed that his letters to the President and Santa Claus were also opened. A letter from the Commission of 25 July 1997, which arrived at the prison on 11 August 1997, was opened and then given to the applicant on 14 August 1997 with a request to sign a statement confirming he had been informed of its content. The letter, which he returned to the Commission, bore the stamp of the prison with a reference number and the date of 11 August 1997.
Article 35(1): The Government did not show that at the material time the applicant had at his disposal an adequate administrative remedy (the Government claimed that an administrative appeal to the Minister of Justice would have drawn attention to the urgency of the problem concerning the correspondence of prisoners and accelerated the reform of the relevant law). Furthermore, the Government gave no example from the domestic judicial practice to demonstrate that the theoretical possibility of lodging a constitutional complaint or a complaint invoking the Convention directly would prove effective in practice.
Admissible under Articles 8 and 34 (hinder the exercise of the right of petition).

ARTICLE 9

FREEDOM OF RELIGION
Suspected members of a sect held in a hotel against their will in order to undergo "de-programming": *partly admissible (and partly inadmissible)*.

RIERA BLUME and others - Spain (Nº 37680/97)
Decision 9.3.99 [Section IV]
(See Article 5(1), above).

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction of a journalist for quoting extracts from an article questioning the honesty of a group of civil servants: *communicated.*

THOMA - Luxembourg (N° 38432/97)
[Section II]

A German-language daily newspaper published an article by B. about reafforestation techniques used after storms had devastated part of the national woodlands. Among other things, the article suggested that all but one of the civil servants from the Water and Forestry Commission were corruptible. The applicant, who was a radio-show presenter and had previously denounced serious problems in the reafforestation sector, decided to quote in one of his shows extracts, in the Luxemburger language, from B.'s article, which he described as "explosive". Sixty-three civil servants from the authority concerned issued defamation proceedings against the applicant. They complained that in quoting the accusations made in the article he had passed them off as his own and had thus informed public opinion that all forest wardens and engineers were, with one exception, corruptible. The court delivered 63 judgments in which it awarded each of the plaintiffs one franc in nominal damages and ordered the applicant to pay costs and expenses. It found that the applicant had suggested without evidence and without qualifying his statements that all the plaintiffs were corruptible; he had thus gone beyond the bounds of his right to impart reliable information. The applicant appealed and sought joinder of the cases. The court of appeal made an order for joinder but upheld the judgments, finding that the applicant had not distanced himself from the quoted passages and therefore could not seek to escape liability by alleging that he had merely quoted from B.'s article. His appeals to the Court of Cassation were dismissed. The applicant complains, *inter alia*, that there has been a violation of his right to freedom of expression and contends that the Court of Cassation is not an impartial court as habitually two (three in the instant case) of its five judges are from the court of appeal and it is called upon to review and, if appropriate, overrule decisions delivered by judges with whom it works.
Communicated under Article 6(1) and Article 10.

FREEDOM OF ASSOCIATION
Disciplinary sanction on judge on account of his past membership of a Masonic lodge: *communicated.*

MAESTRI - Italy (Nº 39748/98)
[Section II]

In November 1993 disciplinary proceedings were brought against the applicant, the interim president of a court, because he had been a member of a Masonic lodge from 1981 to March 1993. The Judicial Service Commission gave him with a warning. His appeal to the Court of Cassation was dismissed. The applicant complains that since then his career has been at a standstill. In addition, the relevant judicial commission has declared that it was unable to rule on his fitness to perform the duties of court president.
Communicated under Articles 9, 10 and 11.
[NB. This case is similar to that of N.F. v. Italy, Nº 37119/97, communicated under Articles 8, 9, 10, 11 and 14 (see Information Note Nº 1)].

ARTICLE 13

EFFECTIVE REMEDY
Lack of effective remedy against eviction from State property (Greece): *violation*.

IATRIDIS - Greece (Nº 31107/96)
Judgment of 25 March 1999 [Grand Chamber]
(See Appendix V).

ARTICLE 14

DISCRIMINATION (Article 8)
Preference given to men over women in inheritance of titles of nobility: *communicated*.

CIERVA OSORIO DE MOSCOSO and others - Spain (N° 41127/98, 41503/98, 41717/98 and 45726/99)
[Section IV]

Following the death of some of their ascendants, the applicants, who were the eldest daughters in the family, brought proceedings in which they claimed that the deceased's peerages should pass to them rather than to their younger brothers. The Supreme Court had held in a series of decisions that the historic law whereby peerages were passed on to men in preference to women was discriminatory and contrary to Article 14 of the Constitution, which prohibits any discrimination on grounds of sex. However, in a constitutional appeal brought by the first applicant, the Constitutional Court reversed the Supreme Court's case-law and held that the historic legislation providing that peerages passed in preference to men rather than women was not contrary to Article 14 of the Constitution. The applicants complain of a violation of their right to respect for their private and family life, discrimination on grounds of sex and of a breach of their right to respect for property.
Joined and communicated under Articles 8 and 14, taken together, and Article 1 of Protocol No. 1 taken together with Article 14.

ARTICLE 34

HINDER THE EXERCISE OF THE RIGHT OF PETITION
Correspondence between detainee and the Commission hindered by prison authorities' abusive monitoring: *admissible*.

SLAVGORODSKI - Estonia (Nº 37043/97)
Decision 9.3.99 [Section I]
(See Article 8, above).

ARTICLE 35(1)

EFFECTIVE DOMESTIC REMEDY (Estonia)
Absence of effective remedy for prisoners complaining about abusive monitoring of their correspondence: *admissible*.

SLAVGORODSKI - Estonia (Nº 37043/97)
Decision 9.3.99 [Section I]
(See Article 8, above).

EFFECTIVE DOMESTIC REMEDY (Austria)
Length of proceedings: application under Article 132 of the Federal Constitution.

BASIC - Austria (Nº 29800/96)
Decision 16.3.99 [Section III]

In the course of a search carried out by the police in a gambling house in February 1990, the applicant was found in possession of a watch of great value which did not bear the required tax stamp. The applicant stated that the watch in question had been pledged to him for gambling debts several years ago. The police began an inquiry against him on suspicion of receiving goods for which no import duties had been paid; the seizure of the watch was consequently ordered by the Customs Office to secure a possible forfeiture. E.W. then claimed to be the owner of the watch. In April 1990 and July 1991, the applicant unsuccessfully requested the Customs Office to return the watch to him. In September 1991, criminal proceedings were initiated against E.W. on suspicion of tax evasion. In January 1992, the applicant joined these proceedings as a private party. In May 1992, E.W. was found guilty and the forfeiture of the watch was ordered. In 1993, the Customs Office confirmed E.W.'s guilt and the forfeiture. In January 1995, the Appeals Board of the Regional Directorate of Finance concluded that the applicant's pledge on the watch was not valid and hence the forfeiture order became final, taking effect against the applicant; this decision was served on the applicant in March 1996. In the meantime, in January 1992, the applicant had been found guilty in separate criminal proceedings of having negligently acquired the watch for which no import duties had been paid. However, upon the applicant's objection, the proceedings were discontinued for lack of evidence in November 1993. The customs authorities issued a decision in March 1994 by which the seizure of the watch was ordered as a security for the payment by E.W of the evaded tax. In July 1995, the applicant appealed against this decision to the Regional Directorate of Finance. In April 1997, it quashed the decision, noting that the watch had already been seized to secure a possible forfeiture, and had thereafter remained in the hands of the Customs Office.
Article 35(1): According to the Government, the applicant failed to exhaust the domestic remedies offered to him as he did not make use of the possibility to file an application against the administration for its failure to decide, under Article 132 of the Federal Constitution, on his request for restoration of the watch. The Court found that an application against the administration's failure to decide enables the person concerned to speed up the proceedings to a certain extent. However, it cannot give rise to any finding as regards the length of the proceedings as a whole, nor can it give rise to redress, for example compensation or reduction of sentence, for any unreasonable delay to that point. Measures available to an individual which might speed up proceedings are matters which fall to be considered in the context of the merits of an application relating to the length of proceedings rather than to the exhaustion of domestic

remedies. For these reasons, an application against the administration's failure to decide under Article 132 of the Federal Constitution on the applicant's request would not have provided effective and sufficient redress as to the alleged unreasonable duration of the proceedings at issue. Thus, it did not constitute an effective remedy which the applicant would have been required to exhaust: admissible under Article 6(1) (length of proceedings).

ARTICLE 1 OF PROTOCOL NO. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Eviction after lengthy occupation of property claimed by the State: *violation*.

IATRIDIS - Greece (Nº 31107/96)
Judgment of 25 March 1999 [Grand Chamber]
(See Appendix V).

PEACEFUL ENJOYMENT OF POSSESSIONS
Renewal of ban on construction for 36 years without expropriation or damages: *admissible*.

TERAZZI S.a.s - Italy (Nº 27265/95)
Decision 30.3.99 [Section I]

The applicant company owns land in Rome. In December 1962 the municipality decided in accordance with the local development plan to allocate the land for the creation of green belt. That entailed a five-year ban on building. That period was subsequently extended until 1977 by a series of laws. The land then became subject to the ordinary law which, in this case, meant that building permission could be sought for maintenance works but that no new buildings could be put up. In June 1990 the municipality renewed the ban on building for a further five years. The applicant company's appeal to the administrative courts against that decision was dismissed, as was its appeal to the *Consiglio di Stato*. No formal expropriation proceedings have been taken or compensation awarded as a result of the ban.
Admissible under Article 1 of Protocol No. 1.

PEACEFUL ENJOYMENT OF POSSESSIONS
Margin of appreciation of authorities as regards legislation on restitution of property nationalised without compensation: *inadmissible*.

ČESKOMORAVSKÁ MYSLIVECKÁ JEDNOTA - Czech Republic (Nº 33091/96)
Decision 23.3.99 [Section III]

In 1949, a property which had been nationalised the previous year was sold to the applicant association. In 1991, the applicant association refused to settle an agreement with the successors of the former owner of the property who were, pursuant to the 1991 Restitution Act, entitled to restitution of the property. The District Court, upon the successors' application, ordered the applicant association to reach an agreement on the restitution of the property. The applicant association appealed against this decision and claimed that as it had lawfully acquired this property the Restitution Act was not applicable. The Municipal Court dismissed the appeal, stating, *inter alia,* that the Act did apply since the former owner had not received any compensation at the time of the nationalisation of his property. The High Court rejected the applicant association's appeal on points of law, and the Constitutional Court rejected its constitutional complaint. The applicant association was paid the original purchase price as provided for in the Restitution Act.
Inadmissible under Article 1 of Protocol Nº 1: Provided the legislature remained within the bounds of its margin of appreciation, it is not for the Court to say whether the legislation represented the best solution for dealing with the problem or whether the legislative discretion should have been exercised in another way. In assessing whether the legislature went beyond its margin of appreciation, regard must be had to the background to the Restitution Act, which provided redress in cases where properties had been nationalised without any form of compensation and thus promoted the values of a democratic society. Therefore, it must be considered that the deprivation of which the applicant association complained took place not only in the interests of individuals - the original owner of the nationalised property or its successors - but also in the general interest. Thus, the legislature did not overstep its margin of appreciation in the present case. Furthermore, the applicant association received, pursuant to the Restitution Act, the original purchase price of the property, and it could also claim compensation for revaluation from those benefiting from the restitution: manifestly ill-founded.

DEPRIVATION OF PROPERTY
Amount of compensation for expropriation: *no violation*.

PAPACHELAS - Greece (Nº 31423/96)
Judgment of 25 March 1999 [Grand Chamber]
(See Appendix III).

DEPRIVATION OF PROPERTY
Presumed benefit of expropriation, partly excluding compensation: *violation*.

PAPACHELAS - Greece (Nº 31423/96)
Judgment of 25 March 1999 [Grand Chamber]
(See Appendix III).

ARTICLE 3 OF PROTOCOL NO. 1 / ARTICLE 3 DU PROTOCOLE ADDITIONNEL

VOTE
Impossibility for a patient detained long-term in mental hospital to use address of hospital or previous address for purposes of registration on the electoral roll: *communicated*.

MOORE - United Kingdom (Nº 37481/97)
[Section III]

The applicant has been detained at a hospital in Colchester since 1993 under the Mental Health Act 1983. Prior to his detention, he was registered on the electoral roll in the Uttlesford aera, but claimed that after his release he would go and leave in the Colchester area. Thus, he asked the Colchester authorities to be entered on the relevant electoral roll and gave the hospital's address as his residential address. He was told to get in contact with the Uttlesford authorities as, pursuant to Section 7 of the Representation of the People Act 1983, detained patients could not be considered as "resident" at their place of detention. However, the Uttlesford authorities refused to register him on the grounds that he had been detained for more than 6 months away from this area and had not expressed a wish to live there after his release.
Communicated under Article 3 of Protocol Nº 1.

PROCEDURAL MATTERS

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

CASES REFERRED BY THE EUROPEAN COMMISSION OF HUMAN RIGHTS

At its 283rd Session, the European Commission of Human Rights referred the following 22 cases to the Court:

Ismail ERTAK v. Turkey (Nº 20764/92) concerning the disappearance of applicant's son while in custody, the alleged unlawful killing by security forces and failure of the authorities to carry out effective investigation.

Cemil KILIÇ v. Turkey (Nº 22492/93) concerning the murder of the applicant's brother, a journalist with the newspaper Özgür Gündem, by unidentified persons, allegedly with the connivance of the security forces.

Mahmut KAYA v. Turkey (Nº 22535/93) concerning the kidnapping and murder of the applicant's brother by unidentified persons, allegedly after torture and with the connivance of the security forces.

Gurbetelli ERSÖZ v. Turkey (Nº 23144/93) concerning a campaign of harassment against the newspaper Özgür Gündem and persons associated with it.

Mehmet TIMURTAS v. Turkey (Nº 23531/94) concerning the disappearance of the applicant's son after allegedly being taken into custody.

T. v. the United Kingdom (Nº 24724/94) and **V. v. the United Kingdom** (Nº 24888/94) concerning the trial of 11-year old boys for murder – effect and fairness; sentence and sentencing procedure, in particular the role of the Executive in fixing the tariff; absence of possibility of review.

Roberto MARRA and Paola GABRIELLI v. San Marino (Nos. 24971/94 and 24972/94) concerning the absence of public hearing in criminal proceedings.

Jozef GAWĘNDA v. Poland (Nº 26229/95) concerning the courts' refusal to register the titles of two periodicals.

Witold LITWA v. Poland (Nº 26629/95) concerning the lawfulness of the applicant's detention at a sobering-up centre.

Benedetto LABITA v. Italy (Nº 26772/95) concerning alleged ill-treatment of the applicant in prison; control of correspondence; length of detention on remand; delay in release; preventive measures after acquittal, including restrictions of voting.

Eric JASPER v. the United Kingdom (Nº 27052/95), **Raphael ROWE and Michael DAVIS v. the United Kingdom** (Nº 28901/95) and **Barry FITT v. the United Kingdom** (Nº 29777/96) concerning the non-disclosure of evidence in criminal proceedings by prosecution on basis of public interest immunity.

CHA'ARE SHALOM VE TSEDEK v. France (Nº 27417/95) concerning the refusal of a permit for an ultra-orthodox Jewish association to carry out ritual slaughters.

Herman Olivier ZOON v. the Netherlands (Nº 29202/95) concerning the applicant's complaint that in criminal proceedings against him he was not provided with a complete version of the judgment before he had to decide whether or not to file an appeal.

Ian FAULKNER v. the United Kingdom (Nº 30308/96) concerning the unavailability of legal aid for the institution of civil proceedings by the applicant in Guernsey.

Nicolas FRYDLENDER v. France (Nº 30979/96) concerning civil rights – the applicant's contractual employment by the State and the length of proceedings.

Jean-Claude GUISSET v. France (Nº 33933/96) concerning disciplinary rights – the applicant's contractual employment by the State; the length of proceedings and the lack of oral hearing.

Petar ILIJKOV v. Bulgaria (Nº 33977/96) concerning the length of detention on remand; the scope of review of lawfulness of detention and the length of criminal proceedings.

Iakovos THLIMMENOS v. Greece (Nº 34369/97) concerning the refusal of the authorities to appoint the applicant, a Jehovah's Witness, to a post of chartered accountant because of his criminal conviction for refusing to do military service, and the length of proceedings before the Council of State.

Mehammad Rahim ASPICHI DEHWARI v. the Netherlands (Nº 37014/97) concerning the applicant's threatened expulsion to Iran.

CASES REFERRED TO THE GRAND CHAMBER

The Panel of the Grand Chamber has decided to refer the following 9 cases to the Grand Chamber (see above):

T. - United Kingdom (Nº 24724/94)

V. - United Kingdom (Nº 24888/94)

Labita - Italy (Nº 26772/95)

Jasper - United Kingdom (Nº 27052/95)

Rowe and Davis - United Kingdom (Nº 28901/95)

Fitt - United Kingdom (Nº 29777/96)

Cha'are Shalom ve Tsedek - France (Nº 27417/95)

Frydlender - France (Nº 30979/96)

Thlimmenos - Greece (Nº 34369/97)

RULE 39 OF THE RULES OF COURT

INTERIM MEASURES
Free access of a detainee to lawyers in connection with domestic proceedings and in connection with his application to the Court: *application of Rule 39.*

OCALAN - Turkey (N° 46221/99)
[Section I]

While in Nairobi, Kenya, the applicant, who is the leader of the PKK (Workers' Party of Kurdistan), was arrested by Turkish security forces in circumstances which have yet to be elucidated and taken to Turkey. His representatives lodged an application concerning his arrest and detention, invoking Articles 2, 3, 5 and 6. They also requested the Court under Rule 39 of the Rules of Court to indicate interim measures which Turkey should adopt.
The Chamber, which had initially held that it was unnecessary to apply Rule 39, had nonetheless decided under Rule 54 (3)(a) to request the Turkish authorities to clarify a number of points concerning the conditions of the applicant's arrest and detention and indicated that it considered respect of the applicant's rights to put forward his case both in the criminal proceedings and in the proceedings concerning his application to the Court to be of particular importance. It accordingly sought information about whether the applicant would be permitted to receive assistance by counsel in both sets of proceedings. In response to that request the Turkish Government provided some information about the conditions in which the applicant was being held. In the light of the risk of that the applicant will be tried by a tribunal which the Court has previously held in other cases does not satisfy the requirements of Article 6 and of the fact that even more is at stake in the instant case since the applicant faces the death penalty, the Court

decided that Rule 39 should be applied. It accordingly requested the Turkish authorities to secure compliance with the applicant's rights under Article 6 in the domestic proceedings, to respect the rights of the defence in full, including the applicant's right to see and to have unrestricted, effective access to the lawyers representing him in private, and to ensure that the applicant has an effective opportunity through lawyers of his own free choosing to exercise his right of individual petition to the Court. The Government has also been invited to inform the Court of the measures taken by the authorities to satisfy these requests. The Committee of Ministers has been informed of these provisional measures.

APPENDIX I

Case of Nikolova v. Bulgaria - Extract from press release

Facts: The applicant, Ivanka Nikolova, is a Bulgarian national who was born in 1943 and lives in Plovdiv. The applicant was suspected of having misappropriated funds while working as a cashier and accountant at a State-owned enterprise. In October 1995 she was arrested and brought before an investigator who decided, with a prosecutor's approval, to detain her on remand. In November 1995 the applicant appealed against her detention to the competent court. She advanced arguments which in her view demonstrated that there was no danger of her absconding, committing crimes or obstructing justice, and also requested to be released on medical grounds. The court examined the case *in camera*, after having received the prosecutor's comments. The court dismissed the appeal noting that the applicant was charged with a serious wilful crime and that the medical evidence was out of date.
The applicant complained that following her arrest she had not been brought before "a judge or other officer authorised by law to exercise judicial power" within the meaning of Article 5 § 3 of the Convention. She further complained under Article 5 § 4 of the Convention that the judicial proceedings concerning her appeal against detention were not adversarial and that the scope of the judicial review of lawfulness was limited. The applicant also alleged that Article 13 of the Convention was violated in that she had no remedy against the violations of Article 5.
Law: Government's preliminary objection: The Court found unanimously that the Government were estopped from relying on their preliminary objection as regards the exhaustion of domestic remedies as they had not raised it when the admissibility of the application had been considered by the Commission.
Article 5 § 3 of the Convention: The Court found unanimously that the investigators and the prosecutors under Bulgarian law and practice did not meet the criteria of independence and objective impartiality established in the Court's case-law and that therefore they could not be considered officers exercising judicial power within the meaning of Article 5 § 3 of the Convention. There had been, therefore, a violation of the applicant's right to be brought before a judge or an officer exercising judicial power.
Conclusion: Violation (unanimous).
Article 5 § 4 of the Convention: The Court noted that the Plovdiv Regional Court when examining the applicant's appeal against her detention had only verified whether the applicant had been charged with a "serious wilful crime" within the meaning of the Penal Code and whether her medical condition required release, thus without having examined concrete facts concerning the soundness of the charges against the applicant and the issue whether there existed a danger of absconding. The Court found unanimously that this approach, which was based on section 152 §§ 1 and 2 of the Code of Criminal Procedure and the Supreme Court's practice, was contrary to the requirement of Article 5 § 4 of the Convention that the judicial review of detention should encompass all the conditions essential for its lawfulness, in the Convention sense. The Court further found, unanimously, that the proceedings before the Plovdiv Regional Court did not ensure equality of arms as they were held *in camera*, because the prosecutor submitted comments which were not communicated to the applicant, and also due to the fact that the applicant was not allowed to consult the case-file.
Conclusion: Violation (unanimous).
Article 13 of the Convention: The Court found, unanimously, that Article 5 § 4 of the Convention was a *lex specialis* in respect of Article 13 and that, consequently, it was not necessary to examine the complaint under the latter provision.
Conclusion: Not necessary to examine (unanimous).

Article 41 of the Convention: The Court, unanimously, found no causal link between the violations of the Convention and the pecuniary damage allegedly suffered by the applicant and dismissed her claims in this respect. The Court further, by 11 votes to 6, dismissed the applicant's claim for non-pecuniary damage, having found that its judgment constituted sufficient just satisfaction. By 16 votes to 1 the Court awarded the applicant 14 million Bulgarian levs in respect of costs and expenses.
Several judges expessed separate opinions and these are annexed to the judgment.

APPENDIX II

Case of Musial v. Poland - Extract from press release

Facts:The applicant, Zbigniew Musiał, a Polish national, was born in 1953 and lives in Jastrzębie Zdrój, Poland. On 16 March 1993 the applicant's lawyer applied to the Katowice Regional Court for the applicant's release from the psychiatric hospital where he had been detained since 1988. He had been committed after criminal proceedings for the manslaughter of his wife had been discontinued on the grounds that he was not criminally responsible. The applicant's lawyer insisted that he should be examined by psychiatrists from the University of Cracow rather than by experts from the hospital where he was detained. On 26 April 1993 the court agreed to this request and on 22 September 1993 the applicant's medical records were forwarded to Cracow University. From 31 January 1994 to 4 February 1994 the applicant underwent an examination at Cracow University. In an opinion of 30 November 1994 the psychiatrists from Cracow University stated that the applicant's condition necessitated further detention as the grounds on which his committal to a psychiatric institution had been ordered had not ceased to exist. On 9 January 1995, having considered the medical opinion of 30 November 1994, the Katowice Regional Court decided that the applicant's detention should be continued.
The applicant complained that the proceedings seeking a judicial review of his psychiatric detention, instituted by his request of 16 March 1993, were unreasonably long and that his right to a speedy judicial decision concerning the lawfulness of his detention, guaranteed under Article 5 § 4 of the European Convention on Human Rights, has thereby been breached.
Law: Article 5 § 4 of the Convention: The Court considered that a lapse of time of one year, eight months and eight days was incompatible with the notion of speedy judicial review within the meaning of Article 5 § 4 of the Convention, unless there were exceptional grounds to justify it. The Court considered that there were no grounds in the circumstances of the present case for departing from the usual principle that the primary responsibility for delays resulting from the provision of expert opinions rests ultimately with the State. It further considered that the complexity of a medical case could not absolve national authorities from their essential obligations under Article 5 § 4 of the Convention, and that it has not been shown that in the present case there was a causal link between the complexity of the medical issues which might arguably have been involved in the assessment of the applicant's condition and the delay in the preparation of the expert opinion. The Court also noted that the Katowice Regional Court, when giving its decision of 9 January 1995 to continue the applicant's detention, had regard to the medical opinion of 30 November 1994 prepared on the basis of the applicant's clinical examination which had taken place from 30 January to 4 February 1994. Therefore, the decision was based on medical information which did not necessarily reflect the applicant's actual condition. In the Court's opinion, such a delay between clinical examination and preparation of a medical report is in itself capable of running counter to the principle underlying Article 5 of the Convention, namely the protection of individuals against arbitrariness as regards any measure depriving them of their liberty. The Court

concluded that in the contested proceedings the lawfulness of the applicant's detention was not decided speedily as required by Article 5 § 4 of the Convention.
Conclusion: Violation (16 votes to 1).
Article 41 of the Convention: The Court acknowledged that the applicant suffered prejudice of a non-pecuniary nature as a result of the length of the proceedings by which he sought termination of his confinement. In the circumstances of the case and making its assessment on an equitable basis, the Court awarded the applicant 15 000 Polish zlotys as compensation for non-pecuniary damage. As regards costs and expenses, the Court, having considered that the applicant, who had received legal aid from the Council of Europe in connection with his legal representation in the proceedings before the Commission and the Court, did not submit any details of any costs incurred over and above the amounts received in legal aid, rejected his claim for reimbursement of legal costs.
Judge Pastor Ridruejo expressed a dissenting opinion that is annexed to the judgment.

APPENDIX III

Case of Papachelas v. Greece - Extract from press release

Facts:The applicants, Aristomenis Papachelas and Eugène Papachelas, Greek nationals, were born in 1926 and 1933 respectively and live in Athens. On 9 January 1998 the Greek State expropriated 8,402 sq. m. of the applicants' land in order to build a new major road. However, the applicants, received compensation for only 6,962 sq. m., as a result of the application of an irrebuttable presumption under Law no. 653/1977 whereby, on the building of new major roads, owners of expropriated adjoining land are deemed to benefit and are consequently required to contribute to the costs of expropriation. On 5 June 1991 the Greek State brought proceedings to have the compensation assessed by the courts. The applicants produced, among other things, an official report by the Association of Sworn Valuers, in which the land was valued at 53,621 drachmas per square metre. However, the final unit amount for compensation was fixed at 52,000 drachmas per square metre. The proceedings ended on 20 June 1995 with a decision of the Court of Cassation dismissing the applicants' appeal. That decision was "finalised" on 28 September 1995 and the applicants obtained a copy on 9 October 1995.
The applicants complained that, contrary to Article 6 § 1 of the Convention, their case had not been heard within a reasonable time. They also maintained that there had been two violations of Article 1 of Protocol No. 1. They complained firstly, that the compensation that was awarded was less than the value of the expropriated land and, secondly, that, as a result of the application of the presumption created by section 1(3) of Law no. 653/1977, they had received compensation for only 6,962 sq. m of the total of 8,402 sq. m. of the expropriated land.
Law: Government's preliminary objection: The Court dismissed the Government's preliminary objection that the application had been lodged out of time.
Article 6 § 1 of the Convention: The Court found that the case had been relatively complex, owing in particular to the number of properties that had been expropriated by the same ministerial decision. The length of the proceedings before the court of first instance and the Athens Court of Appeal had not been unreasonable. The proceedings in the Court of Cassation had lasted a year and a half, which was not excessive, regard being had in particular to the fact that the applicants had delayed in lodging their appeal submissions. Consequently, there had been no violation of Article 6 § 1 of the Convention.
Conclusion: No violation (12 votes to 5).
Article 1 of Protocol No. 1 to the Convention:

1. Amount of compensation. The Court noted that the final unit price for compensation had been assessed at only GRD 1,621 less than the price suggested by the Association of Sworn Valuers. Having regard to the margin of appreciation Article 1 of Protocol No. 1 afforded national authorities, the Court considered that the price paid to the applicants had borne a reasonable relation to the value of the expropriated land. Consequently, there had been no violation of Article 1 of Protocol No. 1 as regards the amount of compensation per square metre awarded.
Conclusion: No violation (15 votes to 2).
2. Application of the irrebuttable presumption created by Law no. 653/1977: The Court observed that the system that had been applied in the case before it, a system that was too inflexible and took no account of the diversity of situations, had previously been held by the Court to amount to a breach of Article 1 of Protocol No 1 in two similar cases (Katikaridis and Others v. Greece and Tsomtsos and Others v. Greece, both of 15 November 1996). The Court saw no reason not to follow that case-law as the applicants had been prevented from asserting before the domestic courts their right to compensation in full for the loss of their property and been awarded compensation for only 6,962 sq. m. of the 8,402 sq. m. that were expropriated. They had thus had to bear a burden that had been individual and excessive and could have been rendered legitimate only if they had had the possibility of proving their alleged damage and, if successful, of receiving the relevant compensation. The Court considered that it was not necessary at that stage to determine whether the applicants had in fact been prejudiced; it was in their legal situation itself that the requisite balance was no longer to be found. There had therefore been a violation of Article 1 of Protocol No. 1 as a result of the application of the presumption created by section 1(3) of Law no. 653/1977.
Conclusion: Violation (unanimous).
Article 41 of the Convention: In the circumstances of the case, the Court considered that the question of the application of Article 41 was not ready for decision as far as pecuniary damage was concerned and had to be reserved, due regard being had to the possibility of the respondent State and the applicants reaching an agreement. It awarded the applicants two million drachmas for costs and expenses.

APPENDIX IV

Case of Pélissier and Sassi v. France - Extract from press release

Facts: The applicants, François Pélissier and Philippe Sassi, are French nationals. Mr Pélissier, was born in 1944 and lives at Sanary-sur-Mer; Mr Sassi was born in 1935 and live at Cannes. After a criminal investigation the applicants were committed to stand trial in the Toulon Criminal Court on charges of criminal bankruptcy. That court acquitted them in 1991, finding that they had not acted as *de jure* or *de facto* managers. In a judgment delivered on 26 November 1992 the Aix-en-Provence Court of Appeal upheld that finding but convicted them of aiding and abetting criminal bankruptcy instead. It sentenced them to a suspended term of eighteen months' imprisonment and imposed a FRF 30,000 fine. The applicants' appeal to the Court of Cassation was dismissed on 14 February 1994.
The applicants complained that the Court of Appeal had decided in deliberations to convict them of aiding and abetting criminal bankruptcy, which was not the offence charged, without hearing argument from the parties on the issue. They complained, too, of the length of the proceedings. They relied on Article 6 §§ 1 and 3 (a) and (b) of the Convention. Mr Pélissier also complained under Article 6 § 1 of the Convention that a certificate relied on by the Court of Appeal should not have been admitted in evidence.

Law: Article 6 §§ 1 and 3 (a) and (b) as regards the fairness of the proceedings: As regards the complaint concerning the Court of Appeal's admission of a contested certificate as evidence against the first applicant, the Court, after rehearsing the main principles established by its case-law, found on the basis of all the material in its possession that the certificate and the Aix-en Provence Court of Appeal's reliance on it had not been decisive in the conviction or sentence of Mr Pélissier. Thus, the fact that the document had been admitted in evidence had not impaired the fairness of the proceedings. Consequently, the use by the Court of Appeal of the document in issue did not entail a violation of Article 6 § 1 of the Convention. The Court went on to consider the decision of the Aix-en-Provence Court of Appeal to convict the applicants of a different offence. After explaining the scope of Article 6 § 3 (a) and (b), the Court noted that the only charge contained in the order committing the applicants for trial before the Criminal Court was criminal bankruptcy. There was nothing to suggest that a charge of aiding and abetting criminal bankruptcy was considered to have been a genuine possibility during the investigation. Argument before the Criminal Court had been confined to the offence of criminal bankruptcy. On the public prosecutor's appeal to the Aix-en-Provence Court of Appeal the applicants were at no stage, whether in the summons to appear or at the hearing, accused by the judicial authorities of having aided and abetted criminal bankruptcy. On the facts, the Court found that it had not been established that the applicants were aware that the Court of Appeal might return an alternative verdict of "aiding and abetting" criminal bankruptcy. None of the Government's arguments, whether taken together or in isolation, could suffice to guarantee compliance with the provisions of Article 6 § 3 (a) of the Convention.

With regard to the question whether the notion of aiding and abetting under French law meant that the applicants ought to have been aware of the possibility that a verdict of aiding and abetting criminal bankruptcy might be returned instead of one of criminal bankruptcy, the Court noted that the provisions of Articles 59 and 60 of the Criminal Code as applicable at the material time expressly provided that aiding and abetting could be made out only on proof of a number of special elements, subject to strict, cumulative conditions. The Court could not, therefore, accept the Government's submission that aiding and abetting differed from the principal offence only as to the degree of participation. It was not for the Court to assess the merits of the defences the applicants could have relied on had they had an opportunity to make submissions on the charge of aiding and abetting criminal bankruptcy. It merely noted that it was plausible that the defence would have been different from the defence to the substantive charge. Further, the principle that criminal statutes had to be strictly construed meant that it was not possible to avoid having to make out the specific elements of aiding and abetting. The Court also found that aiding and abetting did not constitute an element intrinsic to the initial accusation known to the applicants from the beginning of the proceedings. The Court accordingly considered that, in using the right which it unquestionably had to recharacterise facts over which it properly had jurisdiction, the Aix-en-Provence Court of Appeal should have afforded the applicants the possibility of exercising their defence rights on that issue in a practical and effective manner and, in particular, in good time. It found nothing in the case before it capable of explaining why, for example, the hearing had not been adjourned for further argument or, alternatively, the applicants had not been requested to submit written observations while the Court was in deliberation. On the contrary, the evidence indicated that the applicants had been given no opportunity to prepare their defence to the new charge, as it was only through the Court of Appeal's judgment that they had become aware of the recharacterisation of the facts. Plainly, that had been too late. The Court concluded that the applicants' right to be informed in detail of the nature and cause of the accusation against them and their right to have adequate time and facilities for the preparation of their defence had been infringed. Consequently, there had been a violation of paragraph 3 (a) and (b) of Article 6 of the Convention, taken together with paragraph 1 of that Article.

Conclusion: Violation (unanimous).

Article 6 § 1 of the Convention as regards the length of the proceedings: The Court noted that the period to be taken into consideration in determining whether the proceedings satisfied the "reasonable length" requirement laid down by Article 6 § 1 had begun when Mr Pélissier and Mr Sassi were charged, that is to say on 14 September 1984 and 12 June 1985 respectively, and ended with the judgment of the Court of Cassation of 14 February 1994. Consequently, the proceedings had lasted nine years and five months in the case of the first applicant and eight years, eight months and two days in the case of the second applicant. The reasonableness of the length of proceedings was to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities. In the case before it, the Court found that the length of the proceedings could not be justified by the complexity of the case and that there was nothing to suggest that the applicants had been responsible for the delays in the proceedings. The Court also considered that there had been unjustified delays and periods of inactivity during the investigation, which were attributable to the national authorities. Consequently, there had been a violation of Article 6 § 1 of the Convention as regards the length of the proceedings.
Conclusion: Violation (unanimous).
Article 41 of the Convention: The Court noted that in the case before it an award of just satisfaction could only be based on the fact that the applicants had not had the benefit of the guarantees of Article 6. Whilst it could not speculate as to the outcome of the trial had the position been otherwise, it did not find it unreasonable to regard the applicants as having suffered a loss of real opportunities. To that had to be added the non-pecuniary damage which the findings of a violation in the present judgment did not suffice to remedy. Ruling on an equitable basis, in accordance with Article 41, it awarded them FRF 90,000 each. With regard to costs and expenses, the Court, ruling on an equitable basis, awarded the applicants FRF 70,000 each.

APPENDIX V

Case of Iatridis v. Greece - Extract from press release

Facts: The applicant, Georgios Iatridis, is a Greek national. He was born in 1923 and lives in Athens. Until 1988 he operated the "Ilioupolis" open-air cinema in the Athens suburb of that name. The ownership of the land on which the "Ilioupolis" cinema was built is in dispute between the heirs of one K.N. and the Greek State. The applicant leased the cinema from K.N.'s heirs in 1978. In 1988 the authorities ordered the applicant to be evicted on the grounds that he was wrongfully retaining State property and assigned the cinema to Ilioupolis Town Council. In 1989 the Athens Court of First Instance quashed the eviction order. The relevant departments of the Ministry of Finance, the State Legal Council and the State Lands Authority all expressed the opinion that the Minister of Finance should return the cinema to the applicant but the Minister has so far refused to comply with the judgment of the Athens Court of First Instance.
In the applicant's view, the authorities' failure to return the cinema to him constituted an infringement of his right to the peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1 and of his right to respect for his home under Article 8 of the Convention. He also complained that Articles 6 and 13 of the Convention had been violated in that the authorities had refused to comply with the judgment in his favour given by the Athens Court of First Instance.

Law: The Government's preliminary objections: The Court first dismissed the Government's preliminary objections, which were that the application had been lodged out of time and that domestic remedies had not been exhausted.

Article 1 of Protocol No. 1: The Court observed at the outset that, before the applicant was evicted, he had operated the cinema for eleven years under a formally valid lease without any interference by the authorities, as a result of which he had built up a clientele that constituted an asset; in that connection, the Court took into account the role played in local cultural life by open-air cinemas in Greece and the fact that the clientele of such cinemas was made up mainly of local residents. The Court then noted that the applicant, who had had a specific licence to operate the cinema he had rented, had been evicted from it by Ilioupolis Town Council and had not set up his business elsewhere. It also noted that, despite a judicial decision quashing the eviction order, Mr Iatridis could not regain possession of the cinema because the Minister of Finance refused to revoke the assignment of it to the Council. In those circumstances, there had been interference with the applicant's property rights under the first sentence of the first paragraph of Article 1. The applicant's eviction on 17 March 1989 had certainly had a legal basis in domestic law, namely the administrative eviction order issued on 9 February 1989 by a State-controlled body, the Lands Department of the Attica prefecture, the cinema having in the meantime been assigned to Ilioupolis Town Council by the State Lands Authority. However, on 23 October 1989, the Athens Court of First Instance had heard the case under summary procedure and had quashed the eviction order on the grounds that the conditions for issuing it had not been satisfied. From that moment on, the applicant's eviction had thus ceased to have any legal basis and Ilioupolis Town Council had become an unlawful occupier and should have returned the cinema to the applicant, as had indeed been recommended by all the bodies from whom the Minister of Finance sought an opinion, namely the Ministry of Finance, the State Legal Council and the State Lands Authority. More specifically, the last-named body had proposed that the Minister should revoke the assignment of the cinema to the Town Council, restore the use of it to Mr Iatridis and reinstate him in the property he had leased. The Minister had, however, refused to approve that proposal as was necessary if the applicant was to be reinstated in his premises. The Court considered that the interference in question was manifestly in breach of Greek law and accordingly incompatible with the applicant's right to the peaceful enjoyment of his possessions. There had therefore been a violation of Article 1 of Protocol No. 1.

Conclusion: Violation (unanimous).

Article 13 of the Convention: The Court found that the Greek legal system afforded a remedy – in the form of an application to have an eviction order quashed – which had been available to the applicant not just in theory; he had availed himself of it, and successfully, for the Athens Court of First Instance had found in his favour. However, the Court reiterated that the remedy required by Article 13 had to be "effective" in practice as well as in law, in particular in the sense that its exercise should not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State. In the light of the Minister of Finance's refusal to comply with the judgment of the Court of First Instance in the applicant's case, the remedy in question could not be regarded as "effective" under Article 13 of the Convention. Consequently, there had been a violation of that Article.

Conclusion: Violation (16 votes to 1).

Articles 6 § 1 and 8 of the Convention: The Court did not consider it necessary to deal separately with the complaints under those Articles.

Conclusion: Not necessary to examine (unanimous).

Article 41 of the Convention: The Court considered that in the circumstances of the case the question of the application of Article 41 was not yet ready for decision, so that it was necessary to reserve the matter, due regard being had to the possibility of an agreement between the respondent State and the applicant.

Articles of the European Convention of Human Rights
and Protocols Nos. 1, 4, 6 and 7

Convention

Article		Subject
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		Subject
Article 1	:	Protection of property
Article 2	:	Right to education
Article 3	:	Right to free elections

Protocol No. 2

Article		Subject
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		Subject
Article 1	:	Abolition of the death penalty

Protocol No. 7

Article		Subject
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