CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 16
on the case-law of the Court
March 2000

Statistical information[1]

		March	2000
I. Judgments delivered			
Grand Chamber		0	6
Section I		3	15(17)
Section II		7	31
Section III		19(23)	64(68)
Section IV		7(8)	18(28)
Total		**36(41)**	**134(150)**
II. Applications declared admissible			
Grand Chamber		1	1
Section I		17(21)	71(213)
Section II		40	46
Section III		21	71(72)
Section IV		15	52(54)
Total		**94(98)**	**241(386)**
III. Applications declared inadmissible			
Section I	- Chamber	10(24)	23(37)
	- Committee	25	179
Section II	- Chamber	12(18)	26(32)
	- Committee	179	279
Section III	- Chamber	14	39(40)
	- Committee	303	420
Section IV	- Chamber	15(16)	26(28)
	- Committee	293	510
Total		**851(872)**	**1502(1525)**
IV. Applications struck off			
Section I	- Chamber	1	1
	- Committee	0	0
Section II	- Chamber	3	18
	- Committee	2	4
Section III	- Chamber	1	4
	- Committee	4	6
Section IV	- Chamber	1	4
	- Committee	6	11
Total		**18**	**48**
Total number of decisions[2]		**962(987)**	**1790(1958)**
V. Applications communicated			
Section I		10	95(96)
Section II		31(33)	70(72)
Section III		20(22)	53(55)
Section IV		28	44
Total number of applications communicated		**89(93)**	**222(267)**

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

[* = non-final judgment]

ARTICLE 2

LIFE
Shooting by unidentified perpetrators and adequacy of investigation: *violation*.

CEMIL KILIÇ - Turkey (N° 22492/93)
Judgment 28.3.2000 [Section I]

Facts: The applicant's brother, K, was a journalist with the newspaper Özgür Gündem (see Özgür Gündem v. Turkey, judgment of 16 March 2000, under Article 10, below). In December 1992 he requested the Governor to take measures to protect him and other people working for the newspaper's local office, referring to attacks on others associated with the newspaper. The request was refused and the applicant was later charged with insulting the Governor and briefly taken into detention. On 18 February 1993, K got off a bus at a junction. A nightwatchman heard voices arguing, followed by two shots. The gendarmes were called and found K's body with two bullet wounds. He had been gagged and had a rope round his neck. The gendarme captain took photographs and made a sketch of the scene. Ballistic tests later linked a pistol found at a subsequent incident to the murder of K. An individual arrested in that connection was convicted of being a member of Hizbollah, but the court considered that he could not be held responsible for numerous other attacks, including that on K, since different members of the group could have shared the pistol.
A delegation of the European Commission of Human Rights took evidence from witnesses, but several witnesses (the nightwatchman, the Governor and a public prosecutor) did not appear.
Law: The Court found no elements that might require it to exercise its own power to verify the facts and therefore accepted the facts as established by the Commission. Moreover, in the absence of any satisfactory or convincing explanation by the Government with regard to the failure of an important official witness to appear before the delegates, the Court confirmed the Commission's finding that the Government had fallen short of its obligations to furnish all necessary facilities.
Article 2: It has not been established beyond a reasonable doubt that any State agent or person acting on behalf of the State authorities was involved in the killing and the question is therefore whether the authorities failed to comply with their positive obligation to protect K from a known risk to his life. The Court has already found that the authorities were aware that persons involved with Özgür Gündem feared that there was a campaign against them, tolerated if not approved by State officials. It is undisputed that a significant number of serious incidents occurred and the Court was therefore satisfied that K was at real and immediate risk of unlawful attack at the time. The authorities were aware of that risk and were aware, or ought to have been aware, of the possibility that the risk derived from the activities of persons or groups acting with the knowledge or acquiescence of elements in the security forces. As to whether the authorities did all that could reasonably be expected of them, there was a framework of law in place with the aim of protecting life (criminal law, police/gendarmerie, prosecutors, courts), but at the relevant time the implementation of the criminal law in south-east Turkey disclosed particular characteristics which undermined the effectiveness of criminal law protection (in particular, the transfer of jurisdiction to administrative councils, the series of failures to investigate allegations of wrongdoing by the security forces and the attribution of responsibility for incidents to the PKK, resulting in the matter falling within the jurisdiction of State Security Courts). This permitted or fostered a

lack of accountability of members of the security forces which was not compatible with the rule of law in a democratic society. In addition, there was an absence of operational measures of protection: a wide range of measures was available which would have assisted in minimising the risk to K's life and which would not have involved an impractical diversion of resources, but there is no evidence that any steps were taken in response to his request. The authorities failed to take reasonable measures available to them to prevent a real and immediate risk to his life.
Conclusion: violation (6 votes to 1).
As to the investigation, this did not include any enquiries as to the possible targeting of K due to his position and there is no indication that any steps were taken to investigate any collusion on the part of the security forces. Having regard to the limited scope and short duration of the investigation, the authorities failed to carry out an effective investigation.
Conclusion: violation (unanimously).
Article 10: As the complaints arose out of the same facts, the Court did not consider it necessary to examine this complaint separately.
Conclusion: not necessary to examine (unanimously).
Article 13: Although the Court found that it had not been proved beyond reasonable doubt that State agents were implicated in the killing of K, this does not mean that the complaint under Article 2 is not an "arguable" one. There was an arguable claim and therefore an obligation to carry out an effective investigation. Since no effective criminal investigation can be considered to have been conducted, the applicant has been denied an effective remedy.
Conclusion: violation (6 votes to 1).
Alleged practice infringing Articles 2, 10 and 13: The Court did not find it necessary to determine whether the failings identified were part of a practice adopted by the authorities.
Article 14: The Court considered that these complaints arose out of the same facts examined under Articles 2 and 13 and did not find it necessary to examine them separately.
Conclusion: not necessary to examine (unanimously).
Article 41: The Court did not find it appropriate to make any award to the applicant in respect of pecuniary damage, since the claims related to alleged losses accruing subsequent to the death of K, who was unmarried and had no children, and not to losses actually incurred by either K before his death or the applicant after the death. The Court awarded the applicant 2,500 pounds sterling (GBP), in respect of the non-pecuniary damage sustained by him. It also made an award in respect of costs.

LIFE
Shooting by unidentified perpetrators and adequacy of investigation: *violation*.

MAHMUT KAYA - Turkey (N° 22492/93)
Judgment 28.3.2000 [Section I]

Facts: The applicant's brother, H, a doctor, was found shot dead in February 1993. A few days earlier, he had gone with a lawyer friend to treat a wounded member of the PKK and had failed to return. The lawyer had also been shot. The victims' hands had been bound. Both victims had previously indicated that they believed they were under surveillance and that their lives were at risk. Autopsies were carried out, revealing some bruising and indicating prolonged exposure of H's feet to water or snow, but it was not considered necessary to conduct full autopsies. The applicant's father lodged several petitions with the public prosecutor in which he referred to various sources of information indicating that the victims had been abducted by the police and attributing the murders to contra-guerrillas acting with official approval. One particular individual had allegedly been seen receiving assistance from gendarmes. Unsuccessful attempts were made to apprehend the suspects and the file was transferred on several occasions to different prosecutors on jurisdictional grounds. A delegation of the European Commission of Human Rights took evidence from witnesses.

Law: The Court found no elements that might require it to exercise its own power to verify the facts and therefore accepted the facts as established by the Commission.
Article 2: It has not been established beyond a reasonable doubt that any State agent was involved in the killing, but strong inferences can be drawn that the perpetrators were known to the authorities, including the fact that the victims were transported over 130 kilometers through several checkpoints. The question is whether the authorities failed in a positive obligation to protect H from a risk to his life. At the time, there were rumours of contra-guerrillas being involved in targeting those suspected of supporting the PKK and it was undisputed that a significant number of killings occurred. The Court was therefore satisfied that H, as a doctor suspected of aiding the PKK, was at particular risk and that that risk could be regarded as real and immediate. Moreover, the authorities were aware of that risk and were aware, or ought to have been aware, of the possibility that it emanated from persons or groups acting with the knowledge or acquiescence of elements in the security forces. As to whether the authorities did all that could reasonably be expected of them, there was a framework of law in place with the aim of protecting life (criminal law, police/gendarmerie, prosecutors, courts), but at the relevant time the implementation of the criminal law in south-east Turkey disclosed particular characteristics which undermined the effectiveness of criminal law protection (in particular, the transfer of jurisdiction to administrative councils, the series of failures to investigate allegations of wrongdoing by the security forces and the attribution of responsibility for incidents to the PKK, resulting in the matter falling within the jurisdiction of State Security Courts). This permitted or fostered a lack of accountability of members of the security forces which was not compatible with the rule of law in a democratic society. These defects removed the protection which H should have received by law. A wide range of preventive measures would have been available with regard to the activities of the security forces and groups allegedly acting under their auspices, and in the circumstances the authorities failed to take reasonable measures to prevent a real and immediate threat to life. There has therefore been a violation of Article 2 in that respect.
Conclusion: violation (6 votes to 1).
As to the investigation, the file changed hands several times, the autopsies were incomplete, and there was no forensic examination of the scene or investigation concerning how the victims were transported. The prosecutors took steps in response to information provided by the victims' relatives, but these steps were often limited and superficial. The investigation was also dilatory and there were periods during which no apparent activity took place. In view of the serious allegations of misconduct implicating the security forces, it was incumbent on the authorities to respond actively and with reasonable expedition. The Court was not satisfied that the investigation was adequate or effective and there had also been a violation of Article 2 in that respect.
Conclusion: violation (unanimously).
Article 3: The authorities knew or ought to have known that H was at risk of being targeted and the failure to protect his life placed him in danger not only of extra-judicial execution but also of ill-treatment from persons who were unaccountable for their actions. The Government is therefore responsible for the ill-treatment he suffered after his disappearance. The medical evidence available does not establish that the level of suffering could be regarded as very cruel and severe, but the cutting of H's skin due to the binding of his hands and the prolonged exposure of his feet to water or snow, whether caused intentionally or otherwise, may be regarded as inflicting inhuman or degrading treatment.
Conclusion: violation (6 votes to 1).
Article 13: Although the Court found that it had not been proved beyond reasonable doubt that State agents were implicated in the killing of H, this does not mean that the complaint under Article 2 is not an "arguable" one. There was an arguable claim and therefore an obligation to carry out an effective investigation. Since no effective criminal investigation can be considered to have been conducted, the applicant has been denied an effective remedy.
Conclusion: violation (6 votes to 1).
Alleged practice infringing Articles 2, 3 and 13: The Court did not find it necessary to determine whether the failings identified were part of a practice adopted by the authorities.

Article 14: The Court considered that these complaints arose out of the same facts considered under Articles 2 and 13 and did not find it necessary to examine them separately.
Conclusion: not necessary to examine (unanimously).
Article 41: The Court did not find it appropriate to make any award to the applicant in respect of pecuniary damage, since the claims related to alleged losses accruing subsequent to the death of H, who was unmarried and had no children, and not to losses actually incurred by either H before his death or the applicant after the death. The Court awarded 15,000 pounds sterling (GBP) in respect of non-pecuniary damage, to be held by the applicant for his brother's heirs. It also awarded the applicant GBP 2,500 in respect of the non-pecuniary damage sustained by him. Finally, the Court made an award in respect of costs.

ARTICLE 3

INHUMAN TREATMENT
Conditions of detention and arbitrary imposition of disciplinary penalties: *admissible*.

VALAŠINAS - Lithuania (N° 44558/98)
Decision 14.3.2000 [Section III]

The applicant is serving a prison sentence for the theft, possession and sale of firearms. He complained of the poor conditions of his detention in a segregation unit as well as under the normal regime. While detained in the segregation unit, he was allegedly subject to strip-searching in front of other prisoners and a woman from the prison staff. The infirmary nurses came to examine him several days after he had reported to them that he had a fever and he was merely told to stay in bed. There was no possibility of doing any sport, work or other recreational activities. As for the normal regime, the applicant complained of overcrowding in general and of appalling sanitary and catering conditions, as well as the lack of adequate medical care and the absence of any work or activities. He referred to an order of the Minister for the Interior whereby, from August to November 1998, no prisoner was allowed to remain in bed during the day; the sleeping time being 8 hours, prisoners were required to spend the remaining 16 hours on their feet, which was physically very strenuous for some of the prisoners, including the applicant, who suffers from a heart condition. The order was eventually amended after numerous protests by prisoners. The applicant also complained about specific treatment and penalties inflicted upon him, maintaining that he was regularly ill-treated by the prison staff because of his critical comments about the prison system and the conditions of his own detention. He further complained about the control by the prison authorities of his correspondence, in particular with the Convention organs: he claimed that his letters to the Convention organs were deliberately delayed by the prison authorities.
Admissible under Article 3, 8 and 34: The Government have not established the existence of adequate and effective remedies to redress the violations alleged by the applicant.

INHUMAN TREATMENT
Use of psychologically disorientating interrogation methods in criminal investigation: *inadmissible*.

EBBINGE - Netherlands (N° 47240/99)
JAGER - Netherlands (N° 39195/98)
Decisions 14.3.2000 [Section I]

Preliminary criminal investigations were opened against the two applicants. The first applicant was suspected of extortion and murder, while the second was suspected of the

murder of a young girl. They were both placed in detention on remand and subjected to a specific interrogation technique (*Zaanse verhoormethode*), aimed at obtaining a confession from a suspect by making him relive past experiences through the use of a very sophisticated method of questioning. The applicants were eventually convicted and sentenced to imprisonment. They both lodged appeals against their respective convictions, complaining, *inter alia*, about the interrogation method used by the police which, according to them, amounted to inhuman treatment. In both cases, the appellate courts found the method to be contrary to Article 29 of the Code of Criminal Procedure, which prohibits the exertion of pressure on suspects, and incompatible with the requirements of a fair trial, but did not find that it amounted to inhuman treatment. The applicants' appeals on points of law were unsuccessful. Recourse to the interrogation method was eventually prohibited in November 1996 after strong criticism in legal circles and in the media.
Inadmissible under Article 3: The interrogation method in issue appeared to be quite sophisticated from a psychological point of view and its use in the context of a criminal investigation appeared objectionable, considering that it was designed to gain the suspect's trust by creating a deceptive atmosphere of intimacy through a series of destabilising questions designed to incite the suspect to confide in the interrogators. However, it was not established that the use of such a method resulted in mental pain and suffering to an extent amounting to inhuman treatment: manifestly ill-founded.

EXPULSION
Return of asylum-seeker to the country where he was originally refused asylum: *inadmissible*.

T.I. - United Kingdom (N° 43844/98)
Decision 7.3.2000 [Section III]

The applicant, a Sri Lankan national, lived in an area of Sri Lanka controlled by the LTTE, a Tamil terrorist organisation engaged in armed struggle for independence. He claimed that he had been held prisoner by the LTTE for several months before managing to escape. He left the area for Colombo, where he was arrested and detained on several occasions by the Sri Lankan authorities on suspicion of being a member of the LTTE. He maintained that he was repeatedly tortured and ill-treated while in detention. He eventually fled to Germany, where he applied for asylum. The Federal Office for the Recognition of Foreign Refugees refused him asylum, without making any findings as regards his allegations of torture, considering, in line with the German approach to State responsibility, that neither the LTTE's actions nor the "excesses of isolated executive organs" could be regarded as political persecution attributable to the State. The applicant's subsequent appeal was rejected, the Administrative Court concluding that his account was a "tissue of lies" and that there was no obstacle to his deportation. He then travelled to the United Kingdom, where he also claimed asylum. Following the request of the UK authorities, the German authorities agreed to take responsibility for the applicant's asylum request, pursuant to the Dublin Convention concerning the attribution of responsibility between European countries for deciding asylum claims. The UK authorities directed the applicant's removal to Germany and refused to examine the substance of his complaint. His attempts to have this decision reviewed remained unsuccessful. The UK authorities were satisfied that Germany was a safe third country and accordingly issued removal directions. A medical report established at this stage that the scars on the applicant's body were fully consistent with his account of torture. His second application for judicial review, in the light of this medical report, was to no avail. A further medical report later confirmed the findings of the first one.
Inadmissible under Article 3: The indirect removal to an intermediary country which is also a Contracting State did not affect the responsibility of the United Kingdom to ensure that the applicant was not, as a result of its decision to expel, exposed to treatment contrary to this provision, nor could the United Kingdom rely automatically in that context on the

arrangements made in the Dublin Convention. Where States establish international organisations, or *mutatis mutandis* international agreements, to pursue cooperation in certain fields of activities, there may be implications for the protection of fundamental rights. It would be incompatible with the purpose and object of the Convention if Contracting States were thereby absolved from their responsibility under the Convention in relation to the field of activity covered by such attribution.

The material presented by the applicant, notably the medical reports and reports concerning Sri Lanka by Amnesty International, the United Nations Special Rapporteur and the United States Department of State, gave rise to concerns as to the risks that he might face should he be returned to Sri Lanka, in spite of the rulings of the German Federal Office and Administrative Court to which the UK authorities referred.

As to the position of the applicant as an asylum-seeker if returned to Germany, it appeared that he would be able to make a fresh claim for asylum as well as claims for protection under the Aliens Act. The German authorities assured that he would not risk immediate or summary removal to Sri Lanka. The previous deportation order having been made more than two years earlier, he could not be removed without a fresh deportation order being made, and this would be subject to review by the Administrative Court. Moreover, the applicant could make an application for interim protection within one week and he would not be removed until the court had ruled upon his application. The apparent gap in protection resulting from the German approach to non-State agent risk is met, at least to a certain extent, by the application by the German authorities of section 53(6) of the Aliens Act, which has been applied to give protection to persons facing risk to life and limb from non-State agents. Although this provision is phrased in discretionary terms, there is an obligation for the authorities to apply its protection to persons who have shown that they were in danger. Moreover, the Federal Administrative Court considers that cases involving a serious risk to life and personal integrity should be re-examined. The applicant's contention that the re-examination of his application could only be rejected was largely a matter of speculation and conjecture. As to the alleged high burden of proof placed on asylum-seekers in Germany, the record of Germany in granting large numbers of asylum claims gave an indication that the threshold being applied in practice was not too high. Therefore, it was not established that there was a real risk that Germany would expel the applicant to Sri Lanka in breach of Article 3, and consequently the United Kingdom had not failed in its obligations under this provision by taking the decision to remove the applicant to Germany. Nor had it been shown that this decision was taken without regard to the existence of adequate safeguards in Germany to avoid the risk of any inhuman or degrading treatment: manifestly ill-founded.

ARTICLE 5

Article 5(1)

LAWFUL ARREST OR DETENTION
Detention for non-payment of community charge: *struck out*.

M.C. and others - United Kingdom (N° 25283/94, 25690/94, 26701/95, 27771/95 and 28457/95)
Judgment 21.3.2000 [Section III]

Each of the applicants was committed by a magistrates' court to a term of imprisonment for failing to pay the community charge (poll tax). At the time, the applicants were dependent on State benefits or living on a low income. It was established that the non-payment was due to the debtor's wilful refusal or culpable neglect. Legal aid was not available and the applicants were not legally represented. Two of the applicants served their entire term of imprisonment, while the remaining three were released on bail after applying for judicial review, which resulted the magistrates' imprisonment orders in their cases being quashed.
The applicants' lawyers have not submitted any memorial to the Court and no pertinent correspondence has been received from the applicants since July 1999. In the light of this, the Court concluded that the applicants did not intend to pursue their applications and consequently struck the case out of the list.

LAWFUL ARREST OR DETENTION
Continuation of detention on remand under a practice without any legal basis: *violation*.

BARANOWSKI - Poland (N° 28358/95)
Judgment 28.3.2000 [Section I]

Facts : The applicant was detained on remand in June 1993. The Regional Court prolonged the detention, initially until the end of 1993 and then until 31 January 1994. The criminal investigation was concluded and the prosecutor lodged the bill of indictment during January 1994. As a result, an appeal which the applicant had lodged on 7 January against the decision to prolong his detention was treated as a request for release, since the practice was to consider it unnecessary for any decision prolonging detention to be taken once the bill of indictment had been lodged. The Court of Appeal referred the matter back to the Regional Court, which did not however examine it. The applicant had notified the prosecutor on 1 February that there was no basis for his continuing detention after 31 January, but his two requests for release (of 7 February and 28 March), in which he invoked ill-health, were rejected on 24 May and this was confirmed on appeal on 5 July. In December 1994 the Regional Court found that the order for the applicant's detention until 31 January 1994 was enforceable despite his appeal against it and confirmed that the subsequent detention was based on the fact that the bill of indictment had been lodged. The detention order was eventually quashed and the applicant was released. The law has since been amended to end the practice of continuing detention on remand solely on the basis of an indictment having been lodged.
Law: Article 5(1) - The practice of maintaining detention on the basis of the indictment was not based on any specific legislative provision or case-law but stemmed from the absence of clear rules. The relevant legislation consequently did not satisfy the test of foreseeability. Moreover, the practice, allowing detention for an unlimited and unpredictable time, was in itself contrary to the principle of legal certainty. Such detention, which had not been ordered by a court or judge

or other officer exercising judicial power, could not be regarded as "lawful": the prolongation of detention beyond the initial period foreseen in paragraph 3 of Article 5 necessitated judicial intervention as a safeguard against arbitrariness.
Conclusion: violation (unanimously).
Article 5(4): The proceedings relating to the first request for release (of 7 February 1994) lasted approximately 5 months (until 5 July) and those relating to the second request (of 28 March) ran concurrently and lasted just over three months. The complexity of the medical issues involved can be a factor in assessing "speediness" but even if exceptional it does not absolve the national authorities from their obligations. There were rather lengthy intervals between decisions to take evidence, which does not appear consistent with "special diligence". The proceedings were not conducted speedily. In addition, since the applicant's appeal of 7 January was not examined, all of the issues concerning the lawfulness of the applicant's detention were in effect determined by the decision of 5 July 1994, and that decision may be seen as having addressed the arguments raised by the applicant in the appeal of 7 January. The determination of the lawfulness of the prolongation of his detention therefore lasted from 7 January until 5 July, almost 6 months. Such a long delay, which resulted in the appeal being of no legal or practical effect, amounted to a denial of his rights under Article 5(4).
Conclusion: violation (unanimously).
Article 41: The Court considered that there was no causal link between the violation and the alleged pecuniary damage. It awarded the applicant 30,000 zlotys (PLN) in respect of non-pecuniary damage. It also made an award in respect of costs.

LAWFUL DETENTION
Detention on remand on the basis of acts wrongly qualified as an offence: *admissible*.

WŁOCH - Poland (N° 27785/95)
Decision 30.3.2000 [Section IV]

In September 1994, the applicant, a lawyer by profession, was charged with trading in children and incitement to give false testimony. He was remanded in custody. Later the same month, the written grounds for the charge were served on him. They referred to numerous case-files in which the applicant acted as representative of foreigners wishing to adopt children. The applicant appealed, maintaining that the acts which he was accused of committing could not constitute the offence of trading in children. In October 1994, the Court of Appeal dismissed his appeal. In December 1994, the prosecutor asked the court to prolong the detention for a further three months, which the court duly did. The applicant complained that these proceedings had not been adversarial, he and his lawyer having been denied access to the case-file. Subsequently, however, his appeal against the prolongation was upheld, the Court of Appeal stating that the acts with which he was charged could not reasonably be qualified as trading in children, since this offence implied actions detrimental to the child, whereas adoption may be in the child's own interest. In January 1995, the applicant was released, but the criminal proceedings against him are still pending. At the initial stage of the proceedings, after the applicant's arrest in particular, numerous articles were published in the newspapers, informing the public about his arrest and about the charges proffered against him. In this regard, the applicant submitted that the criminal proceedings against him were part of wider scale political campaign against adoptions by foreigners; he referred in particular to the fact that spokespersons of the prosecuting authorities had told the press that he was guilty of trading in children, that he had been buying and selling children and the alleged prices had been quoted. He alleged that information about him had been given in a way that clearly disclosed his identity.
Admissible under Articles 5(1): The Government contended that the applicant should have instituted compensation proceedings and claimed damages for unjustified detention. However, where lawfulness of detention is concerned, an action for damages against the State is not a remedy which has to be exhausted, the right to obtain release from detention and the

right to obtain compensation for any deprivation of liberty incompatible with Article 5 being two separate rights. According to the Code of Criminal Procedure, a request to obtain compensation for manifestly unjustified detention on remand enabled a detainee to seek retrospectively, once the proceedings against him were over, a ruling as to whether his detention was justified and obtain compensation if it was not. The proceedings relating to such a request were designed merely to secure financial reparation for unjustified detention. Therefore, it could not be considered as a remedy by which the lawfulness of a continuing detention could be challenged and release obtained, and thus this remedy was not a relevant one in this context. The applicant had a specific judicial remedy at his disposal to complain about the alleged unlawfulness of his arrest. However, the applicant did avail himself of this remedy by lodging an appeal against his detention order, and then lodging an appeal against the decision prolonging his detention.
Admissible under Article 5(4) and 6(1) (length of proceedings).
Inadmissible under Article 6(2): The applicant's case was commented upon extensively by the press. Most of the impugned articles were published right after his arrest in September 1994 and during his detention. The applicant having been released in January 1995, a considerable period had already elapsed since the incriminated articles had been published. Moreover, the proceedings are still at the investigative stage and evidence is still being gathered; the prosecuting authorities have not yet lodged the bill of indictment with the court. Therefore, the composition of the panel of judges who will examine the merits of the applicant's case has not been determined yet. In these circumstances, and leaving open the question of whether the press coverage of the applicant's case was inspired by the authorities, there were no grounds on which to find that the impartiality of the court dealing with the applicant's case was adversely affected by the press campaign to a degree amounting to a breach of the presumption of innocence: manifestly ill-founded.

Article 5(3)

JUDGE OR OTHER OFFICER
Impartiality of officer ordering detention of soldier: *violation*.

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

Facts: The applicant, a soldier, was arrested after having gone missing from his unit. His commanding officer dealt with the charge summarily and sentenced him to 28 days' imprisonment. He was due to be released on 27 May 1995, but was kept in detention on the basis of other suspected offences which were being investigated. He was brought before his commanding officer on 16 June and again on 29 August 1995 for charges to be read to him. On the latter date the commanding officer remanded the applicant for trial by court martial. In November 1995 the applicant brought habeas corpus proceedings, claiming that he had not been given a formal hearing at which he was informed of the case against him and given an opportunity to argue in favour of his release because of the delay in arranging the court martial. The Army admitted that he had not been charged until 16 June as a result of an oversight and undertook to release him to open arrest, which it did on 11 December. The applicant subsequently brought proceedings for compensation in respect of his detention between 27 May and 11 December. The Army accepted that the detention had been unlawful and the matter was settled by payment of compensation and costs. The applicant was tried by court martial on a number of charges and in November 1999 was sentenced to imprisonment. An appeal is pending.
Law: Artice 5(3): The applicant was arrested on reasonable suspicion of an offence and his close arrest amounted to detention. As in the case of Hood (judgment of 18 February 1999),

the commanding officer was liable to play a central role in the subsequent prosecution and his responsibility for order and discipline provided an additional reason for the accused reasonably to doubt his impartiality when deciding on the necessity of detention.
Conclusion: violation (unanimously).
Article 5(5): The applicant did not have an enforceable right to compensation.
Conclusion: violation (unanimously).
Article 41: There is no evidence that the applicant would not have been detained or would have been release earlier if there had been no violation, and the judgment in itself constitutes sufficient just satisfaction. The Court made an award in respect of costs.

JUDGE OR OTHER OFFICER EXERCISING JUDICIAL POWER
Independence of investigating judge subject to control of the prosecuting authority by virtue of cantonal law: *admissible.*

I.O. - Switzerland (N° 21529/93)
Decision 23.3.2000 [Section II]

After a warrant for his arrest had been issued by the Berne investigating judge, the applicant was arrested, and on 15 January 1992 the judge ordered a preliminary judicial investigation to be launched in respect of him for extortion and blackmail and his detention to avoid the risk of collusion. The applicant was interviewed by the investigating judge and on 23 January he applied for provisional release from pre-trial detention and access to the case file so that he could give reasons in support of his application for release. After the investigating judge refused those two applications in a reasoned decision dated 28 January 1992, the application for release was automatically referred, in accordance with cantonal legislation, to the Indictment Division of the Berne Court of Appeal, which likewise refused it. On 13 February 1992 a witness was examined by the investigating judge in the presence of, among others, the applicant's lawyer and the district prosecutor. On 17 February 1992 the Indictment Division refused an appeal that the applicant had lodged against the investigating judge's decision of 28 January 1992. Nevertheless, on 19 February, that is to say thirty-five days after the applicant's arrest, his lawyer was able to inspect the investigation file. On 20 February a press conference was held in which the Berne police chief, the investigating judge and the district prosecutor took part, among others. On 16 March 1992 the applicant lodged a public-law appeal with the Federal Court against the two decisions by the Indictment Division in which he relied on an infringement of Articles 5(3) and 4 and Article 6(1) and (3)(b) and (c) of the Convention. In a judgment of 27 May 1992 the Federal Court held that the complaint that access to the file had been denied was inadmissible on the grounds that the application had become devoid of purpose once permission had been granted on 19 February 1992. It dismissed the complaint based on Article 5(3) of the Convention as being unfounded and held that, with respect to this, while the district prosecutor's right under cantonal legislation to give instructions was in itself an infringement of the requirement that investigating judge must be independent, Article 5(3) would nevertheless have to be held not to have been infringed because, as the Principal Public Prosecutor had observed, over the previous decades it had been the settled practice that no directions for the arrest of an accused were given by the prosecuting authority to the investigating judges, any more than had happened in the instant case, in which the district prosecutor had not issued any orders to have the applicant arrested or kept in custody. By concurring decisions of the investigating judge and the prosecutor, the applicant was committed for trial at the Berne Criminal Court and on 3 February 1994 was finally convicted by the Court of Appeal, which sentenced him to twenty-four months' imprisonment and made an order excluding him from the country for five years.
Admissible under Article 5(3) and (4).
Inadmissible under Article 6(3) (b) and (c): non-exhaustion.

Article 5(4)

REVIEW BY A COURT
Review by Parole Board of detention "at Her Majesty's pleasure": *violation*.

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

Facts: In 1979, at the age of 17, the applicant was convicted of murder and sentenced to be detained "at Her Majesty's pleasure". The tariff period of his detention was set at 8 years. After its expiry, several reviews were held by the Parole Board. The applicant was recaptured in July 1993 after absconding and a further review took place in August 1995, following which the Parole Board recommended that he should be released after one year. However, the Secretary of State did not accept this recommendation. The applicant was refused leave to seek judicial review of the Secretary of State's rejection of his representations against the decision not to accept the recommendation to release him. In August 1996 the applicant was notified that under interim arrangements introduced in response to the Court's judgments in Hussain and Singh his case would be referred back to the Parole Board for an oral hearing at which he could be represented. The Parole Board again recommended his release and this recommendation was accepted.
Law: Article 5(4): Prior to his release, the applicant did not have a review by a court offering the necessary guarantees, since even under the interim arrangements the Parole Board did not have power to order his release. It was unnecessary to examine separately the claim that there was excessive delay in implementing the interim arrangements.
Conclusion: violation (unanimously).
Article 5(5): It was uncontested that the foregoing violation could not give rise to an enforceable claim for compensation before the domestic courts.
Conclusion: violation (unanimously).
Article 3: There is no indication that the lack of a review complying with Article 5(4) was sufficiently severe in its effects to disclose treatment contrary to this provision.
Conclusion: no violation (unanimously).
Article 41: The Court awarded the applicant 1,500 pounds sterling (GBP) in respect of non-pecuniary damage. It also made an award in respect of costs.

SPEEDINESS OF REVIEW
Length of time taken to decide on requests for release from detention on remand: *violation*.

BARANOWSKI - Poland (N° 28358/95)
Judgment 28.3.2000 [Section I]
(See Article 5(1), above).

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Applicability of Article 6 to disputes concerning the expatriation allowance paid to civil servants from the Ministry of Foreign Affairs: *inadmissible*.

MARTÍNEZ-CARO DE LA CONCHA CASTAÑEDA and others - Spain
(N° 42646/98, 42647/98, 42648/98, 42650/98, 42653/98, 42656/98, 42657/98, 42658/98, 42659/98, 42660/98, 42661/98, 43556/98, 45514/99, 45515/99 and 46187/99)
Decision 7.3.2000 [Section I]

The fifteen applicants, high-ranking civil servants in the Ministry of Foreign Affairs, submitted claims to various administrative authorities for review of the amount of special allowances they received because they resided abroad. The claims were refused. The applicants then brought administrative proceedings in the *Audiencia nacional*, which found against them on the basis of a Supreme Court judgment dealing with a similar case in which it had ruled on an appeal by counsel representing the Government against a decision contravening a statutory provision; the applicants had not been parties to that case and consequently had not been able to appear or make any submissions they might have had. In that judgment the court ruled against the view contended for by the applicants. The applicants lodged appeals (*recursos de amparo*) with the Constitutional Court based on various complaints relating to the fairness of the proceedings in the *Audiencia nacional.* The appeals were dismissed.
Inadmissible under Article 6(1) (applicability) and Article 14 taken together with Article 6(1) and with Article 1 of Protocol No. 1.
It had first to be determined whether Article 6(1) applied in the case in the light of the functional criterion identified in the Pellegrin judgment, which governed the applicability of Article 6 in the area of disputes raised by employees of the State over their conditions of service. That functional criterion involved ascertaining in each case whether the applicant's post entailed – in the light of the nature of the duties and responsibilities appertaining to it – direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities. If that was the case, the dispute fell outside the scope of Article 6. In the instant case the applicants, employees of the Ministry of Foreign Affairs in post in consulates and embassies abroad, had specific obligations "inherent in the public-service nature" of their duties, as their activities typified the specific duties of the public service set out above. In concrete terms it appeared that the applicants had had important responsibilities in connection with the State's external relations; they had therefore directly participated both in the exercise of powers conferred by public law in the States where they were posted and in the performance of duties designed to safeguard the general interests of the State. The same reasoning applied to the two retired applicants as their application related to sums of money directly connected with the performance of their duties at a time when their special link with the public service still existed: incompatible *ratione materiae*.

APPLICABILITY
Applicability of Article 6 to proceedings concerning the annulment of a prefectoral decree declaring an expropriation of property to be in the general interest : *applicable.*

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

Facts: In a prefectoral decision of 17 September 1990 the compulsory purchase by the local authority of property belonging to the applicants was declared to be in the public interest.
On 1 March 1991, after the prefect's refusal to reconsider his decision, the applicants applied to the Besançon Administrative Court for judicial review of the decision. On 16 April 1992 the Administrative Court dismissed the applicants' application. The application was renewed before the *Conseil d'Etat* and preparation of the case for trial began on 19 November 1992. In a judgment of 5 March 1997 the *Conseil d'Etat* dismissed the application. In the interim the civil courts had delivered a final decision on 22 December 1992 concerning the amount of compensation for the expropriation.
Law : Article 6(1): *Applicability* – While proceedings challenging the lawfulness of the expropriation order indeed related to the assessment of the public interest of the expropriation, it was the stage prior to the transfer of ownership itself, so that the outcome had a direct impact on the applicant's right of property, a "civil" right law" nature within the meaning of the Convention. That stage had public-law aspects, but the Court reiterated that under its case-law the fact that the applicable law was based on the requirements of the general interest had no bearing. Lastly, in the Guillemin judgment, the Court had found Article 6 to be applicable in proceedings identical to those in this case. Article 6 was therefore applicable.
Length of proceedings – The proceedings had lasted six years. The period of inactivity in the *Conseil d'Etat* could not be justified by the conduct of the applicants.
Conclusion: violation (unanimously).
Article 41: The Court awarded 15,000 French francs (FRF) to each of the applicants in respect of non-pecuniary damage and FRF 5,000, likewise to each of the applicants, for costs and expenses.

APPLICABILITY
Applicant working as caretaker for a State school : *Article 6 applicable*.

PROCACCINI - Italy (N° 31631/96)
Judgment 30.3.2000 [Section IV]

Facts: In March 1990 the applicant lodged an application with the Administrative Court. She had worked from 1977 onwards as a caretaker at a State school under several fixed-term contracts. The applicant sought a declaration that there was an employment relationship of unlimited duration, continuation of the employment relationship after the expiry of her current contract and payment of the differences between the remuneration received and that to which she claimed she was entitled. The Administrative Court rejected her claims in a judgment deposited with the registry in November 1997.
Law: Article 6(1): *Applicability* – In order to determine the applicability of this Article to public servants, whether established or employed under contract, a functional criterion should be adopted based on the nature of the person's duties and responsibilities and to ascertain if the post entailed direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities. In this case the duties performed by the applicant as a caretaker had not entailed participation in the exercise of powers conferred by public law. Article 6 was therefore applicable.

Length of proceedings – The period to be taken into consideration had started in March 1990 and ended in November 1997, that is to say more than seven years and eight months at a single level of jurisdiction.
Conclusion: violation (unanimously).
Article 41: The Court awarded 16,000,000 Italian lire (ITL) in respect of non-pecuniary damage and ITL 6,000,000 for costs and expenses in the proceedings before the Court.

APPLICABILITY
Administrative proceedings concerning the lawfulness of the decision of a jury refusing to grant the applicant a State qualification: *admissible*.

MOTIERE - France (N° 39615/98)
Decision 28.3.2000 [Section III]

After working for two years between March 1985 and July 1987 in the field of physical training and body-building and after subsequently being made redundant, the applicant took a vocational training course from September 1988 to September 1989 leading to a national certificate qualifying her to teach in that field and sat the final examinations. Not having received any official notification of the results of her course, she applied to the director of the Regional Centre for Physical Education and Sport (*CREPS*) which ran the course, and in January 1990 the director took a decision refusing her the certificate. In August 1990 the applicant applied to the Grenoble Administrative Court to set aside both that decision and the refusal of her application to the regional Director of Youth and Sport to review the decision of the director of the *CREPS*. She submitted that various formal and substantive defects had rendered the conduct of the examination unlawful. In November 1995, some five years and four months after the application to the Administrative Court, the court set aside the decision whereby the examiners who had drawn up the list of candidates admitted to the competitive examination had eliminated the applicant, holding that gaps in the training report book had vitiated the training course as a whole and the examiners' decision. Nevertheless, both the administrative authority, on a non-contentious application by the applicant, and the Administrative Court in a decision of 24 March 1997 refused the applicant's request for execution of the judgment of 22 November 1995, on the ground that the administrative authority could no longer reconstitute the training report book and that an essential formality required in order to retake the same examination, as the applicant wished, was therefore impossible to carry out.
Admissible under Article 6(1) (reasonable time).
The case was quite different from those in which the Court had found that Article 6 applied and in which the subject matter was a dispute over the right to carry on or to continue to carry on an occupation, the persons concerned satisfying the statutory requirements or possessing the relevant qualifications or, again, having already carried on their occupations in the past. However, the applicant in the instant case had already worked in the field of body-building and the certificate in question would, if she had gained it, have given her access to a new occupation in that field. In taking the director of the *CREPS*'s refusal to admit her to the examination to the Administrative Court, the applicant was seeking a ruling that an administrative decision had infringed certain legal rules. While it was certain that the applicant did not have a right to be awarded the certificate or to carry on the occupation of a body-building instructor, she was entitled to a lawful examination process, which would have allowed her to seek employment in the field of body-building. As the lawfulness of that process was amenable to judicial review, a remedy which the applicant had sought, a *contestation* (dispute) over a "civil right" had arisen in the case and had been adjudicated by the Administrative Court. Article 6(1) was therefore applicable.

ACCESS TO COURT
Failure of administrative authorities to comply with a final judgment: *violation*.

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

Facts: The applicant, a retired judge, made an application to the 42nd division of the General State Finance Office to obtain a supplementary pension pursuant to an inter-ministerial decision granting judges extra pay. The application was refused, as were numerous other applications by retired judges, on the ground that the extra pay could not be taken into account in the calculation of pensions. The applicant lodged an appeal with the 2nd Division of the Audit Court, which on 4 July 1996 set aside the decision complained of and fixed the amount of the additional pension to be paid to the applicant, relying, *inter alia*, on Law no. 2320/1995. The judgment became enforceable as soon as it was served on the authorities concerned, on 16 and 26 September 1996, but they refused to comply with it and pay the amount due. The judgment became final on 26 September 1997, the State not having entered an appeal on points of law. On 27 July 1997 Law no. 2512/1997 was promulgated, which interpreted various sections of Law no. 2320/1995 and provided, in section 3 *inter alia*, that the inter-ministerial decision did not apply to pensions, that all claims based on it were barred, that all pending legal proceedings were annulled and that sums paid – with the exception of those awarded in final court decisions – were to be paid back. On 17 December 1997 a full court of the Audit Court delivered a judgment in which it held section 3 of Law no. 2512/1997 to be contrary to the Constitution and to Article 6(1) of the Convention and Article 1 of Protocol No. 1. In January 1998 the applicant asked the 42nd Division of the General State Finance Office to comply with the judgment delivered by the 2nd Division of the Audit Court on 4 July 1996 and consequently to pay him the amount of the additional pension. The applicant's request was refused in a letter of 4 February 1999 on the ground that the 2nd Division's judgment had been subject to the provisions of section 3 of Law no. 2512/1997 and therefore archived before it became final, a situation that could not be altered by the judgment of the full court of the Audit Court as it had been delivered subsequently.
Law: Article 6(1): The issue in the case was the State's obligation to make back payment of a pension to a civil servant in accordance with the legislation in force. It was therefore a "civil right" and Article 6(1) applied. As to the merits, the Audit Court's judgment had been served on the public authorities concerned in September 1996, and they had refused to comply with it. In July 1997 Law no. 2512/1997 had been passed, barring the claims in issue. In December 1997 a full court of the Audit Court had held that law to be unconstitutional but the applicant had still not received the sum awarded by the 2nd Division. The execution of a judgment was an integral part of a "hearing" within the meaning of Article 6, and if the authorities refused or delayed execution, the safeguards of Article 6 which a litigant enjoyed during the judicial phase would lose all meaning. Moreover, the principle of the rule of law and the concept of a fair trial precluded any interference by the legislature in the administration of justice that was designed to influence the outcome of a dispute to which the State was a party. In the instant case the judgment of the 2nd Division had become final on 4 July 1997. Even supposing that Law no. 2512/1997 had made the authorities' refusal to pay the sum owed to the applicant lawful between 27 July 1997 (the date on which the law had been passed) and 17 December 1997 (the date of the final judgment whereby the full court of the Audit Court had held that the law was unconstitutional), nothing could justify that refusal of execution from the latter date onwards, as the grounds given by the authorities in their letter of 4 February 1999 for refusing to make payment were to be regarded as amounting to a denial of justice.
Conclusion: violation (unanimously)
Article 1 of Protocol No. 1: The Audit Court's judgment of 4 July 1996 had created an adequately established right to payment in the applicant's favour. The fact that it was impossible for the applicant to have that judgment executed before the passing of Law no. 2512/1997 amounted to an interference with his right to the peaceful enjoyment of

his possessions. Further, by intervening after the final judgment of the 2nd Division of the Audit Court, the legislature had upset the fair balance that should be struck between safeguarding the applicant's right of property and the needs of the general interest. Lastly, the final refusal by the authorities on 4 February 1999 to make the payment due constituted a fresh interference with the enjoyment of the applicant's right to the peaceful enjoyment of his possessions. That interference was contrary to Article 1 of Protocol No. 1, as the refusal in question was manifestly unlawful under domestic law.
Conclusion : violation (unanimously)
Article 41: In compensation for the pecuniary damage suffered, it was appropriate to award 11,043,786 drachmas (GRD), that is to say the whole of the sum awarded by the 2nd Division of the Audit Court, plus interest. In respect of non-pecuniary damage, the Court awarded the applicant GRD 1,000,000. Lastly, the Court allowed the applicant's claim for costs and expenses in full and awarded him GRD 1,000,000 under that head.

ACCESS TO COURT
Absence of legal aid in civil proceedings: *inadmissible*.

NICHOLAS - Cyprus (N° 37371/97)
Decision 14.3.2000 [Section III]

The applicant, a pilot by profession, instituted defamation proceedings against a Cypriot airline company which had refused to employ him following the publication in a newspaper of a letter in which, according to him, the company made disparaging comments concerning his professional ability. In a previous civil litigation, the applicant had been told by the judicial authorities that no legal aid could be obtained in civil proceedings. He was represented by counsel at the opening of the proceedings. He then failed to appear at the scheduled hearing and his action was consequently dismissed. However, on his request the court reinstated his action. After repeated adjournments of the hearing, counsel for the applicant informed him that he would no longer represent him but that "no fees (were) expected to be paid (by the applicant)", and that he could collect the file in order to present his case himself. The applicant subsequently asked for several adjournments. As none of the parties appeared at the scheduled hearing, the court again dismissed the action.
Inadmissible under Article 6(1) (access to court): During part of the proceedings the applicant was represented by counsel, who prepared all the necessary written submissions. Although he had arranged to ensure his legal representation on a "no fee" basis, the applicant did not substantiate that after his counsel's withdrawal he tried to make similar arrangements. Furthermore, the applicant's action was rejected because no one appeared at the scheduled hearing. Under Cypriot law, it was open to the applicant to appear himself and there was nothing to indicate that the action was dismissed because of the unavailability of legal aid. In these circumstances, the applicant could not claim to be a victim: incompatible *ratione personae*.

ACCESS TO COURT
Refusal of requests for legal aid due to the absence of serious grounds of appeal: *communicated*.

ESSAADI - France (N°49384/99)
Decision 28.3.2000 [Section III]

The Post Office delivered a registered letter addressed to the applicant to a third person with the same name as the applicant. Because of that, the applicant – who was granted legal aid – started an action for damages against the Post Office. The Lyons Court of Appeal set aside a decision by the Bourg-en-Bresse *tribunal de grande instance* that the action was inadmissible

and held that the Post Office was liable for the damage suffered by the applicant and ordered it to pay an amount which covered only part of the applicant's claim. The applicant then applied for legal aid so as to be able to appeal on points of law against the Court of Appeal's judgment. The Legal Aid Office at the Court of Cassation refused that application, being of the view that there was no serious ground for appealing against the impugned decision. An appeal by the applicant against that refusal was dismissed by the President of the Court of Cassation, likewise on the ground that an examination of the case file did not disclose any ground of appeal which might be successfully pleaded. At the same time, the applicant started proceedings against the Chairman of the Bourg-en-Bresse Bar, complaining that he had, among other things, refused his request to have his lawyer replaced, agreed to represent his opponent – the Post Office – although there was "a risk of a breach of confidentiality" and made use of information which he could only have learned in his capacity as Chairman of the Bar. The Macon District Court dismissed the applicant's application, holding, in particular, that no breach of professional duty by the Chairman had been proved. That decision was affirmed by the Dijon Court of Appeal. Like the first application and on the same grounds, the applicant's application for legal aid to appeal on points of law was refused by the Legal Aid Office and that refusal was upheld by the President of the Court of Cassation. Lastly, in a third set of proceedings, the applicant lodged an appeal against the judgment of the Dijon Court of Appeal, which had ordered him to pay the costs of the second set of proceedings. That appeal was dismissed by the taxing master of the Dijon Court of Appeal, and an application for legal aid to appeal on points of law was likewise refused by the Legal Aid Office and then by the President of the Court of Cassation.
Communicated under Article 6(1) (access to court).
[This case might put in doubt the case-law according to which refusal of legal aid in the absence of any real prospects of success does not raise any problem from the point of view of access to court.]

FAIR HEARING
Non-communication to parties of evidence available to court: *violation*.

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

Facts: The company owned by the applicants' family was nationalised in 1945. In 1991 the Czech government approved a privatisation plan for the company's sale to a foreign company. The applicants, as successors in title to the original owners, brought an action for restitution under the Extrajudicial Rehabilitations Act and the Transfer of the State's Property to Other Persons Act. They claimed that there had not been a valid nationalisation under the relevant 1945 decree - in particular because the number of employees had been lower than that stated in the decree - and that the company had therefore been nationalised under a 1948 law, that is after the decisive date for restitution under the Extrajudicial Rehabilitations Act. The court dismissed their claim and their successive appeal, appeal on points of law and constitutional appeal were all rejected. The Constitutional Court based its findings in particular on documentary evidence which had not been disclosed to the parties. The evidence related to the number of employees at the relevant time.
Law: Article 6(1): This provision is applicable, since the applicants had a right to claim restitution - a right which is of a pecuniary nature - and there was a serious dispute about whether they were actually entitled to restitution. In itself, the gathering of additional evidence by a court is not incompatible with the requirements of a fair hearing and it is only the fact that the evidence obtained was not communicated to the applicants that raises a problem. There was no infringement of the principle of equality of arms, since the evidence was not communicated to the other party either, but the right to adversarial proceedings means that the parties must have an opportunity not only to produce evidence in support of their claims but also to be aware of and have an opportunity to comment on all the evidence

and observations submitted with a view to influencing the court's decision. The evidence in this case was clearly crucial and given its character and importance even reading it out at the hearing would not have satisfied the right to adversarial proceedings, since a party must have the opportunity to familiarise himself with the evidence, as well as to comment on its existence, contents and authenticity in an appropriate form and within an appropriate time, if need be, in a written form and in advance. The applicants should therefore have been given an opportunity to comment on the documentary evidence obtained by the Constitutional Court.
Conclusion: violation (unanimously).
Article 41: The Court awarded 1,350,000 korunas (CZK) to each of the applicants, in respect of all heads of damage taken together. It noted that the applicants in effect claimed compensation for the allegedly unlawful nationalisation but that this was not the complaint before the Court, which could not speculate on the outcome of the proceedings had the right to a fair hearing been respected. It nevertheless did not consider it unreasonable to regard the applicants as having suffered a loss of real opportunities. It also made an award in respect of costs and expenses.

FAIR HEARING
Dismissal of appeal on points of law as a consequence of a clear error: *violation*

DULAURANS - France (N° 34553/97)
Judgment 21.3.2000 [Section III]

Facts: The applicant instructed B.N., a property dealer, to sell two properties belonging to her. She later gave him two powers of attorney to sell the properties in question. Having found a buyer for a higher price, the applicant eventually revoked the powers of attorney. B.N. countered that he had already entered into two preliminary contracts of sale in her name. The applicant concluded a settlement with B.N., in which she agreed to pay him a lump sum in compensation. However, as the applicant refused to pay B.N. the lump sum on the agreed date, he brought proceedings against her for payment of the compensation. The applicant argued that the powers of attorney she had granted to B.N. were void for failure to comply with formalities laid down in the Act of 2 January 1970 on the conditions for carrying on activities relating to certain property and business transactions. The applicant submitted that the Act applied to B.N. as he had concluded two transactions referred to in it by means of the two powers of attorney, a condition which had been held by the courts to be sufficient to bring him within the terms of the Act. The applicant was ordered to pay the lump-sum compensation by the *tribunal de grande instance*, which did not, however, rule on the complaint of failure to comply with the 1970 Act. The applicant paid the disputed sum and appealed, seeking a declaration that the powers of attorney were void for failure to comply with the 1970 Act; although once again asserting that that Act applied to B.N., the applicant did not expressly mention the two powers of attorney as justifying applying it to B.N. The Court of Appeal dismissed her appeal on the ground that the 1970 Act did not apply to B.N., since he did not regularly enter into the transactions covered by it. The applicant appealed on points of law and again submitted that the 1970 Act applied to B.N. because of the two powers of attorney which she had given him. B.N. filed a defence in which he raised an objection to admissibility, asserting that the applicant had raised a new argument in her appeal on points of law. The Court of Cassation dismissed the applicant's appeal on points of law on the ground that the argument based on the habitual nature of B.N.'s activities, which was a precondition for applying the 1970 Act, had not been raised by the applicant before the case had come before the Court of Cassation.
Law: Article 6(1): Both at first instance and in the Court of Cassation, the applicant had argued that the habitual nature of the work she had instructed B.N. to carry out was apparent from the two powers of attorney she had given him to sell the two buildings. While it was true that at the appeal stage the applicant had not expressly referred to the two powers of attorney in issue, it could not be said on that account that she had put forward two different lines of

reasoning. In stating that B.N. had already acted on her behalf, the applicant could only be alluding to the two powers of attorney in question. In addition, the Court of Cassation confined itself to declaring that in her submissions the applicant had only maintained that B.N. had effected or participated in transactions covered by the 1970 Act. The Court of Appeal, however, in the operative provisions of its judgment, had decided precisely that issue and there was no reason for the Court of Appeal to have reached that conclusion unless to answer a complaint raised by the applicant. The absence of any other reasoning by the Court of Cassation suggested that the dismissal of the ground of appeal in question was the result of an error.
Conclusion: violation (unanimously)
Article 41: The Court awarded the applicant the sum of 100,000 French francs (FRF) in respect of pecuniary and non-pecuniary damage and also FRF 50,000 in respect of costs and expenses.

PUBLIC HEARING
Absence of public hearing: *violation*.

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

Facts: The applicant was detained on remand on suspicion of attempted murder. He was subsequently acquitted by a jury by 7 votes to 1, the majority finding that there was insufficient evidence. The applicant brought proceedings for compensation in respect of his detention. His claim was rejected by the Regional Criminal Court, sitting *in camera*, on the ground that there had been reasonable suspicion which had not been dissipated. The Court of Appeal, after the Constitutional Court had upheld the constitutionality of the relevant provision, dismissed the applicant's appeal. It also sat *in camera*.
Law: Article 6(1): The Court held in the Szücs and Werner judgments of 24 November 1997 that Article 6 applied to compensation proceedings and that the absence of a public hearing and public pronouncement violated Article 6(1). It saw no reason to reach a difference conclusion in this case.
Conclusion: violation (unanimously).
Article 6(2): Although there was no new assessment of guilt (unlike in the case of Sekanina, judgment of 25 August 1993), the Court was not convinced that the voicing of suspicion is acceptable if those suspicions have already been expressed in the reasons for the acquittal. Once an acquittal is final, even if on the benefit of the doubt, the voicing of suspicions, including those expressed in the reasons for the acquittal, is incompatible with the presumption of innocence.
Conclusion: violation (unanimously).
Article 41: The Court found no causal link between the violations and the alleged pecuniary loss, and considered that the judgment in itself constituted sufficient just satisfaction in respect of non-pecuniary damage. It made an award in respect of costs.

REASONABLE TIME
Length of administrative proceedings: *violation*.

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

REASONABLE TIME
Length of administrative proceedings: *violation*.

PROCACCINI - Italy (N° 31631/96)
Judgment 30.3.2000 [Section IV]
(See above).

REASONABLE TIME
Length of administrative proceedings: *violation*.

CALIENDO - Italy (Nº 34437/97)
Judgment 14.3.2000 [Section II]

The case concerns the length of proceedings in the administrative court (more than 5 years and 5 months and still pending).
Conclusion: violation (unanimously).
Article 41: The Court considered that the judgment itself constituted sufficient just satisfaction in respect of the alleged non-pecuniary damage.

REASONABLE TIME
Length of administrative proceedings: *violation*.

KIEFER - Switzerland (N° 27353/95)
Judgment 28.3.2000 [Section II]

Facts: The applicant, an Austrian national, lived in Switzerland from 1979 until 1984 and contributed to the Swiss social security system. After suffering an injury, he requested pension benefits from the Compensation Office, but his claim was rejected in December 1987 on the basis of ten medical reports. In January 1988 the applicant appealed to the relevant Federal Appeals Commission, which upheld his appeal and remitted the case to the Compensation Office in October 1988. Numerous further medical reports were obtained. In a preliminary decision in October 1992, the Compensation Office found that the applicant had not been insured when the injury occurred and in April 1993 it dismissed his claim on that ground. The applicant's appeal was rejected in February 1994 and his administrative law appeal, in which he complained that it had taken ten years to reach the conclusion that he had not been insured, was rejected in November 1994 by the Federal Insurance Court.
Law: Government's preliminary objection (non-exhaustion) - In his administrative law appeal the applicant had complained that it had taken ten years to conclude that he had not been insured, and he had therefore raised in substance his complaint about the length of the proceedings.
Article 6(1): The proceedings began in January 1988 when the applicant contested the administrative decision not to grant him a pension, and they ended in November 1994. They therefore lasted 6 years, 9 months and 28 days for three levels of jurisdiction. Pension benefits intended to compensate for a disability were at stake and expedition was called for. Even if the case might have been of some complexity, this does not reasonably explain the length. The main delay was a period of 4½ years from October 1988 to April 1993, including a three year delay which cannot be considered reasonable.
Conclusion: violation (unanimously).
Article 41: The Court found that there was no causal link between the violation and the alleged pecuniary damage. It awarded the applicant 5,000 Swiss francs (CHF) in respect of non-pecuniary damage. It also made an award in respect of costs.

REASONABLE TIME
Length of administrative proceedings: *violation*.

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

The applicants are respectively the widow and daughter of R.J., who died in 1990. He had been infected with hepatitis C following blood transfusions in 1983. In March 1993 the applicants instituted proceedings in the administrative court, which dismissed their claim in December 1994. They appealed to the Administrative Court of Appeal, which upheld their claim in February 1998. The other party appealed and the case is pending in the *Conseil d'Etat*. The proceedings have therefore lasted 7 years.
Conclusion: violation (unanimously).
Article 41: The Court awarded each of the applicants 30,000 francs (FRF) in respect of non-pecuniary damage, despite the fact that they had not submitted any claim after the application had been declared admissible.

REASONABLE TIME
Length of civil proceedings: *violation*.

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

The case concerns the length of civil proceedings instituted by the applicant in July 1994 and still pending before the Supreme Court in November 1999 (5 years and 4 months).
Conclusion: violation (unanimously).
Article 41: The Court awarded the applicant 2,500 Cypriot pounds (CYP) in respect of non-pecuniary damage. It also made an award in respect of costs.

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

PITSILLOS - Cyprus (N° 41854/98)
Judgment 28.3.2000 [Section III]

The case concerned the length of proceedings brought by the applicant in November 1989 in connection with an expropriation. His appeal to the Supreme Court, lodged in 1994, is still pending.
The parties have reached a friendly settlement providing for payment to the applicant of 2,000 Cypriot pounds (CYP) in damages and 1,000 Cypriot pounds in legal costs. Moreover, the Government undertook not to seek to recover from the applicant legal costs granted by Cypriot courts against him in other legal proceedings brought by him against the Government (estimated at over 2,000 Cypriot pounds). Finally, the Government acknowledged that applicant had not in any way contributed to the delay in the fixing of his appeal to the Supreme Court.

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

FRAGOLA - Italy (N° 40939/98)
Judgment 21.3.2000 [Section III]

The case concerns the length of civil proceedings brought by the applicant in November 1987 and still pending in March 1999.
The parties have reached a friendly settlement providing for payment to the applicant of 39 million lire (ITL), made up of 37 million lire in respect of non-pecuniary damage and two million lire in respect of costs and expenses.

REASONABLE TIME
Length of civil proceedings: *violation*.

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

The case concerns the length of civil proceedings brought by the applicants in July 1995 and still pending at first instance. They have therefore lasted 4 years 7 months.
Conclusion: violation (unanimously).
Article 41: The Court awarded each of the two applicants 750,000 escudos (PTE) in respect of pecuniary and non-pecuniary damage. It also awarded 250,000 escudos in respect of costs and expenses.

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

VELHO DA COSTA DE ABREU ROCHA and TITO DE MORAIS - Portugal
(N° 33436/96 and N° 33475/96)
Judgment 23.3.2000 [Section IV]

The case concerns the length of two sets of civil proceedings brought by the applicants, both of which lasted around 5 years.
The parties have reached a friendly settlement providing for payment to each of the applicants of one million escudos (PTE) in respect of non-pecuniary damage, plus a lump sum of 300,000 escudos in respect of costs.

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

RODRIGUES COELHO OSÓRIO - Portugal (N° 36674/97)
Judgment 23.3.2000 [Section IV]

The case concerns the length of proceedings brought by the applicant after an expropriation.
The parties have reached a friendly settlement providing for payment to the applicant of 750,000 escudos (PTE) in respect of non-pecuniary damage, as well as the 250,000 escudos in respect of costs and expenses.

REASONABLE TIME
Length of civil proceedings: *violation*.

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

The case concerns the length of civil proceedings brought against the applicants in August 1994. The proceedings ended in October 1997 and therefore lasted 15 years, one month and eight days.
Conclusion: violation (unanimously).
Article 41: The Court awarded each of the two applicants 30,000 francs (FRF) in respect of non-pecuniary damage. It also made an award in respect of costs.

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

PEDERSEN - Denmark (N° 28064/95)
Judgment 28.3.2000 [Section II]

The case concerns the length of defamation proceedings brought by the applicant in November 1988. The proceedings ended in October 1997.
The parties have reached a friendly settlement providing for payment to the applicant of 50,000 Danish kroner (DKK), to cover any pecuniary and non-pecuniary damage as well as costs.

REASONABLE TIME
Length of civil proceedings: *violation*.

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

The case concerns the length of civil proceedings brought against the applicant in April 1980. The proceedings ended in August 1998 and therefore lasted around 18 years and 4 months.
Conclusion: violation (unanimously).
Article 41: The Court found that there was no causal link between the violation and any pecuniary damage. It awarded the applicant 100,000 francs (FRF) in respect of non-pecuniary damage. It also made an award in respect of costs.

REASONABLE TIME
Length of proceedings relating to expropriation: *violation*.

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

The case concerns the length of proceedings relating to the applicants' request for judicial review of the implicit refusal to revoke ministerial decisions to expropriate land. The applicants lodged their request in August 1993 and no decision has been given yet by the Council of State.
Conclusion: violation (unanimously).
Article 41: The Court awarded each of the applicants 2 million drachmas (GRD) in respect of non-pecuniary damage. It also made an award in respect of costs.

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

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

The case concerns the length of criminal proceedings which the applicant joined as a civil party in June 1985. The proceedings ended, in respect of the civil claim, in January 1998 and therefore lasted 12 years, 7 months and 2 days.
Conclusion: violation (unanimously).
Article 41: The Court awarded the applicant 30,000 francs (FRF) in respect of non-pecuniary damage. It also made an award in respect of costs.

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

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

The case concerns the length of proceedings brought by the applicant in October 1993 in respect of an employment dispute. The proceedings ended in January 1998 when the Court of Cassation rejected the applicant's appeal. They therefore lasted 4 years, 2 months and 24 days.
Law: The Court noted that the Court of Cassation stage lasted 2 years, 2 months and one day, which it considered rather long. However, apart from this shortcoming in the speediness of the proceedings, the Court did not see any significant period of inactivity attributable to the national authorities. Having regard to the global length of the proceedings, it considered that the authorities had shown the necessary diligence.
Conclusion: no violation (5 votes to 2).

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

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

The case concerns the length of proceedings brought by the applicant in September 1992 in respect of an employment dispute. The proceedings ended in December 1997 when the Court of Cassation rejected the applicant's appeal. They therefore lasted 5 years, 3 months and 13 days.
Law: The Court did not see any significant period of inactivity attributable to the national authorities. Having regard to the global length of the proceedings, it considered that the authorities had shown the necessary diligence.
Conclusion: no violation (4 votes to 3).

IMPARTIAL TRIBUNAL
Lawyer of opposing party simultaneously acting as judge in other proceedings to which the applicant is party: *admissible*.

H.P.W. - Switzerland (N° 33958/96)
Decision 23.3.2000 [Section II]

The applicant was involved in three unrelated real property proceedings. In one set of proceedings the opposing party was represented by lawyer R., and in another by lawyer W. R. and W., together with a third lawyer, L., had their offices in the same premises. R. and L. also acted as part-time administrative judges at the Administrative Court and were on the bench of judges which rejected the applicant's action in the third set of proceedings. The proceedings in which R. was representing the opposing party were still pending before the Federal Court when the applicant instituted the last set of proceedings.
Admissible under Article 6(1) (impartial tribunal).

Article 6(1) [criminal]

ACCESS TO COURT
Absence of possibility of court review of conviction by administrative authorities for minor offence: *friendly settlement*.

J.K. - Slovakia (N° 29021/95)
Judgment 21.3.2000 [Section II]

The Local Office found the applicant guilty of a minor offence and fined him 1,000 korunas (SKK). This was upheld by the District Office. The applicant was subsequently fined 1,800 korunas by the Local Office in respect of similar offences and this decision was also upheld by the District Office. At the material time, such decisions could not be reviewed by a court unless the fine exceeded 2,000 korunas (cf. Lauko and Kadubec judgments of 2 September 1998). In October 1998 the Constitutional Court found that the relevant provision was unconstitutional and contrary to Article 6 of the Convention in so far as it excluded court review, as a result of which the provision became ineffective.
The parties have reached a friendly settlement providing for payment to the applicant of 5,000 korunas to cover any damages and costs.

FAIR HEARING
Admission in evidence at trial of adverse statement revoked by witness before the trial: *inadmissible*.

CAMILLERI - Malta (N° 51760/99)
Decision 16.3.2000 [Section II]

The applicant was charged with possession of and trafficking in heroin while in prison. A fellow prisoners, G.F, made a signed statement under caution to a police officer accusing the applicant of having supplied him with drugs in prison, and later confirmed his statement under oath before an investigating judge. He later retracted this statement in an affidavit sworn in prison before a notary and in the presence of the applicant. At the applicant's trial, G.F. confirmed that he had revoked his statement and claimed that he had been under the influence of drugs when he had made it. Counsel for the applicant cross-examined him and a copy of the initial statement was produced in court. The request of the applicant's counsel that

this statement be declared inadmissible was rejected, the Court of Magistrates deciding that it could be admitted in evidence given that it took the form of a properly drawn up *procès verbal*. The court considered that G.F.'s retraction had been prompted by the applicant's presence when the affidavit was made and assumed pressure must have been exerted on him by inmates. Moreover, his testimony before the magistrate was very detailed and consistent, which showed that he was lucid at the time. The applicant was eventually found guilty and sentenced to prison. The applicant's appeals to the Court of Criminal Appeal and the Constitutional Court were dismissed.
Inadmissible under Article 6(1) and (3)(d): The applicant was able to call before the Court of Magistrates the inmate who had made the incriminating statement and to cross-examine him. This opportunity allowed him to undermine the probative value of the incriminating statement and more than compensated for any alleged disadvantage which had resulted from the fact that the statement had been made in circumstances in which he was unable to challenge its veracity. Therefore, it could not be maintained that the rights of defence had not been secured at the trial. Furthermore, the Court of Magistrates had to make a choice between the competing versions of the truth, and for that purpose had the advantage of hearing the oral testimony of the G.F. and observing his demeanour in the witness box under cross-examination. The court gave detailed reasons for its decision to attach weight to the accusatory statement before the investigating magistrate, which reasons were reviewed and upheld on appeal. Moreover, G.F. gave his initial statement of his own volition and under caution to a police inspector, and confirmed it under oath before the investigating magistrate. G.F.'s consistency of approach over this period strongly argued against his assertion that he was not lucid at the time. Finally, the Court of Magistrates could properly have regard to the fact that the applicant himself was present when G.F. retracted his statement before the notary, implying that some pressure may have been brought on him to withdraw his earlier statement. Therefore, the Court of Magistrates' verdict could not be deemed arbitrary or manifestly unreasonable, all the more so since it was affirmed by three instances on appeal: manifestly ill-founded.

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

CLOEZ - France (Nº 41861/98)
Judgment 14.3.2000 [Section III]

The case concerns the length of criminal proceedings brought against the applicant in November 1989. He was acquitted in July 1994 and the acquittal was confirmed on appeal in February 1997. The parties have reached a friendly settlement providing for payment to the applicant of the sum of 40,000 francs (FRF), covering all heads of damage.

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

BOCCARDI - Italy (N° 38045/97)
Judgment 28.3.2000 [Section II]

The case concerns the length of criminal proceedings brought against the applicant in 1991. He was acquitted in March 1997.
The parties have reached a friendly settlement providing for payment to the applicant of the sum of 13 million lire (ITL), to cover non-pecuniary damages and also legal costs.

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

MARAZZO - Italy (N° 41203/98)
Judgment 28.3.2000 [Section II]

The case concerns the length of criminal proceedings brought against the applicant in 1991. The proceedings ended in October 1997.
The parties have reached a friendly settlement providing for payment to the applicant of the sum of 6 million lire (ITL), to cover any pecuniary and non-pecuniary damages as well as legal costs.

IMPARTIAL TRIBUNAL
Impartiality of judge having previously participated in confirmation of indictment: *inadmissible.*

GARRIDO GUERRERO - Spain (N° 43715/98)
Decision 2.3.2000 [Section IV]

In an order made by Madrid Central Military Judge No. 1 the applicant, a regular soldier, was charged with committing an offence lodged against the Treasury. He appealed against that order to the Central Military Court. That court, on which D.R.G. – a judge from the army's legal corps – sat among others, dismissed the appeal. After the trial stage had begun, Judge P.G.B. was appointed as judge rapporteur and conducted the judicial investigation. The division of the Central Military Court before which the public hearing was held was made up of five judges, among them D.R.G. and P.G.B. In a decision of 21 March 1994 the applicant was found guilty and sentenced to a one-year prison term. The applicant appealed on points of law to the Supreme Court, alleging, in particular, that the trial court had not been impartial owing to the plurality of functions of Judges D.R.G. and P.G.B. The Supreme Court and later the Constitutional Court dismissed the appeals.
Inadmissible under Article 6(1) (impartial tribunal/fair trial): The personal impartiality of Judge D.R.G. had not been challenged. With respect to the objective test, on the one hand Judge D.R.G., who had sat on the trial court, had indeed earlier been a member of the bench which had affirmed the order in which the applicant had been charged and, on the other hand, in its decision of 21 March 1994 the court on which D.R.G. had sat had indeed adopted the terms of the order charging the applicant. However, contrary to what had happened in the Castillo Algar case, the appellate court in the instant case had taken care to state the limits of the indictment and as the decision had been a provisional procedural one, it did not prejudge the outcome of the proceedings. Moreover, in the instant case, again unlike the position in the Castillo Algar case, Judge D.R.G. had sat as an ordinary judge in the Central Military Court division made up of five judges. The fears of bias were therefore not objectively justified. As far as Judge P.G.B. was concerned, the mere fact that he had taken part in certain investigations as judge rapporteur at the trial stage could not justify fears as to his impartiality: manifestly ill-founded.

Article 6(2)

PRESUMPTION OF INNOCENCE
Impact of adverse press campaign against the accused: *inadmissible*.

WŁOCH - Poland (N° 27785/95)
Decision 30.3.2000 [Section IV]
(See Article 5(1), above).

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

ASAN RUSHITI - Austria (N° 28389/95)
Judgment 21.3.2000 [Section III]
(See Article 6(1), above).

ARTICLE 8

PRIVATE LIFE
Civil servants dismissed for having collaborated with the Ministry of Security of the GRD and for having denied this: *communicated*.

KNAUTH - Germany (N° 41111/98)
BESTER - Germany (N° 42358/98)
[Section IV]

The two applicants, both former civil servants in the GDR, were integrated into the civil service of the FRG after German reunification. Both gave a negative answer when they were asked, before being integrated, whether they had collaborated with the Ministry of Security of the GDR. An examination of Ministry of Security documents revealed their past collaboration with that Ministry. The first applicant, a teacher, was registered as having collaborated with the Ministry of Security between 1973 and 1979. The second applicant had done his military service with the People's Army of the GDR between 1971 and 1972 and at that time had signed a declaration undertaking to collaborate with the Ministry of Security. As a result, the two applicants were expelled from the civil service for having collaborated with the Ministry of Security of the GDR and for having knowingly concealed the fact when they were integrated into the civil service of the FRG. Proceedings they brought in the employment courts and the Federal Court were unsuccessful, and the Federal Constitutional Court declined to accept their appeals for adjudication.
Communicated under Article 8.

PRIVATE LIFE
Impossibility for psychiatric detainee to change "nearest relative": *settlement between parties*.

J.T. - United Kingdom (N° 26494/95)
Judgment 30.3.2000 [Section IV]

The applicant spent some time in psychiatric detention. Various reports noted her difficult relationship with her mother and her wish that her mother should be replaced as her "nearest relative", within the meaning of the relevant legislation, by a social worker. Her mother disagreed and the matter was unresolved.
The parties have reached a settlement providing for the legislation to be changed to allow a psychiatric detainee to request that the nearest relative be changed and to exclude certain persons from acting as nearest relative. The Government paid the applicant compensation of 500 pounds sterling (GBP) and her reasonable legal costs.

FAMILY LIFE
Parents denied contact with their children placed in the care of the health authorities by court decision: *communicated*.

COVEZZI and MORSELLI - Italy (N° 52763/99)
[Section II]

The applicants are married and have four minor children. A cousin of their children made a statement to the public prosecutor that she, her brother and her cousins were victims of sexual abuse by her parents and, among others, the parents of the applicants. In November 1998, without hearing the applicants, the Youth Court held that the applicants had failed in their parental duty in not realising that their children had been the victims of repeated incidents of sexual abuse and in continuing to leave them in the care of their grandparents. The court consequently ordered the removal of the children from the parental home and suspension of the applicants' parental rights in favour of the social services. All contact with their children was then suspended "until the protective role of the parents [was] re-established" and the applicants were not told where their children had been placed. They later discovered that the children had in fact been placed in four different homes. In early 1999 some supervised visits took place between the parents and their children as well as some interviews with the social services. In March 1999 a psychologist's report confirmed that the children had indeed been victims of sexual abuse. The applicants were later heard by the Youth Court under conditions that they considered to be very unfavourable to them. The court then ordered an expert report on the personality of the applicants, their ability to exercise parental authority and their relationship with their children. Appeals by the applicants against the decision ordering the children's removal from the parental home and against the psychologist's report were dismissed. Applications they made, firstly, for their children to be placed in the care of another local authority and in the same home and, secondly, for meetings to be arranged with them likewise failed. In the interim, one of the children made a statement complaining of sexual abuse by the applicant father with the complicity of the applicant mother; as a result, investigations were started in respect of the applicants. In October 1999 the public prosecutor secured an extension of time from the court for the preliminary investigations until April 2000.
Communicated under Article 6(1) (length of proceedings) and Article 8. (The Court is giving priority to this case.)

FAMILY LIFE
Withdrawal of parental rights on the basis of psychological reports establishing intellectual deficiencies of the parents: *communicated*.

KUTZNER - Germany (N° 46544/99)
Decision 23.3.2000 [Section IV]

The applicants are married and have two children, who were born in 1991 and 1993. Delays in the children's physical and intellectual development children were found and, from 1994 onwards in the case of the elder child and from 1996 onwards in the case of the younger one, they received specialist teaching support. A social worker who attended at the home of the applicants from October 1995 to May 1996 submitted a report to the youth authorities in which she reported intellectual deficiencies of the applicants, relationships of conflict between family members and contempt shown for her. An application for withdrawal of parental authority was made by the authorities in question to the Bersenbrück Guardianship Court, which appointed an expert psychologist. On the basis of the expert report and after hearing the applicants and the children's grandparents who lived with the family, the court at first ordered provisional intermediate measures, and then in May 1997 withdrew the applicants' parental authority over their children. In July 1997 the two children were placed in different hostels,

the parents visiting rights being limited to one supervised visit every two months. The applicants appealed to Osnabrück Regional Court against the Guardianship Court's decision. In support of their appeal, they produced opinions by doctors and a psychologist in favour of returning of the children to their family. The Regional Court appointed a second expert psychologist, heard the applicants, the grandparents, the relevant authority and the expert, and in a decision of 29 January 1998 dismissed the appeal on the basis of the two expert reports, which, according to the court, reached the same conclusion. The first report submitted to the Guardianship Court emphasised the parents' inability to raise their own children because of their lack of intellectual abilities, while the second report established that the parents were incapable of helping their children in the development of their personalities because they were unable to understand them and handle them satisfactorily, and thus hindered the development of emotional relationships between the parents and the children. The first report also found that support measures in the applicants' home would aggravate the situation, and the second concluded that only a separation of the children from their family would remove all risk of harm to them. Appeals by the applicants to the Oldenburg Court of Appeal and thereafter to the Federal Constitutional Court were dismissed.
Communicated under Article 8.

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

ADAM - Germany (N° 43359/98)
[Section IV]

The applicant, a Turkish national, arrived in Germany with his family at the age of 5 to join his father. In 1988, having committed several offences, the applicant, who was still a minor at the time, was placed in a special children's home. Upon reaching the age of majority, he was granted renewable one-year residence permits. He was warned on several occasions by the Aliens Department that he risked deportation on account of his criminal behaviour, for which he had a number of convictions. In February 1998 an order was made for his deportation in accordance with the Aliens Act, a decision based on the fact that in the course of five years he had been sentenced to a total of three years and six months' imprisonment. He was deported to Turkey in August 1998.
Communicated under Article 8.

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

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 Criminal 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.
Proposed relinquishment of jurisdiction to the Grand Chamber.

CORRESPONDENCE
Control by the prison authorities of letters addressed to the Convention organs and delay in sending these letters: *admissible*.

VALAŠINAS - Lithuania (N° 44558/98)
Decision 14.3.2000 [Section III]
(See Article 3, above).

ARTICLE 10

FREEDOM OF EXPRESSION
Campaign of harassment against newspaper: *violation*.

ÖZGÜR GÜNDEM - Turkey (Nº 23144/93)
Judgment 16.3.2000 [Section IV]

Facts: The application was brought by the editor-in-chief, assistant editor in chief and owners (an individual and a company) of the newspaper *Özgür Gündem*, which ceased publication in 1994, allegedly as a result of a systematic campaign involving killings, disappearances, arson, harassment and intimidation of journalists and distributors and detention of the former, as well as unjustified legal proceedings, including the seizure of issues. The applicants claim that the Government instigated or tolerated these actions. On one occasion, the police searched the newspaper's premises, detained everyone there (over 100 people) and seized the archives, library and documents. Numerous petitions to the authorities remained unanswered. The newspaper's successor was also subjected to similar measures. The Government, which considers the newspapers to be run by the PKK, denies that State agents have been involved in any of these activities. Investigations and, in some cases, criminal proceedings, are pending. The Government further maintains that certain alleged incidents did not occur and that others were not brought to the attention of the authorities. The *Susurluk* report, commissioned by the Prime Minister, described acquiescence and connivance by State authorities in unlawful activities, some of which targeted *Özgür Gündem*.
Law: The Court struck the case out in respect of one applicant who had died in 1997, there being no indication that any heir or relative wished to pursue the complaints.
Article 10: The *Susurluk* report could not be relied on for establishing to the required standard of proof that State officials were implicated in any particular incident, but it had be regarded as a serious attempt to provide information on and analyse problems associated with the fight against terrorism from a general perspective and to recommend preventive and investigative measures. It could therefore be relied on as providing factual substantiation of the fears expressed by the applicants from 1992 onwards that the newspaper and persons associated with it were at risk. The Court was satisfied that between 1992 and 1994 there had been numerous incidents of killing, assault and arson and that the newspaper's concerns had been brought to the attention of the authorities, but that no investigative or protective measures appeared to have been taken. Having regard to the seriousness of the attacks and their widespread nature, the Government could not rely on the investigations lodged by individual public prosecutors into specific incidents, which did not provide an adequate or effective response to the allegation that the attacks formed part of a concerted campaign supported or tolerated by the authorities. Moreover, the Government's conviction that the newspaper and its staff supported the PKK did not, even if true, provide justification for failing to take steps to investigate effectively and, where necessary, provide protection against unlawful violence. The Government had therefore failed to comply with their positive obligation to protect the newspaper's freedom of expression.

The operation at the newspaper's premises constituted a serious interference with its freedom of expression and while it was conducted in accordance with a procedure prescribed by law for the purpose of preventing crime and disorder, it was not proportionate to those aims. No justification had been provided for the seizure of the archives, documentation and library and no explanation had been furnished for the blanket apprehension of everyone found on the premises.

As to the legal proceedings brought against the newspaper, the Court found no reason to criticise the Commission's approach of selecting domestic decisions for examination, since a detailed analysis of all cases would have been impossible, given the number. The measures constituted *prima facie* an interference under Article 10, which could be regarded as "prescribed by law" and to have pursued the legitimate aims of protecting national security and territorial integrity and of preventing crime and disorder. With regard to necessity, the essential role of the press had to be taken into account. The Court dealt with the different offences charged and concluded as follows: (a) insulting the State and military authorities - there were no convincing reasons for penalising the publications at issue; (b) provoking racial and regional hostility - there were not relevant and sufficient reasons for imposing criminal convictions and penalties in respect of the article at issue; (c) reporting statements of the PKK - in view of the content, tone and context of several of the articles at issue, they could not be regarded as inciting to violence, but others could and, given the relatively light penalties imposed the measures were reasonably proportionate; (d) identifying officials participating in the fight against terrorism - in some of the articles at issue, the named officials were not alleged to be responsible for misconduct, while in the others neither the truth of their content nor the fact that the names were already in the public domain was taken into account and the reasons given for the imposition of criminal sanctions could not be regarded as sufficient; (e) separatist propaganda - while the use of the term "Kurdistan" might be highly provocative to the authorities, the public had a right to be informed of different perspectives on the situation in south-east Turkey and even against the background of serious disturbances in that region expressions which appeared to support the idea of a separate Kurdish entity did not have to be regarded as inevitably exacerbating the situation: the articles could not be reasonably regarded as advocating or inciting to violence, and having regard to the severity of the penalties the restrictions were disproportionate.

The State had failed to take adequate protective and investigative measures and had imposed measures which were disproportionate and unjustified in the pursuit of any legitimate aim.

Conclusion: violation (unanimously).

Article 14: There was no reason to believe that the restrictions could be attributed to a difference of treatment based on the applicants' national origin or to association with a national minority.

Conclusion: no violation (unanimously).

Article 41: The Court accepted that some pecuniary loss must have flowed from the breaches identified and awarded TRL 9,000 million. It found that the two remaining individual applicants had suffered considerable anxiety and stress and awarded them each GBP 5,000. It also made an award in respect of costs.

FREEDOM OF EXPRESSION
Injunction prohibiting reference to "Nazi journalism": *no violation*.

WABL - Austria (N° 24773/94)
Judgment 21.3.2000 [Section III]

Facts: The applicant, a Member of Parliament and a member of the Green Party, was involved in protests against the stationing of fighter planes, during which it was alleged that he had scratched a policeman's arm. He was charged but the proceedings were discontinued. A newspaper, in an article headed "Police Officer claims: AIDS test for Wabl", called for the applicant to have an AIDS test, claiming that the policeman that he had scratched feared that he had been infected. When asked to comment, the applicant, believing the article to be politically motivated, said it was "Nazi-journalism". The newspaper brought injunction proceedings against the applicant to prohibit him from repeating the statement. The first and second instance courts dismissed the newspaper's application, finding that the impugned statement was a value-judgment and referring to an expert opinion that the defamation of political opponents with an alleged illness was an essential element of journalism under the Nazi regime. However, the Supreme Court overturned those decisions and issued a preliminary injunction against the applicant prohibiting him from repeating his opinion that it was "Nazi-journalism". The court noted that while the statement was intended as a value-judgment, in balancing the respective interests those of the newspaper were significant, since the reproach of "Nazi-journalism" would be close to a charge of criminal behaviour under the National Socialism Prohibition Act.
Law: It was not disputed that the injunction constituted an interference which was prescribed by law and pursued the legitimate aims of protecting the reputation or rights of others. Moreover, the reasons given by the Supreme Court were relevant and sufficient: the applicant's remark was not only polemical but particularly offensive and the Supreme Court duly balanced the interests involved, in particular having regard to the special stigma which attaches to activities inspired by National Socialist ideas. The article about the applicant was defamatory and it was doubtful whether it contributed to a debate of general concern and despite the fact that the applicant is a politician, he had justifiable grounds for indignation. However, he did not use the term "Nazi journalism" until several days later and the injunction concerned only the repetition of that term or similar ones, so that he retained the right to voice his opinion about the newspaper's reporting in other terms.
Conclusion: no violation (6 votes to 1).

FREEDOM OF EXPRESSION
Exclusion from the civil service of university professor from the former GDR on the ground of lack of professional qualification, in particular because of the content of his two theses: *communicated*.

PETERSEN - Germany (N° 39793/98)
Decision 23.3.2000 [Section IV]

From 1988 onwards the applicant, a historian who graduated in 1972, was a professor of modern history at Humboldt University in Berlin in the former GDR. He gained his qualification as a university teacher and his degree of Doctor of Science after writing two theses: the first, in 1978, dealing with the links between civilian research and its military use in the GDR in the fifties; and the second, in 1986, dealing with the CDU and with the conception of the social market economy between 1945 and 1949. After German reunification, the applicant was initially provisionally integrated into the civil service of the FRG and subsequently submitted to assessment by an organisation and appeals board set up to evaluate university professors from the former GDR. In 1992 a history professor in the Faculty of History at Bochum, who was a member of that board, submitted an expert report in which he concluded that it was indefensible for the applicant to continue as a member of the

civil service because of his lack of professional qualifications. He noted that the applicant's first thesis was more political than historical, that the second contained no new material, that the requirements for a work of scholarship had not been satisfied and, lastly, that the applicant had not published anything since. The board interviewed the applicant and voted by four to two for his dismissal. It confirmed that vote in January 1993. Consequently, in April 1993, the Vice-Chancellor of Humboldt University dismissed the applicant. In December 1993 the Labour Court allowed the applicant's appeal on the ground, *inter alia*, that the board had not complied with certain procedural requirements. In June 1994 the Berlin Regional Labour Court quashed that judgment, holding that the dismissal had been correct as regards both the procedure and the merits, as even though procedural errors had been made before the board, they had not had any effect on the outcome in view of the board's advisory role and the internal and administrative nature of proceedings before it. The Federal Labour Court dismissed an appeal on points of law by the applicant, who then lodged an appeal with the Federal Constitutional Court. In a judgment of 8 July 1997 the Constitutional Court dismissed the applicant's appeal, holding that the decisions complained of had not infringed the applicant's freedom of employment and his academic freedom. The Constitutional Court held, in particular, that the Regional Court had rightly held that the qualification of a professor was determined on the basis of his scholarly publications and it had rightly relied on the expert report and on the lack of any subsequent scholarly publications which could have remedied the deficiencies of the applicant's two theses. The Constitutional Court held that the applicant had received a fair trial.
Communicated under Articles 6(1) and 10.

ARTICLE 14

DISCRIMINATION (SEX)
Calculation of the joint pension of a couple exclusively on the basis of the husband's contribution to the pension scheme: *inadmissible*.

WALDEN - Liechtenstein (N° 33916/96)
Decision 16.3.2000 [Section IV]

In December 1993, the old age pension authorities fixed a joint married couple pension for the applicant and his wife. According to the Old Age Pension Act, husbands are exclusively entitled to receive the married couple's pension, while their wives' claims to an individual pension cease and are replaced by a derived right to payment of half of the joint pension. Joint pensions are calculated on the basis of the husbands' number of years of contribution to the pension scheme and correspond to 150% of their individual pension. The applicant's years of contribution being shorter than his wife's, their joint pension turned out to be lower than it would have been if the pension had been fixed on the basis of his wife's years of contribution. The applicant filed an objection against the decision fixing their joint pension, which the old age pension authorities dismissed. The Court of Appeal and the Supreme Court rejected the applicant's appeals. In May 1996, the applicant's constitutional complaint was partly granted by the State Court, sitting as a Constitutional Court. The court found that the pension system, based on a traditional view of marriage, was unconstitutional as being contrary to the principle of non-discrimination between the sexes. However, the court refused to quash the contested judgment and set aside the relevant provisions of the Old Age Pension Act given, in particular, the detrimental consequences it would have on the pension claims of the majority of couples. An amendment which took into consideration the applicant's situation was being examined by the Parliament at the time. Nevertheless, having regard to the six month statutory time-limit imposed on the suspension of abrogations and the fact that it might take longer to enact the amended legislation, the court could not take the risk that the annulment

might become effective and produce adverse effects on other couples. The amendment was eventually adopted, the applicants each receiving an individual pension as of January 1997.
Inadmissible under Article 14 taken in conjunction with Article 1 of Protocol N° 1: The applicant had a pecuniary right to a joint married couple's pension, the calculation of which he deemed to be discriminatory and despite the State Court's finding of May 1996, he could claim to be a victim of the alleged violation, as the impugned provisions were not set aside and remained applicable until January 1997. The principle of legal certainty may dispense States from questioning legal acts or situations that antedate a judgment of a constitutional court annulling domestic law as being unconstitutional. Moreover, by reason of the principle of legal certainty, a constitutional court may set a time-limit for the legislator to enact new legislation with the effect that an unconstitutional provision remains applicable for a transitional period. In the present case, the State Court did not annul the provisions found to be unconstitutional. Having regard to the fact that an abrogation could only be suspended for six months, it appeared too short a period to enact new legislation on such an intricate issue. In view of the detrimental effects which an annulment of the relevant provisions would have on the pensions claims of others, the court refused to set aside the provisions. Overall, the present case did not differ substantially from a case in which a Constitutional Court annuls an unconstitutional provision and sets a time-limit for enacting new legislation. Therefore, the State Court's decision, which had the effect that unconstitutional legislation remained applicable to the applicant for a limited period, served the interests of legal certainty. Given the shortness of this period, which ended seven months after the State Court's decision, the continued application of the pension provision in issue could be regarded as proportionate: manifestly ill-founded.

DISCRIMINATION (Article 1 of Protocol No. 1)
Difference in treatment of civil servants from the former GDR with regard to retirement pensions : *inadmissible*.

SCHWENGEL - Germany (N° 52442/99)
Decision 2.3.2000 [Section IV]

From 1966 to 1990 the applicant held a managerial position in the Ministry of State Security of the former GDR. He retired in March 1990 and the GDR authorities granted him a retirement pension and disablement pension. His disablement pension was reduced for the first time in January 1991 and again in July 1991, pursuant to the Pension Transfers Act. In June 1994 the federal authorities set the amount of the proportion of salary to be used as a basis for calculating future pension, with a ceiling figure equal to 70% of the average salary in the former GDR. An objection by the applicant was dismissed, as was an appeal to the Social Court. The Social Court of Appeal stayed the proceedings pending delivery of the Constitutional Court's ruling in similar cases before it, on an issue as to the constitutionality of the relevant sections of the Pension Transfers Act. With respect to the question affecting the applicant, the Constitutional Court held, in its authoritative judgment of 28 April 1999, that while the temporary reduction of pensions of the civil servants in the Ministry of State Security infringed the right to the peaceful enjoyment of possessions, a general alignment of the pension rights of former civil servants in that ministry with the average salary of GDR citizens did not infringe the Basic Law because its purpose was to prevent financial favouritism arising from political considerations.
Inadmissible under Article 14 taken together with Article 1 of Protocol No. 1 and under Article 6(1) (reasonable time, impartial tribunal and fair hearing)
Article 14 taken together with Article 1 of Protocol No. 1 was applicable to the case. The applicant's pension had been reduced after German reunification pursuant to statutory provisions prompted by the fact that his salary and pension as a former civil servant in the Ministry of State Security greatly exceeded the average pension and salary in the former GDR for political reasons. The alignment of pensions of former civil servants and the reasons for it

were upheld by the Constitutional Court. The applicant would lose only the part of his pension which corresponded to a financial privilege. The German legislature was thereby pursuing the objective of social justice, which was a legitimate aim under Article 14. Moreover, the Constitutional Court's judgment guaranteed that the pension of former civil servants would not be less than the average pension in the former GDR, a fact which demonstrated the proportionality of the means used to the aim pursued: manifestly ill-founded.

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*: proposed relinquishment of jurisdiction.*

ABDOUNI - France (N° 37838/97)
[Section III]
(See Article 8, above).

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY
Effective remedy in respect of unlawful detention.

WŁOCH - Poland (N° 27785/95)
Decision 30.3.2000 [Section IV]
(See Article 5(1), above).

ARTICLE 37

Article 37(1)(c)

ABSENCE OF INTENTION TO PURSUE PETITION
Death of applicant: *struck out*.

GŁADKOWSKI - Poland (Nº 29697/96)
Judgment 14.3.2000 [Section IV]

The case concerned the length of civil proceedings. The applicant has died and his widow has informed the Court that she does not wish to pursue the application.

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. 13):

BOUILLY - France (Nº 38952/97)
Judgment 7.12.99 [Section III]

KHALFAOUI - France (Nº 34791/97)
Judgment 14.12.99 [Section III]

MARCHETTI - Italy (Nº 37702/97)
Judgment 14.12.99 [Section II]

A.M. - Italy (Nº 37019/97)
Judgment 14.12.99 [Section II]

EDILTES S.N.C. - Italy (Nº 40953/98)
CITTADINI and RUFFINI - Italy (Nº 40955/98)
I. - Italy (Nº 40957/98)
CANTACESSI - Italy (Nº 40959/98)
CASSETTA -Italy (Nº 40961/98)
CASTELLI - Italy (Nº 40962/98)
AIELLO -Italy (Nº 40963/98)
R. - Italy (Nº 40964/98)
P. - Italy (Nº 40966/98)
PRIVITERA -Italy (Nº 40967/98)
MUSO -Italy (Nº 40969/98)
DI ROSA - Italy (Nº 40970/98)
F. - Italy (Nº 40971/98)
MASI - Italy (Nº 40972/98)
IADANZA - Italy (Nº 40973/98)
ERCOLINO and AMBROSINO - Italy (Nº 40976/98)
Judgments 14.12.99 [Section II]

SERIF - Greece (N° 38178/97)
Judgment 14.12.99 [Section II]

FERREIRA DE SOUSA and COSTA ARAÚJO - Portugal (Nº 36257/97)
Judgment 14.12.99 [Section IV]

SALGUEIRO DA SILVA MOUTA - Portugal (Nº 33290/96)
Judgment 21.12.99 [Section IV]

FREITAS LOPES - Portugal (Nº 36325/97)
Judgment 21.12.99 [Section IV]

Article 44(2)(c)

On 20 March 2000, the Panel of the Grand Chamber rejected requests for rehearing of the following judgments, which have consequently become final:

QUADRELLI - Italy (N° 28168/95)
Judgment 11.1.2000 [Section II]

The case concerned an appeal on points of law dismissed without examination of the applicant's submissions (*violation*) (see Information Note No. 14)

McGINLEY and EGAN - United Kingdom (Nº 21825/93 and Nº 23414/94)
Judgment 28.1.2000 [Section I]

Request for revision of the judgment (see Information Note No. 14).

ANTONAKOPOULOS, VORSTSELA and ANTONAKOPOULOS - Greece
(Nº 37098/97)
Judgment 14.12.99 [Section III]

The case concerned non-execution by the authorities of a court decision ordering payment of pensions (*violation*) (see Information Note No. 13).

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Refusal of compensation or special allowance for forced labour performed during military service: *inadmissible*.

J.S. and others - Poland (N° 33945/96)
Decision 23.3.2000 [Section IV]

The applicants claimed compensation from the State for forced labour imposed on them during their compulsory military service in the 1950's; most of them claimed additional compensatory sums, in particular for the holidays to which they should have been entitled. Their compensation claims were all rejected by the domestic courts. One of the applicants, K.P., unsuccessfully lodged an appeal against the first instance decision refusing him compensation. The applicants maintained that they should have been granted a special allowance considering the ordeal which the forced labour had represented for them.
Inadmissible under Article 6(1): All the applicants except K.P. failed to appeal against the first instance decisions of refusal and thus only K.P. exhausted domestic remedies. However, there is nothing to indicate that he was unable to submit his arguments to the courts or that the proceedings were otherwise unfair. Moreover, no entitlement to compensation for persons in the same situation as the applicants is provided for by law, and the Court cannot create any substantive rights which have no basis in domestic law: manifestly ill-founded.
Inadmissible under Article 1 of Protocol N° 1: Even assuming that this provision guarantees benefits to persons who have contributed to a social insurance scheme, it cannot be interpreted as entitling these persons to a pension of a particular amount or to any given kind

of social insurance benefit. Finally, this provision does not recognise any right to acquire possessions: incompatible *ratione materiae*.

PEACEFUL ENJOYMENT OF POSSESSIONS
Administrative authorities failing to pay a debt : *violation*.

GEORGIADIS - Greece (N° 41209/98)
Judgment 28.3.2000 [Section II]
(See Article 6(1), above).

PROCEDURAL MATTERS

RULES 40 AND 41 OF THE RULES OF COURT

PRIORITY CASE
Pretender to throne prevented from entering and living in Italy for fifty-three years : *refusal to apply article 40 or 41 of the Rules of Court*.

VITTORIO EMANUELE DI SAVOIA - Italy (N° 53360/99)
[Section II]

The application had been brought by the pretender to the Italian throne, who had been excluded from Italy for fifty-three years. Although the application was unquestionably important, there was no reason to give it priority or, *a fortiori*, to communicate it as a matter of urgency.

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