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

INFORMATION NOTE No. 18
on the case-law of the Court
May 2000

Statistical information[1]

		May	2000
I. Judgments delivered			
Grand Chamber		1	12[2]
Chamber I		4	24(26)
Chamber II		5	62
Chamber III		8	78(82)
Chamber IV		4[2]	35(45)[2]
Total		**22**	**211(227)**
II. Applications declared admissible			
Section I		21(24)	94(240)
Section II		27	90
Section III		14(23)	96(106)
Section IV		4(5)	64(67)
Total		**66(79)**	**344(503)**
III. Applications declared inadmissible			
Section I	- Chamber	12	40(54)
	- Committee	138	371
Section II	- Chamber	15	47(53)
	- Committee	100	465
Section III	- Chamber	15(19)	57(62)
	- Committee	130(134)	601(634)
Section IV	- Chamber	11	44(47)
	- Committee	176	847
Total		**597(605)**	**2472(2533)**
IV. Applications struck off			
Section I	- Chamber	1	2
	- Committee	2	5
Section II	- Chamber	6	25
	- Committee	0	5
Section III	- Chamber	1	5
	- Committee	3	10
Section IV	- Chamber	1	6
	- Committee	1	15
Total		**15**	**73**
Total number of decisions[3]		**678(699)**	**2889(3109)**
V. Applications communicated			
Section I		17	125(134)
Section II		48(49)	127(130)
Section III		122	193(196)
Section IV		28	84
Total number of applications communicated		**215(216)**	**529(544)**

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

[* = non-final judgment]

ARTICLE 2

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

__**ISMAIL ERTAK - Turkey**__ (N° 20764/92)
Judgment 9.5.2000 [Section I]

Facts: The facts surrounding the death of the applicant's son are disputed. The applicant submitted that at the time of certain incidents which had occurred in August 1992 and which had led to a number of persons being taken into police custody his son had been stopped by the police while coming home from work in the company of three other persons and taken away. The applicant took witness statements from six persons who had been held in police custody and who declared that they had seen the applicant's son during their detention, or had even shared a cell with him. One A.D., in particular, a lawyer who had been in police custody, stated that he had spent five days in the same cell as the applicant's son, that the latter had been tortured and that the last time he, A.D., had seen him the applicant's son had been brought back to the cell unconscious after undergoing torture for fifteen hours and had then been taken away when it was seen that he no longer showed any signs of life. The applicant applied to the provincial governor to find out why his son had not been released and to discover where he was. The governor asked the armed forces and the police for information and was told by them that the applicant's son had never been taken into police custody. The governor then asked the security police to appoint an investigating officer to carry out an inquiry into the applicant's allegations. The applicant lodged a complaint with the public prosecutor's office, asking to be informed what had happened to his son. In April 1993 the investigating officer submitted his report to the administrative council, concluding that there was no case to answer. In June 1993 the public prosecutor ruled that the case was out of his jurisdiction and sent the file to the provincial administrative council so that it could conduct the investigation. In November 1993 the administrative council decided that the members of the security police had no case to answer in the criminal courts, as it had not been established that the alleged offences had been committed. The file was sent to the Supreme Administrative Court, which upheld the administrative council's finding that there was no case to answer. The applicant also asserted that the authorities had brought criminal proceedings against a Mr T.E., on account of the role the latter had played as the applicant's lawyer when he lodged his application with the European Commission of Human Rights, and in particular that all the documents relating to his application had been seized by the security forces. The Government submitted a totally different account of the facts. While they admitted that following clashes in August 1992 nearly a hundred people had been placed in police custody, as the custody registers showed, the applicant's son had been neither arrested nor taken into custody. With regard to the allegations of hindering exercise of the right of individual petition, the Government supplied the Commission with a list of the documents seized from the applicant's lawyer. The Commission conducted its own investigation and a delegation took oral evidence from witnesses.
Law: 1. <u>The Court's assessment of the facts</u> – The Commission had shown the necessary prudence in carrying out its task of assessing the witness evidence, by focusing narrowly on those facts which backed up the applicant's version of events and those which cast doubt on his credibility. The Court therefore intended, in the absence of any new evidence supplied by the parties, to base its findings on the evidence gathered by the Commission, but would assess the value of that evidence. Moreover, with regard to the allegations about the confiscation of documents relating to the application to the Commission and the Government's failure to return them, the Court upheld the Commission's finding that in the present case there was no

reason to conclude that the Government had not fulfilled their obligations under former Article 28(1)(a) of the Convention.
2. Preliminary objection (non-exhaustion): The applicant had done everything he could have been expected to do to obtain redress for his grievance. He had applied to the provincial governor and then lodged a complaint with the public prosecutor's office. But as the authorities had not conducted an effective inquiry into the alleged death and had constantly denied that the applicant's son had been arrested, the applicant had not had any basis on which he could have used to good effect the civil and administrative remedies mentioned by the Government. He had accordingly done everything that could reasonably have been expected of him to exhaust the domestic remedies available to him.
3. Article 2: (a) With regard to the applicant's son's fate: The Court endorsed the Commission's findings of fact. It noted on that basis that there was sufficient evidence for it to conclude beyond all reasonable doubt that the applicant's son, after being arrested and detained, had been the victim of serious ill-treatment that had not been acknowledged and had died in the custody of the security forces. The Court reiterated that authorities are under a duty to account for persons in their charge and observed that no explanation had been offered as to what had happened after the applicant's son's arrest. In conclusion, the Court considered that in the circumstances of the case, the Government bore responsibility for the death of the applicant's son, and that it had been caused by State agents after his arrest. There had therefore been a violation of Article 2 on that account.
(b) With regard to the investigation conducted by the national authorities: In the light of the fact that the Court endorsed the Commission's findings regarding the unacknowledged detention of the applicant's son, the ill-treatment inflicted on him and his disappearance in circumstances that raised a presumption that he was now dead, it followed that the authorities were under an obligation to conduct an effective and thorough inquiry into his disappearance. The Commission expressed the view that the investigation at the national level into the applicant's allegations had not been conducted by independent bodies, had not been thorough and had been carried out without the applicant being given an opportunity to take part. In that connection, the Court noted one particular omission in that the investigating officer responsible for the preliminary investigation had not had in his possession the case file in which was to be found, among other documents, a deposition mentioning the names of other people who had been in police custody, and had not in the course of his investigations taken a statement from the applicant or the persons named by the applicant in his complaint. The Court therefore concluded that the respondent State had failed in its obligation to conduct a sufficient and effective investigation into the circumstances of the disappearance of the applicant's son. Consequently, there had been a violation of Article 2 on that account also.
Conclusion: violation (unanimously).
4. Former Article 25(1): Before the Court the applicant had not sought to pursue this complaint and the Court was not required to examine the question of its own motion.
5. Alleged practice of Article 2 violations: The Court held that the available evidence and the documents in the case file did not suffice to enable it to decide whether the Turkish authorities had adopted a practice of violating Article 2 of the Convention.
6. Article 41: With regard to pecuniary damage, the Court considered that there was a direct causal connection between the violation of Article 2 and the loss by the widow and orphans of the applicant's son of the financial support he had given them. The Court therefore awarded the applicant, to be held by him on behalf of the widow and orphan children of his son, the sum of 15,000 pounds sterling (GBP). In compensation for the non-pecuniary damage sustained on account of the substantive and procedural violation of Article 2, the Court awarded GBP 20,000 to be held by the applicant on behalf of the widow and orphan children of his son and GBP 2,500 to the applicant himself. Lastly, it awarded the applicant GBP 12,000 for costs and expenses, less 14,660.35 French francs which the applicant had received in legal aid from the Council of Europe.

LIFE
Death of applicant's partner during police custody and alleged lack of proper investigation into death: *violation*.

VELIKOVA - Bulgaria (Nº 41488/98)
*Judgment 16.5.2000 [Section IV]

Facts: In September 1994, T., a Romany with whom the applicant lived, died in police custody some 12 hours after his arrest on suspicion of theft of cows. He had apparently been too drunk to be questioned. The regional investigator ordered a criminal investigation into the death and an autopsy was carried out, according to which death was caused by haemorrhaging due to trauma caused by a blunt object, which could have resulted from either blows or a fall. No further steps in the investigation appear to have been taken after December 1994. In December 1995, the applicant's lawyer unsuccessfully requested the prosecutor to speed up the investigation, but in March 1996 the prosecutor issued an order suspending the criminal proceedings. The order stated that death had resulted from deliberate beating but that it was not possible to ascertain whether this had taken place at the police station or whether the police officers had been responsible. Following the applicant's request, the Chief Public Prosecutor's Office ordered the reopening of the investigation on the ground that it had not been thorough and complete. However, the investigator allegedly refused to provide the applicant's lawyer with any information about the investigation and the lawyer received no reply to the complaint filed with the prosecutor's office. The prosecutor eventually replied to a second request by stating that no further investigation should be carried out as there were no clues as to the identity of the offender. However, no formal decision was taken to that effect and in December 1997 the investigator told the lawyer that he was still working on the investigation.
Law: Government's preliminary objections - (i) as to the Government's claim that the power of attorney allegedly signed by the applicant must have been submitted by unauthorised persons, since the applicant is illiterate, the applicant confirmed prior to the hearing before the Court that she had signed the power of attorney and demonstrated her ability to sign in the presence of the President of the Chamber and the parties' representatives. The Government are not estopped from raising the objection, since it is based on a document which came to light after the admissibility decision but they do not allege in express terms that the application was made without the applicant's consent and it is unclear whether a genuine document signed by a person who had previously claimed to be illiterate would be null and void under Bulgarian law. In any event, under the Rules of Court (Rule 45(3)) a simple written authority is valid for the purposes of proceedings before the Court, in so far as it has not been shown that it was made without the applicant's understanding and consent. There has been no serious doubt as to the applicant's wish to pursue her complaints, and the application has been validly submitted on her behalf;
(ii) as to the Government's assertion that the admissibility decision contains incorrect statements of fact and unjustified conclusions, these are all to be found in the summary of the applicant's complaints and submissions, which forms part of the text without being an expression of the Court's opinion. With regard to non-exhaustion, the six month rule and abuse of the right of petition, the Government for the most part reiterate the objections which were examined by the Court at the admissibility stage and there are no new elements justifying a re-examination of these matters. In any event, there is no substance to the preliminary objections.
Article 2 - It is undisputed that at the time of his arrest T. was able to walk and that there was some verbal communication with the police and others, but that he did not complain of any ailment at that time or within the following two hours, nor did anyone report any visible sign of such serious injuries as were later found in the autopsy. The Government's suggestion that T. might have received the fatal injuries before his arrest is therefore implausible. Equally implausible is the suggestion that he may have been injured by falling to the ground as he was allegedly staggering. The autopsy report mentioned this as a possibility only in respect of

facial injuries, which were not among those that led to the acute loss of blood. According to the prosecutor's report, the fatal injuries were the result of deliberate beating. There is sufficient evidence to reach the conclusion beyond reasonable doubt that T. died as a result of injuries inflicted while in the hands of the police and the responsibility of the State is thus engaged. Moreover, there is no evidence that T. was examined with the proper care due by a medical professional at any time. Consequently, there has been a violation in respect of his death.
Conclusion: violation (unanimously).
Article 2 - As to the alleged lack of an effective investigation, certain references in the material submitted could lead to the supposition that there exist documents concerning the investigation which have not been furnished to the Court. However, it is unnecessary to decide whether the Government have complied with their obligations under Article 38. The Court is entitled to draw the inference that the material submitted contains all information about the investigation. There were numerous unexplained omissions from the very beginning and throughout the investigation: no expert was ever asked to comment on the timing of the injuries, there is no trace of any attempt by the investigator to identify the medical team who the police officers claimed visited the police station, and a number of important witnesses were never questioned. The unexplained failure to undertake indispensable and obvious investigative steps is to be treated with particular vigilance and, failing a plausible explanation by the Government, the State's responsibility is engaged for a particularly serious violation of its obligation under Article 2 to protect the right to life. The investigator did not proceed to collect available evidence and indeed the investigation remained dormant after December 1994. No plausible explanation for these failures has been provided and there has therefore been a violation of the obligation to conduct an effective investigation.
Conclusion: violation (unanimous).
Articles 6 and 13 - The Court considered that the complaints about the excessive length of the investigation and the failure to carry out a thorough, effective and timely investigation fell to be examined under Article 13. Having regard to the conclusion reached above, the State has failed to comply with its obligation to carry out an effective investigation and this failure undermined the effectiveness of any other remedies which might have existed.
Conclusion: violation (unanimous).
Article 14 - While the applicant's complaint is grounded on a number of serious arguments and the State has failed to provide a plausible explanation as to the circumstances of T.'s death and the omissions in the investigation, the material does not enable the Court to conclude beyond a reasonable doubt that his murder and the lack of a meaningful investigation were motivated by racial prejudice.
Conclusion: no violation (unanimous).
Article 41 - The Court awarded the applicant 100,000 French francs (FRF) in respect of non-pecuniary damages. It considered that this sum should be exempt from attachment but it had no jurisdiction to make such an order. It further awarded the applicant 8,000 levs (BGL) in respect of pecuniary damage. Finally, it made an award in respect of costs and expenses.

ARTICLE 3

INHUMAN TREATMENT
Confinement of prisoner in cell as disciplinary measure, leading her to suicide: *inadmissible*.

BOLLAN - United Kingdom (N° 42117/98)
Decision 4.5.2000 [Section III]

A., step-daughter of the first applicant, daughter of the second and mother of the third, committed suicide whilst on remand. She had been a drug addict for a number of years and had passed several spells in drugs rehabilitation clinics without success. On the day after admission, she was examined by a doctor who did not discern any suicidal tendency in her conduct despite her drug dependency. On the day of her death, at around 11 a.m., she started kicking at the door of her cell. The Residential Officer told her that she would be kept in her cell until she calmed down while other prisoners were in free association before lunch. The Residential Officer was called to another unit soon after midday and overlooked her; he had not mentioned her to his supervisor or anyone else. Around 12.30 p.m., A. was found dead in her cell, hanging from the window. The conclusion of the inquiry into her death was that there was no particular reason to suspect that she would commit suicide although she had not taken her usual medication that particular morning. The applicants initiated proceedings in the Sheriff Court, claiming damages on behalf of the third applicant on account of, *inter alia*, the prison staff's negligence. They were refused legal aid and their appeal against this refusal was to no avail.
Inadmissible under Article 3: A. was told by prison officers that she would remain in her cell instead of joining others in association before lunch because of her behaviour. The evidence gathered at the inquiry confirmed that there were no reasons to suspect that she was a suicide risk. Moreover, in view of the short duration of the confinement, the fact that the confinement was in her own cell and that there were no indications, physical or mental, which rendered or should have rendered the prison staff aware that she was at risk of any severe or acute suffering as a result of the measure, it could not be considered as amounting to ill-treatment: manifestly ill-founded.
Inadmissible under Article 5(1): Measures adopted within a prison may disclose interferences with the right to liberty in exceptional circumstances. Generally, however, disciplinary steps, imposed formally or informally, which have effects on conditions of detention within a prison, cannot be considered as constituting deprivation of liberty. Such measures must be regarded in normal circumstances as modifications of the conditions of lawful detention and therefore fall outside the scope of Article 5(1). Taking into consideration the type, duration and manner of implementation of the measure, the confinement of A. in her cell from 11.10 a.m. to 12.30 p.m. was a variation in the routine conditions of detention, the nature and degree of which did not in the instant case involve a deprivation of liberty: manifestly ill-founded.
Inadmissible under Article 11: This provision does not apply within the context of prisons, to confer a right to mix socially with other prisoners at any particular time or place: incompatible *ratione materiae.*

EXPULSION
Deportation to Iran: *communicated*.

AMROLLAHI - Denmark (N° 56811/00)
[Section II]

The applicant, an Iranian citizen, deserted the army and fled from Iran in 1987. In 1989, he arrived in Denmark, where he eventually obtained a permanent residence permit. He married a Danish citizen with whom he had a child. In 1996, he was convicted of drug trafficking by the City Court, which ordered his permanent expulsion. The applicant unsuccessfully lodged an appeal against this decision arguing that in Iran he risked severe punishment for desertion and lifetime imprisonment for the drug offence which had led to his conviction in Denmark. His subsequent appeal was to no avail. The Aliens Authorities found that he did not risk any persecution in the event of deportation to Iran. The applicant made a request for reconsideration before the City Court, which revoked the deportation order. However, the decision was quashed by the High Court on the ground that only one request for reconsideration could be made, and that in the applicant's case there had already been one. The applicant's application for leave to appeal to the Supreme Court is still pending.
Communicated under Articles 2, 3, 5(1)(f) and 8 (and prolongation of application of Rule 39).

ARTICLE 5

Article 5(1)

LAWFUL DETENTION
Confinement in cell of prisoner as disciplinary measure: *inadmissible*.

BOLLAN - United Kingdom (N° 42117/98)
Decision 4.5.2000 [Section III]
(See Article 3, above).

LAWFUL ARREST
Arrest based on testimony of co-accused allegedly obtained unlawfully: *communicated*

BELCHEV - Bulgaria (N° 39270/98)
[Section IV]

In 1996, a preliminary investigation was instituted against the applicant and eight other persons in relation to dubious financial transactions. In November 1996, the applicant was detained on remand on suspicion of having aided and abetted an illegal activity. He alleged that his arrest was prompted by the testimony of another accused, the validity of which he contested on the ground, *inter alia*, that it had been made without the presence of the accused's lawyer. The applicant's application for release was turned down on the ground that not only was he suspected of a serious crime but there was also a risk that he might hinder the course of justice, considering the complexity of the case, the number of witnesses and the evidence to be examined. His appeals were to no avail. His later request for release on grounds of ill-health was rejected, but his transfer to hospital was ordered and in March 1997, he was released on bail. The preliminary investigation was completed between February and April 1997 and in October 1998, after several adjournments of the hearing, the applicant was

found guilty and sentenced to imprisonment. He appealed against the decision and the proceedings are still pending.
Communicated under Article 5(1), (3) (brought before judge), (4) and (5) and Article 6(1) (length of proceedings).

Article 5(1)(f)

EXTRADITION
Detention with a view to allegedly unlawful extradition: *communicated*.

KADEM - Malta (N° 55263/00)
[Section II]

The applicant, a Dutch national, was arrested and detained following a request for his extradition made by Morocco in relation to a drug trafficking offence. He unsuccessfully challenged the legality of his detention before the Magistrates' Court on the ground that there was no extradition treaty between Malta and Morocco and that the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances had not been duly ratified by Malta. His appeal was to no avail: the Court of Criminal Appeals declared that no appeal was available to him at that stage of the proceedings, an appeal being possible only when a person was subject to an order committing him to custody to await his removal. In January 1999, the applicant was acquitted and ordered to return to the Netherlands. In December 1998, while still held in detention, he had filed an application with the First Hall of the Civil Court, relying on Article 5(1)(f) and (4) of the Convention. However, by the time a hearing could take place he had returned to the Netherlands and he did not obtain from the Maltese authorities permission to re-enter Malta for the hearing. In September 1999, his application was finally struck off the list.
Communicated under Article 5(1)(f) and (4).

Article 5(3)

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

BERNARD - France (N˚ 38164/97)
*Judgment 30.5.2000 [Section III]

The case concerns the length of detention on remand. The Court noted that the applicant had never lodged an appeal to the Court of Cassation against the decisions of the Indictments Chamber rejecting his requests to be released and concluded that he had not exhausted domestic remedies (see the Civet v. France judgment of 28 September 1999). It therefore upheld the Government's preliminary objection.

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

FAVRE-CLEMENT - France (N° 35055/97)
*Judgment 30.5.2000 [Section III]

The case concerns the length of detention on remand. The Court noted that while the applicant had on three occasions appealed to the Court of Cassation against decisions of the Indictments Chamber rejecting his requests to be released, the appeals had been rejected on the ground that the applicant had not lodged pleadings in support of the appeals. The Court therefore concluded that the applicant had not exhausted domestic remedies (see the Civet v. France judgment of 28 September 1999). It therefore upheld the Government's preliminary objection.

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

WOJCIK - Poland (N° 26757/95)
Judgment 23.5.2000 [Section I]

The case concerns the length of detention on remand and the length of criminal proceedings, as well as the alleged lack of adversarial proceedings in the review of the applicant's detention.
The applicant has repeatedly failed to reply to the letters addressed to him by the Court.

ARTICLE 6

Article 6(1) [civil]

CIVIL RIGHTS AND OBLIGATIONS
Proceedings to have deceased's brother's conviction annulled: *Article 6 applicable*.

KURZAC - Poland (N° 31382/96)
Decision 25.5.2000 [Section IV]

The applicant's brother was convicted in 1948 in connection with his membership of a resistance group which from 1943 had directed its activities against the Soviets rather than the Nazis. He was sentenced to imprisonment. He was shot by a militia officer in 1956. In 1993 the applicant lodged an application to have the conviction annulled, pursuant to a 1991 law. His lawyer asked for an early hearing in view of the applicant's age and poor health, and he repeated this request a year later. He was informed that an early hearing was excluded since 10,000 similar cases were pending. The conviction was finally annulled in May 1998.
Admissible under Article 6(1): In general, such proceedings have features similar to an appeal against conviction and for the victim the effect is to redetermine the criminal charge. However, this is not the case for someone who seeks to have a relative's conviction annulled. The law entitles such a person to seek a review on behalf of a deceased victim, and thus not only acknowledges the State's responsibility but also the right to obtain a retrospective acquittal. Certain relatives have a right to compensation and in such cases the proceedings are decisive for a pecuniary right; other relatives, such as the applicant, do not have a right to compensation, but this does not remove the proceedings from the scope of Article 6 under its civil head. The proceedings had the aim of restoring the honour and reputation of the

applicant's family, and thus concerned his right to enjoy a good reputation and his right to protect the honour of his family and restore its good name. Article 6 is therefore applicable: admissible.

FAIR HEARING
Unavailability of legal aid for defamation actions: *communicated*.

McVICAR - United Kingdom (N° 46311/99)
[Section III]

The applicant, a journalist by profession, wrote an article in which he suggested that the athlete Linford Christie used banned performance enhancing drugs. Mr Christie subsequently initiated an action for defamation against the applicant. During the greater part of the proceedings, the applicant had to represent himself alone as he could not afford to pay legal fees, legal aid not being available for defamation actions by virtue of the Legal Aid Act 1988. Moreover, under domestic law, the applicant bore the burden of proving that his allegations were founded. Finally, the evidence of two of his best witnesses was excluded on the ground that it should have been disclosed to the plaintiff in advance, which had not been the case. The applicant was found to have defamed the plaintiff and ordered to pay the costs of the action.
Communicated under Articles 6(1) and 10.

ACCESS TO COURT
Absence of possibility of court review of prefectoral decisions staggering the granting of police assistance in enforcement of eviction orders: *friendly settlement*.

ESPOSITO - Italy (N° 20855/92)
Judgment 25.5.2000 [Section II]

The applicant gave notice to the tenant of an apartment which he owns. By an order which became final in 1986, the first instance judge (*pretore*) formally confirmed the notice and decided that the premises should be vacated by 31 December 1987. The tenant's appeal was rejected by the Rome court. A bailiff attempted on numerous occasions to evict the tenant but was unsuccessful because the laws on suspension and staggering of enforcement of eviction decisions did not allow the applicant to benefit from police assistance. The tenant vacated the apartment in February 2000.
The parties have reached a friendly settlement providing for payment to the applicant of 119,864,000 lire (ITL), made up of 35 million lire in respect of non-pecuniary damage, 74,864,000 lire in respect of pecuniary damage and 10 million lire in respect of costs and expenses.

FAIR HEARING
Promulgation of new legislation favouring the authorities' position in ongoing proceedings to which they are party: *admissible*.

AGOUDIMOS and CEFALLONIAN SKY SHIPPING CO. - Greece (N° 38703/97)
Decision 18.5.2000 [Section II]

The first applicant acquired a ship which had been put on compulsory auction sale after having been seized by the previous owner's creditors. The first applicant sold it to the applicant company which in turn sold it to a foreign company. The applicant company requested the authorities to remove the ship from the register of ships as it had been bought by a foreign company. The request was rejected, however, on the ground that it had not been established that all the debts pertaining to the ship before the auction sale had been settled. The applicant company filed a complaint with the first instance court, which stated that a person acquiring a ship put on compulsory auction sale could not be held liable of the debts of the previous owner. No appeal was lodged by the authorities against this decision and the ship was accordingly removed from the authorities' register. In spite of this decision, the Social Security authorities claimed from both applicants, as previous owners of the ship, social security contributions for periods preceding the auction sale. The applicants brought the case before the first instance court which found against them. However, on their appeal, the Court of Appeal quashed this decision. Parliament subsequently enacted a new law according to which persons having acquired a ship following a compulsory auction sale were to be liable for the debts existing prior to the auction sale. In the light of this new legislation, the Social Security authorities appealed against the Court of Appeal's decision. The Court of Cassation's decision was in favour of the authorities and the case was referred back to another Court of Appeal, where it is pending.
Admissible under Article 6(1).

REASONABLE TIME
Length of civil proceedings: *violation*.

FERTILADOUR S.A. - Portugal (N° 36668/97)
*Judgment 18.5.2000 [Section IV]

The case concerns the length of civil proceedings brought by the applicant company in May 1987 and still pending (about 13 years).
Conclusion: violation (unanimous).
Article 41 - The Court awarded the applicant 1,500,000 escudos (PTE) in respect of damages and 250,000 escudos in respect of costs and expenses.

REASONABLE TIME
Length of proceedings before the Audit Court (Italy): *violation*.

ARBORE - Italy (N° 41840/98)
*Judgment 25.5.2000 [Section IV]

The case concerns the length of proceedings before the Audit Court. The proceedings began in June 1971 and were still pending at first instance in October 1999. They had therefore lasted over 28 years and 3 months, including 26 years and 2 months after the entry into force of Italy's acceptance of the right of individual petition.
Conclusion: violation (unanimous).
Article 41 - The Court awarded the applicant 30 million lire (ITL) in respect of non-pecuniary damage and 5 million lire in respect of costs and expenses.

REASONABLE TIME
Length of proceedings relating to employment dispute: *friendly settlement*.

BRUNY - France (N° 41792/98)
Judgment 30.5.2000 [Section III]

The case concerns the length of proceedings relating to an employment dispute. The proceedings began in April 1991 and ended in November 1998.
The parties have reached a friendly settlement providing for payment to the applicant of the sum of 30,000 francs (FRF), to cover all damages.

REASONABLE TIME
Length of constitutional proceedings: *communicated*.

VOGGENREITER - Germany (N° 47169/99)
[Section IV]

The applicant was the owner of a freight tariff control company until the entry into force in January 1994 of a law abolishing tariffs for rail traffic, which made the applicant's profession superfluous. She therefore had to close her business and make eleven workers redundant. In December 1993 she challenged the constitutionality of the legislation in question in the Federal Constitutional Court, emphasising the importance of a declaration of unconstitutionality because the law threatened an entire profession and had not at that time been the subject of an implementing decree. By virtue of the Federal Constitutional Court Act, the applicant was not required to apply first to the ordinary courts, since the question of the constitutionality of legislation is a matter falling within the jurisdiction of the Federal Constitutional Court alone. In June 1994 the Federal Constitutional Court refused to order the temporary suspension of the impugned legislation. In February 1997 the applicant was informed by the Federal Constitutional Court that no date had been set for judgment to be given on account of its heavy case-load.
Communicated under Article 6(1).

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

BUSCARINI - San Marino (Nº 31657/96)
Decision 4.5.2000 [Section II]

The applicant brought civil proceedings against one S.V. His case was assigned to Judge P.G.P, who found against the applicant, but the latter appealed. The case was prepared for hearing by the first-instance judge, in accordance with the law in force. Judge P.G.P. then sent the papers to the appellate judge so that the case could be settled. The appellate judge whose name appeared on the roster had died in the meantime. Parliament appointed P.G.P. as his replacement. The latter asked the Council of Twelve (the third-instance judicial body) for leave to stand down in cases where he had either given judgment at first instance or prepared the appeal proceedings. The Council allowed this application in part and assigned the case to P.G., a judge of criminal appeals. The San Marino Bar Council expressed doubts about the way the stand-in judge had been appointed. P.G. gave judgment as a judge of civil appeals and dismissed the applicant's appeal.
Inadmissible under Article 6(1): The lawfulness of a court must necessarily be based on its composition. In the present case, the applicant had merely asserted that the replacement of the appellate judge had contravened domestic law. However, in spite of the doubts expressed by the Bar Council, the problem raised by the fact that Judge P.G.P. could not sit had been

sufficiently clear to warrant the conclusion that what had to be done was not to appoint another judge, as provided in Law no. 83 of 1992, but to replace a judge who was unable to adjudicate in certain well-identified cases. The court had therefore been established by law: manifestly ill-founded.

Article 6(1) [criminal]

ACCESS TO COURT
Dismissal of cassation appeal due to appellant's failure to comply with arrest warrant: *violation*.

VAN PELT - France (N° 31070/96)
*Judgment 23.5.2000 [Section III]
(See Article 6(3)(c), below).

FAIR HEARING
Self-incrimination - drawing of adverse inferences by a jury: *violation*.

CONDRON - United Kingdom (N° 35718/97)
*Judgment 2.5.2000 [Section III]

Facts: The applicants, both heroin addicts, were charged with supplying heroin after various sachets of heroin were found in their flat. A police doctor considered that although they showed signs of withdrawal symptoms they were able to answer questions, despite the different view of their lawyer. The applicants, who were cautioned that it might harm their defence if they omitted to mention anything which they later relied on in court, said that they understood but replied "No comment" when asked to explain what they had been doing when the police observed them handing items to a neighbour. At trial, the police interviews were allowed in evidence. Both applicants claimed that the heroin had been for their personal use and that the items which they had handed to their neighbour had not been drugs. They maintained that they had not mentioned this at the interviews because their lawyer had considered that they were suffering from withdrawal symptoms. The judge directed the jury that it could draw inferences from the applicants' failure to mention this when interviewed. Both applicants were convicted. Their appeals were dismissed by the Court of Appeal, which considered that it would have been desirable if the trial judge's summing-up had been expressed in different terms but that this lacuna did not render the convictions unsafe, having regard to the other evidence.
Law: Article 6(1) - The right to remain silent is not absolute and whether drawing adverse inferences from silence infringes this provision must be determined in the light of all the circumstances (see John Murray judgment, *Reports* 1996-I). A conviction should not be based solely or mainly on an accused's silence, but silence may be taken into account in situations which clearly call for an explanation. The following features of this case, which are relevant to the assessment of fairness, distinguish it from the John Murray case: the applicants gave evidence at their trial, they offered an explanation for their silence during interview and the trial took place before a jury which required direction by the judge on the issue of drawing inferences. There was no legal compulsion to cooperate with the police, who were moreover under an obligation to give a clear warning of the possible implications of remaining silent, and the presence of the applicants' solicitor throughout the interviews was a particularly important safeguard. However, both the question whether the applicants were sufficiently lucid to understand the consequences of remaining silent and the question whether the trial judge gave sufficient weight to their reliance on the solicitor's advice to explain their silence

must be examined from the standpoint of the directions given to the jury. The formula used by the judge did not reflect the balance to be struck: the principle established in the John Murray case is that, provided appropriate safeguards are in place, an accused's silence, in situations which clearly call for an explanation, may be taken into account in assessing the persuasiveness of the evidence adduced by the prosecution against him. In this case, the applicants put forward an explanation for their silence during interview (namely, their lawyer's advice) but the judge left the jury free to draw adverse inferences even if satisfied that the explanation was plausible. The judge's directions were found by the Court of Appeal to be deficient in this respect. A direction to the effect that if the jury was satisfied that the applicants' silence at the police interview could not sensibly be attributed to their having no answer or none that would stand up to cross-examination it should not draw an adverse inference was more than "desirable". Since it was impossible to ascertain what weight the jury gave to the applicants' silence and certain safeguards identified in the John Murray case (reasons given by the judge, review by appeal court) were not present, it was all the more important to ensure that the jury received proper directions. The omission of the trial judge was incompatible with the applicants' exercise of their right to remain silent and the defect was not remedied on appeal, since the Court of Appeal had no way of knowing what role the silence played in the jury's decision. The Court of Appeal was concerned with the safety of the conviction, which is not the same as whether the applicants had a fair trial within the meaning of Article 6.
Conclusion: violation (unanimous).
Article 6(2): The applicants' arguments under this provision amount to a restatement of their case under Article 6(1).
Conclusion: no separate issue (unanimous).
Article 6(3)(b) and (c): The complaints under these provisions amount to a complaint that the applicants did not receive a fair trial.
Conclusion: not necessary to examine (unanimous).
Article 41 - The applicants did not submit any claim in respect of damages. The Court made an award in respect of costs.

FAIR HEARING
Use in criminal trial of evidence obtained in violation of the Convention: *no violation*.

KHAN - United Kingdom (N° 35394/97)
*Judgment 12.5.2000 [Section III]

Facts: A conversation in the course of which the applicant admitted to being party to the importation of drugs was recorded by the police, who had installed a listening device in the house of B., which the applicant was visiting. The police had not been expecting the applicant to visit B., who was under surveillance. The applicant pleaded not guilty, although he admitted that his voice was one of those recorded. The prosecution admitted that the installation of the listening device had involved a civil trespass and occasioned some damage and accepted that there was no case without the recorded conversation. The trial judge ruled that the evidence was admissible and the applicant pleaded guilty to an alternative charge. He was sentenced to three years' imprisonment. The applicant's appeals were dismissed successively by the Court of Appeal and the House of Lords. The House of Lords held that even if there were a right of privacy in English law, the common law rule that relevant evidence obtained improperly or even illegally remained admissible applied to evidence obtained by the use of surveillance devices which invaded a person's privacy. It further held that the use in a criminal trial of material obtained in breach of Article 8 of the Convention did not render the trial unfair.
Law: Article 8 - It was undisputed that the surveillance constituted an interference with the applicant's rights. At the time of the events in question there existed no statutory system to regulate the use of covert listening devices and the Home Office guidelines were neither

legally binding nor directly accessible to the public. There was therefore no domestic law regulating the use of covert listening devices and the interference was not "in accordance with the law".
Conclusion: violation (unanimous).
Article 6(1) - It is not the Court's role to determine, as a matter of principle, whether particular types of evidence may be admissible or, indeed, whether the applicant was guilty or not; the question is whether the proceedings as a whole were fair, and this involves an examination of the "unlawfulness" of the evidence admitted and, where a violation of another Convention right is concerned, the nature of that violation. In contrast to the Schenk case (judgment of 12 July 1988), the recording of the conversation was not unlawful under domestic law, the "unlawfulness" relating only to the absence of a legal basis satisfying paragraph 2 of Article 8 of the Convention. Furthermore, the contested material in the present case was the only evidence against the applicant, whose guilty plea was made only after the judge ruled that the evidence was admissible. However, in the circumstances, where the recording was acknowledged to be very strong evidence and there was no risk of it being unreliable, the need for supporting evidence was correspondingly weaker. The applicant had ample opportunity to challenge both the authenticity and the use of the recording and at each level of jurisdiction the courts assessed the effect of admitting the evidence on the fairness of the trial and discussed the non-statutory basis for the surveillance. It is clear that if they had considered that the admission of the evidence would have given rise to substantive unfairness they would have had a discretion to exclude it. Consequently, the use of the recording did not conflict with the requirements of fairness.
Conclusion: no violation (6 votes to 1).
Article 13 - The domestic courts were not capable of providing a remedy in respect of the claims under Article 8, since although they could consider questions of the fairness of admitting the evidence they could not deal with the substance of the Convention complaint, nor could they grant appopriate relief. Moreover, the system of investigation of complaints by the Police Complaints Authority - in particular, in view of the role of the Secretary of State - does not meet the requisite standards of independence needed to constitute sufficient protection against abuse of authority and thus provide an effective remedy.
Conclusion: violation (unanimous).
Article 41 - The Court considered that the finding of a violation constituted in itself sufficient just satisfaction for any damage which the applicant may have suffered. It made an award in respect of costs and expenses.

FAIR HEARING
Self-incrimination - reports drafted in disciplinary proceedings used in subsequent criminal proceedings concerning the same facts: *inadmissible*.

SERVES - France (N° 38642/97)
Decision 4.5.2000 [Section III]

Soldiers under the applicant's command on patrol in the Central African Republic opened fire on a poacher and wounded him. They then dispatched him and buried his body. When the applicant was informed he ordered his men not to say anything and he himself did not report them to his superiors. The commanding officer found out about the incident nevertheless and there then followed an internal investigation and a number of reports about what had happened, based largely on interviews with the men involved. A report written by a senior officer concluded that the wounded poacher had been finished off and that the applicant's responsibility was "weighty". A later commanding-officer report confirmed this reading of the facts, which was devastating for the applicant. He was first charged with murder but eventually indicted by the First Indictment Division of the Court of Appeal only for aiding and abetting murder. The Military Court sentenced him to four years' imprisonment. The applicant then appealed on points of law alleging an infringement of his defence rights in that the commanding-officer reports incriminating him had been added to the case file. The Court of Cassation dismissed the appeal, holding in particular: "The fact that the report on the commanding officer's inquiry, carried out in the context of separate administrative proceedings, was added to the case file to be the subject of free discussion between the parties cannot invalidate the judicial proceedings". The applicant was stripped of his rank and dismissed from the service.
Inadmissible under Article 6(1): With regard to the fact that the commanding-officer reports had been added to the case file, the Convention did not regulate the admissibility of evidence as such. However, in a criminal case, the use by the prosecution of evidence obtained by duress or pressure against the will of the accused infringed the latter's right not to incriminate himself. In the present case the reports had resulted from a commanding-officer inquiry conducted by a senior army officer into the same facts as formed the subject of the criminal proceedings. It was likely that the applicant had been obliged to reply to the questions put to him during the commanding-officer inquiry, since he had been interviewed by superior officers and any refusal to answer would have made him liable to serious disciplinary penalties. However, in order to find a violation of Article 6, it was important to look more closely at the use that had been made of the reports during the trial. It did not appear from the judgment of the Criminal Division of the Court of Appeal that the indictment had been largely based on the statements made by the applicant during the commanding-officer inquiry, but mainly on a large number of witness statements taken down during the investigation. Nor did it appear that these reports had been used by the prosecution before the Military Court. Furthermore, they did not constitute the only evidence submitted to the Military Court's assessment, since evidence had been taken from numerous witnesses, in particular. Moreover, the general who had compiled the reports in issue had been called to give evidence and the applicant had not alleged that he had been unable to cross-examine him: manifestly ill-founded.

FAIR HEARING
Allegations of unfair proceedings relating to misappropriation of public funds: *inadmissible*.

UBACH MORTES - Andorra (N° 46253/99)
Decision 4.5.2000 [Section IV]

Until 1993 the applicant was the head of the body charged with management of the Andorran social security system. From the mid-1980s onwards he followed a policy of investing part of the retirement pension fund by buying company stock or variable-rate bonds. In a number of judgments the Andorran courts found that the applicant, aided and abetted by a Spanish national, Mr J.M.R., had used large sums of money to make investments in Spain through a Spanish company - on several occasions without the agreement of the social security fund's governing body. The pension fund sustained heavy losses as a result. By a judgment delivered after a public, adversarially conducted trial, the *Tribunal de Corts* found the applicant guilty of misappropriating public funds and forging official documents, and sentenced him to nine years' imprisonment and payment of a heavy fine. At the beginning of his trial in the *Tribunal de Corts* the applicant had complained of the absence of J.M.R. The court replied that the latter had produced a medical certificate justifying his absence, that as he was a Spanish national in Spain the warrant for his arrest could not be enforced and that any move made by the Andorran courts to secure his extradition would be doomed to failure. In addition, the court based its decision on evidence freely discussed at a public hearing, particularly the applicant's written statements, the testimony of numerous witnesses, auditors' reports and documentary evidence. An appeal by the applicant was dismissed by the Andorran High Court after adversarial proceedings. Following the entry into force of the Constitutional Court Act and pursuant to its third transitional provision, the applicant appealed directly to the Constitutional Court (remedy of *empara*) against the High Court's judgment. The appeal was dismissed.
Inadmissible under Article 6(1) (fair trial, equality of arms), (2) and 3(b) and (d): The Andorran courts had found the applicant guilty of certain crimes in judgments for which ample reasons had been given, basing their decisions on evidence taken during the judicial investigation which had been freely discussed at the applicant's trial, and had found that evidence to be sufficient. The trial courts had given a particularly detailed account of the facts before finding the applicant guilty. The latter, assisted by a lawyer, had had the opportunity to question the witnesses at his trial and to rebut the various witness statements and expert reports incriminating him during the proceedings. There was therefore no appearance of a violation by the Andorran courts of the Convention provisions concerned.
The mere fact that the prosecution had had longer to submit an expert opinion than the applicant was not sufficient to warrant the conclusion that there had been an infringement of the principle of equality of arms, since the difference in treatment complained of had not prevented him from submitting his own expert report.
The applicant had also complained that he had been unable to examine or have examined Mr J.M.R., who was the principal witness in the case. An accused did not have an unlimited right to have witnesses summoned to attend judicial proceedings. It was for the domestic courts to decide whether it was appropriate to summon a witness. In the present case, the Andorran courts could not be held responsible for J.M.R.'s failure to appear, having admitted that this was not possible since J.M.R. was in Spain and had produced a medical certificate justifying his absence. Moreover, the applicant had not convincingly explained why J.M.R.'s evidence would have been decisive. While J.M.R.'s absence might have affected some of the evidence the applicant had wished to adduce, that had not prevented him from exercising his defence rights: manifestly ill-founded.

FAIR HEARING
Surrender to the International Criminal Tribunal for Former Yugoslavia of person suspected of war crimes: *inadmissible*.

NATELITIĆ - Croatia (N° 51891/99)
Decision 4.5.2000 [Section IV]

The applicant, a Croatian citizen, is currently held in the penitentiary of the International Criminal Tribunal for Former Yugoslavia (ICTY) in the Netherlands. He was arrested and held in custody in Croatia on suspicion of kidnapping, murder and participation in a group having committed a crime. He was subsequently indicted by the ICTY on seventeen counts, including crimes against humanity, grave breaches of the Geneva Conventions and violations of the laws and customs of war. The applicant was handed over to the ICTY by order of the domestic courts.
Inadmissible under Article 6(1): Exceptionally, an issue may be raised under this provision following an extradition decision in circumstances where the applicant is exposed to the risk of being denied a fair trial. However, in the circumstances of this case, the act at issue was not an extradition act, but surrender to an international court which, considering its Statute and Rules of Procedure, offers all the necessary guarantees, including those of impartiality and independence: manifestly ill-founded.
Inadmissible under Article 7: Even assuming that Article 7 applied to the present case, it would have done so under its second paragraph and not its first. Therefore the applicant could not invoke the second sentence of Article 7(1): manifestly ill-founded.

INDEPENDENT AND IMPARTIAL TRIBUNAL
Independence and impartiality of military court dealing with civil claim: *inadmissible*.

YAVUZ - Turkey (N˚ 29870/96)
Decision 25.5.2000 [Section II]

The applicants are close relatives of G. who was shot by a fellow-soldier following a dispute over drugs. The other soldier, who had served a prison sentence for homicide before starting his military service, was prosecuted and the applicants joined the proceedings as "intervenors". The accused was convicted by a military court, but the conviction was annulled and the case remitted to the court, which then declined jurisdiction in favour of the Assize Court. The accused was again convicted. The applicants then brought an action for damages before the Supreme Military Administrative Court, which awarded compensation to the victim's parents. This court is made up of two chambers, each composed of a president and four other military judges, plus two members of the officer class. The latter are elected for a four-year term of office by the President of the Republic on the basis of a list of three candidates proposed by the Chief of the General Staff.
Inadmissible under Article 6(1) (independent and impartial tribunal): It is not open to the applicants to rely on this provision in support of their complaint that, as intervenors in the criminal proceedings, their civil right to compensation was also at stake, since they never in fact reserved their right to claim compensation based on the outcome of the criminal trial. As to the compensation proceedings, the applicants' failure to raise the issue of the independence and impartiality, even in substance, cannot defeat the admissibility of their complaint: having regard to the constitutional status of the Supreme Military Administrative Court, any objection to its independence and impartiality would have been doomed to failure. Moreover, the applicants may still claim to be victims, since they contest the level of compensation awarded and consider that they did not obtain just satisfaction on account of the fact that their claim was determined by a court whose independence and impartiality they challenge.
As to the merits, the independence of the military judges is guaranteed under the Constitution and implementing legislation and there is nothing in the manner of their appointment which

would call into question their capacity to function in accordance with the strict requirements of judicial independence. They are appointed for life and are not accountable to the executive; questions of discipline fall to be considered by the Disciplinary Board of the court. As regards the members appointed from the officer class, their independence is not impaired by the fact that they are chosen from a list proposed by the Chief of the General Staff - ultimate appointment lies with the President of the Republic. Moreover, they are guaranteed constitutional protection from external interference and may not be removed by a decision of the executive or the military hierarchy. Finally, they enjoy a four-year term of office and disciplinary matters are dealt with by the Disciplinary Board. The circumstances of this case, concerning a civil claim against the Ministry of Defence, differ significantly from those in Inçal v. Turkey (*Reports* 1998-IV), in which the Court found that a civilian being tried by a court including a military judge could have legitimate doubts about its impartiality.
Inadmissible under Article 6(1) (length): Since the applicants did not join the criminal proceedings as civil parties, their complaint about the length is incompatible *ratione materiae* in that respect. The length of the proceedings in which they claimed compensation (almost 2 years 5 months) is not unreasonable: manifestly ill-founded.
Inadmissible under Article 2: The criminal proceedings, resulting in the conviction of the assailant, and the civil proceedings, resulting in an award of compensation, were sufficient for the State to comply with its procedural obligations under this provision. Moreover, the applicants have not shown that the authorities knew or should have known that there was a risk to G.'s life: manifestly ill-founded.

IMPARTIAL TRIBUNAL
Alleged racial prejudice of jurors: *violation*.

SANDER - United Kingdom (N° 34129/96)
*Judgment 9.5.2000 [Section III]

Facts: During the trial of the applicant, an Asian, one of the jurors wrote a note to the court in which he alleged that at least two of the other jurors had made openly racist remarks and jokes. After discussing the matter with counsel in chambers and hearing submissions in open court, the judge reminded the members of the jury of their oath and requested them to search their consciences overnight and indicate if they were unable to try the case solely on the evidence. The following day, the judge received a letter in which all the jurors, including the one who had made the allegations, refuted the allegations and confirmed their intention to reach a verdict without any racial bias. The judge also received a letter from one of the jurors who explained that he might have made jokes, apologised if any offence had been caused and affirmed that he was in no way racially biased. The judge decided not to discharge the jury, which subsequently convicted the applicant. The applicant's appeal was rejected.
Law: Article 6(1): As with a judge, the subjective impartiality of a juror must be presumed until there is proof to the contrary. It is established that at least one juror made comments that could be understood as jokes about Asians, but this does not on its own amount to evidence of actual bias, and since it was not possible for the judge to question the jurors about the nature and context of the remarks, it has not been established that the court lacked subjective impartiality. As to objective impartiality, the letter from all the jurors cannot on its own discredit the allegations made in the note: firstly, one juror indirectly admitted to having made remarks and jokes, which in the context of court proceedings take on a different hue from those made in a more informal atmosphere; secondly, the fact that the letter was signed by the juror who had made the allegations casts some doubt on its credibility and since his identity was known his position must have been compromised; thirdly, the average person would avoid openly admitting to being racist, especially while on jury service. Moreover, not much weight can be given to the judge's redirection, since an admonition or direction, however clear and forceful, would not change racist views overnight. Thus, the judge's direction could not dispel the reasonable impression and fear of a lack of impartiality. The

judge should have reacted in a more robust manner and by failing to do so he did not provide sufficient guarantees to exclude any objectively justified doubts as to the court's impartiality.
Conclusion: violation (4 votes to 3).
Article 41: The Court considered that there was no causal link between the violation and any alleged damage and the applicant had made no claim in respect of costs and expenses.

Article 6(2)

PRESUMPTION OF INNOCENCE
Test of probability of guilt applied in determining entitlement to compensation following acquittal: *friendly settlement*.

VILBORG YRSA SIGURÐADÓTTIR - Iceland (Nº 32451/96)
Judgment 30.5.2000 [Section 1]

The applicant and her cohabitee, P., were arrested in the course of an investigation in a drug-related case. P. was kept in custody but the applicant was released the next day. She was interrogated again at a later stage and arrested without any court order. The order remanding her in custody was issued the following day. She was released a month afterwards, the detention order having been prolonged. The Supreme Court eventually found P. guilty of drug trafficking and sentenced him to imprisonment. The public prosecutor then issued an indictment against the applicant. However, she was acquitted and subsequently decided to claim compensation for her arrest and detention. Her claims were rejected and she appealed to the Supreme Court, which upheld the decision. The test applied was whether it was more likely that the applicant was guilty than innocent.
The parties have reached a friendly settlement providing for an *ex gratia* payment to the applicant of 1,500,000 kronur (ISK) and payment of 1,800,000 kronur in respect of legal costs. Furthermore, the legislative provision at issue has been repealed.

PRESUMPTION OF INNOCENCE
Use by prosecution of statements made by accused under legal compulsion: *inadmissible*.

STAINES - United Kingdom (N° 41552/98)
Decision 16.5.2000 [Section III]

The applicant, a chartered accountant, was convicted of illegal share dealing practices. The applicant had a meal with another chartered accountant, P., whose firm was involved in a take-over bid of a company. In this context, P. was considered, according to law, a connected person in possession of unpublished price-sensitive information. Shortly after the meal, the applicant advised her father to buy shares in the company which was the subject of the take-over bid. A few years later, inspectors from the Department of Trade and Industry were appointed to investigate share dealings of the company. The applicant voluntarily provided the inspectors with a written statement in which she stated that in the course of their meal P. had disclosed no information which made it possible to deduce which company was being targeted for the take-over bid; she confirmed this during a subsequent informal interview. The applicant was then summoned to a formal interview during which she was obliged under the Financial Services Act 1986 to answer the inspectors' questions under oath; she adhered to the accounts given in her voluntary written and oral statements. At her subsequent trial, the applicant relied on the statements made to the inspectors, including the last one, and did not testify. She was eventually found guilty. The Court of Appeal dismissed her appeal and she was refused leave to appeal to the House of Lords.

Inadmissible under Article 6(1) and (2): The right not incriminate oneself presupposes that the prosecution in a criminal case seeks to prove its case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused. In the instant case, the applicant was obliged under the Financial Services Act 1986 to attend before the inspectors when summoned and to answer questions put to her under oath. However, by that stage, the applicant had already provided unsolicited statements to the inspectors. She was consistent all through her statements in her assertion that no information making it possible to identify the company had been disclosed at the material time. The applicant did not object to the prosecution's reliance on the statements which she had given under oath; on the contrary, she relied on them to establish in the eyes of the jury an unwavering line of defence to the charges brought against her. Testimony obtained under compulsion which appears on its face to be of a non-incriminating nature, such as exculpatory remarks or mere information on questions of facts, may later be employed in criminal proceedings in support of the prosecution case, for example to contradict or cast doubt upon other statements of the accused. However, it does not appear that the prosecution relied on the statements which the applicant gave to the inspectors under oath in a manner calculated to incriminate her. On the contrary, these statements were treated as one element of an overall defence case and the prosecution attempted to expose the weakness of the applicant's line of defence. It did so without any unjustified recourse to evidence which could be said to have been obtained in defiance of the applicant's will or was at variance with her right to be presumed innocent: manifestly ill-founded.

Article 6(3)

RIGHTS OF THE DEFENCE
Failure to inform an accused's curator of criminal proceedings against him, thus depriving him of the possibility of organising his defence: *admissible*.

VAUDELLE - France (N° 35683/97)
Decision 23.5.2000 [Section III]

In March 1995 the first applicant was placed under the supervisory guardianship of his son, the second applicant, following a judgment in which it had been found that on account of the deterioration of his mental faculties he had to be represented and assisted in his civil transactions. One month earlier a complaint had been lodged against him for indecent assaults on minors. He did not respond to two summonses, issued at the prosecution's request, requiring him to undergo a psychiatric examination. Nor did he attend the hearing fixed by the *tribunal de grande instance*, even though he had acknowledged receipt of the summons addressed to him in person. He was not represented at the hearing. The *tribunal de grande instance* sentenced him to a term of imprisonment. The judgment was served on him at a later date. The second applicant then asserted that he had not been informed of his father's arrest and conviction until the day when the latter began to serve his sentence, all the summonses having been sent directly to the first applicant only. He complained unsuccessfully to the public prosecutor's office, arguing that his father had not been in a position to conduct his own defence and that he, the second applicant, should have been informed of events in the proceedings so that he could organise his father's defence. The guardianship judge, to whom he had also applied, explained that the supervisory guardianship under which the first applicant had been placed was a system of assistance only which did not entail an obligation to inform the person appointed as supervisory guardian of criminal proceedings against the person under his supervisory guardianship.
Admissible under Article 6(1) and (3)(a), (b) and (d): As the person directly concerned by the act or omission complained of, the first applicant could validly claim to be a victim in that he

alleged that he had not the means needed to organise his defence at his disposal because he had been placed under supervisory guardianship. The second applicant, however, who had not been a party to the criminal proceedings, but only the supervisory guardian of his father, the defendant in those proceedings, could not claim to be a victim.

Article 6(3)(c)

DEFENCE THROUGH LEGAL ASSISTANCE
Refusal to allow representation of an absent appellant: *violation*.

VAN PELT - France (N° 31070/96)
*Judgment 23.5.2000 [Section III]

Facts: In 1987, in connection with an international drug trafficking inquiry, the applicant was extradited to France, where he was charged with a drugs offence. A major judicial investigation, covering a group of people of different nationalities and countries of resiedence, was conducted. This required thirteen international requests for assistance and the questioning of the various accused on 25 occasions. In 1990, at the end of the judicial investigation, the applicant was committed for trial in the *tribunal de grande instance*, which sentenced him to 18 years' imprisonment and ordered his permanent exclusion from French territory. In 1991, the court of appeal acquitted him after allowing him the benefit of the doubt. In 1992, on appeal by the principal public prosecutor, the Court of Cassation quashed the court of appeal's judgment and referred the case to a different court of appeal. The case was adjourned several times so that the applicant could be summoned and served with the judgment of the Court of Cassation. He was nevertheless able to appear, assisted by his lawyers, and file an application for witnesses to be heard and for further investigative measures. When the proceedings were resumed, in December 1996, the applicant's lawyers produced two medical certificates attesting to the fact that the applicant had just been taken into hospital in the Netherlands and was accordingly unable to appear in court. They therefore requested an adjournment. The assistant principal public prosecutor and one of the lawyers then made oral submissions on the application for an adjournment. It does not appear that the applicant's lawyers were able to make submissions on the merits of the case at that hearing. In January 1994 the court of appeal refused the application for an adjournment and upheld the applicant's conviction at first instance. A warrant was issued for his arrest. An appeal on points of law by the applicant against the above decision was dismissed by the Court of Cassation on the ground that the applicant, who had not complied with the arrest warrant, had not been able to furnish evidence of any circumstance which made it absolutely impossible for him to surrender to custody at the appropriate time.
Law: Article 6(1) and (3): With regard to the fact that the applicant's lawyers had been unable to argue his case in his absence, it was of capital importance that a defendant should appear, both because of his right to a hearing and because of the need to verify the accuracy of his statements and compare them with those of the victim, whose interests had to be protected, and of the witnesses; the legislature therefore had to be able to discourage unjustified absences (Poitrimol judgment of 23 November 1993). However, it was also of crucial importance for the fairness of the criminal justice system that the accused be adequately defended, both at first instance and on appeal. It was for the courts to ensure that counsel who attended trial for the apparent purpose of defending the accused in his absence was given the opportunity to do so (Lala and Pelladoah judgments of 22 September 1994). Moreover, the right of everyone charged with a criminal offence to be effectively defended by a lawyer was one of the basic features of a fair trial. An accused did not lose this right merely on account of not attending a court hearing. Even if the legislature had to be able to discourage unjustified absences, it could not penalise them by creating exceptions to the right to legal assistance

(Van Geyseghem judgment of 21 January 1999). In the present case the applicant's lawyers had been able to present argument only on the application for an adjournment, not on the merits.
Conclusion: violation (unanimously).
Article 6(1): With regard to the inadmissibility of the applicant's appeal on points of law, the Government had submitted at the hearing that since the Court of Cassation had departed from its case-law on the basis of which the applicant's appeal, among others, had been ruled inadmissible, there was no longer any point in discussing the issue. It was clear from the Guérin v. France judgment that, where an appeal on points of law was declared inadmissible solely because the appellant had not surrendered to custody pursuant to the judicial decision challenged in the appeal, that ruling compelled the appellant to subject himself in advance to the deprivation of liberty resulting from the impugned decision, although it could not be considered final until the appeal had been decided or the time allowed for lodging an appeal had expired. This impaired the right of appeal by imposing a disproportionate burden on the appellant, thus upsetting the fair balance that had to be struck between the legitimate concern to ensure that judicial decisions were enforced, on the one hand, and the right of access to the Court of Cassation and exercise of the rights of the defence on the other. The applicant had therefore suffered an excessive restriction of his right of access to a court when he lost his right to appeal because he had not complied with the warrant for his arrest.
Conclusion: violation (unanimously).
Article 41: the Court awarded the applicant a certain sum for costs and expenses.

Article 6(3)(d)

EXAMINATION OF WITNESSES
Failure to appear of key witness, a foreign national living abroad: *inadmissible*.

UBACH MORTES - Andorra (N° 46253/99)
Decision 4.5.2000 [Section IV]
(See Article 6(1), above).

Article 6(3)(e)

FREE ASSISTANCE OF INTERPRETER
Refusal to provide free assistance of interpreter: *communicated*.

GUNGOR - Germany (N° 31540/96)
[Section IV]

A judicial investigation was opened in respect of the applicant, a Turkish national, who was suspected of aiding and abetting drug trafficking. As the applicant did not speak German, his lawyer asked the president of the district court to appoint an interpreter whose fees should be borne by the State to assist him when he interviewed the applicant with a view to preparing his defence. That application was refused on the ground that the State was under a duty to appoint an interpreter and bear the resulting costs only where the interviews between the defendant and a lawyer appointed under the legal aid scheme made this necessary. Since the applicant had been able to confer with the lawyer of his choice, an interpreter to be remunerated by the authorities could not be appointed. Moreover, the applicant had of his own accord done without the assistance of an interpreter when the warrant for his arrest was read out to him, and this, according to the Government, tended to prove that he understood German. The applicant appealed unsuccessfully. He then appealed to the Federal Constitutional Court, which decided not to entertain his appeal.
Communicated under Article 6(3)(b), (c) and (e).

ARTICLE 8

PRIVATE LIFE
Storing of personal data in security files: *violation*.

ROTARU - Romania
Judgment 4.5.2000 [Grand Chamber]
(See Appendix).

RESPECT FOR PRIVATE LIFE
Refusal by courts to order reimbursement of costs of sex change: *communicated*.

VAN KÜCK - Germany (N° 35968/97)
[Section IV]

The applicant, a male to female transsexual, brought an action against the health insurance company to which she was affiliated and claimed reimbursement of the pharmaceutical expenses of her hormone treatment. She also requested a declaratory judgment to the effect that the defendant company would be liable to reimburse 50% of the expenses of the gender reassignment operations and further hormone treatment. In the light of medical evidence, the Regional Court dismissed the applicant's claims, considering notably that hormone treatment and gender reassignment could not be deemed a necessary medical treatment in her case. She unsuccessfully appealed against this decision to the Court of Appeal which found that she had caused her disease deliberately. The court relied on medical evidence gathered during proceedings concerning her forenames and drew the conclusion that the applicant had decided to become a woman as a result of her feeling of inferiority towards other men and had forced this evolution by taking female hormones without a prescription. The Federal Constitutional Court refused to admit the applicant's constitutional complaint.
Communicated under Articles 6(1), 8 and 14.

FAMILY LIFE
Impossibility for adopted child to discover her origins, due to the principle of secrecy of birth: *admissible*.

ODIEVRE - France (N° 42326/98)
[Section III]

The applicant, who was born in 1965, was abandoned to the social services by her mother, who asked for the relationship to be kept secret. She was then taken into care, with the official status of ward of the nation (*pupille de la nation*), before being adopted. The applicant has tried to find out who her parents are. The only information about them she has been able to obtain does not identify them, but she has discovered that she has siblings.
Communicated under Articles 8 and 14.

HOME
Proposed transfer of villagers belonging to a minority to another municipality due to expansion of coal mine: *inadmissible*.

NOACK and others - Germany (N°46346/99)
Decision 25.5.2000 [Section IV]

The applicants are residents of a municipality which is due to be dissolved to permit the extension of a lignite (brown coal) mine; it is therefore planned to move them eventually to a neighbouring municipality. They belong to a Slav minority, the Sorbs, who make up one-third of the population of the municipality where they live. In 1994 the *Land* mines authority approved an outline plan for the continued extraction of lignite under which the residents of the municipality would have to be transferred. An appeal to the administrative court against the above decision, to which some of the applicants subscribed, was unsuccessful. A basic law on the subject enacted by the *Land* ("the Lignite Act") subsequently came into force. This made express provision for the municipality's dissolution. Before the Lignite Act was adopted the Environment Committee of the *Land* parliament had listened to what the representatives of associations and interest groups had had to say about the bill. Members of the *Land* parliament asked the *Land* Constitutional Court to rule on the bill's constitutionality. In concurrent proceedings two of the applicants lodged a constitutional appeal. The Constitutional Court held that parliament's decision to dissolve the applicants' municipality to make it possible to operate a mine was compatible with those provisions of the *Land*'s constitution which guaranteed the rights of the Sorbian minority and in particular with protection of their homeland. Compensatory measures had been provided for and the State's determination to protect the original homeland of the Sorbian minority had been weighed against the objectives of developing employment opportunities and energy supplies. The applicants' appeal was dismissed on those grounds. The municipality's residents were consulted about the municipality they wished to be transferred to. By a decree of the *Land* government the operating plan acquired binding force. Negotiations then began with the residents who were to be transferred so that they could be offered land in the municipality they had chosen. All the costs of the transfer were to be covered by the company operating the mine. By a second implementing decree the *Land* government approved that part of the plan which concerned the transfer of the municipality's residents. It was provided that the life of the municipality would be preserved during the transfer and that the conservation and development of Sorbian culture would be encouraged.
Inadmissible under Article 8: the Convention did not in general guarantee specific rights to minorities. Enjoyment of rights and privileges had to be secured without any distinctions, particularly one based on membership of a national minority. Under Article 8, however, the lifestyle of a minority could, in principle, be covered by the protection of private and family life and one's home. Be that as it may, and irrespective of the protection of minorities, the transfer of the residents from their municipality to another directly affected their private lives and their homes. In the present case the Lignite Act and the implementing decrees promulgated by the *Land* government, which made provision for the applicants' transfer, constituted interference with their rights under Article 8. That interference, which was in accordance with the law, pursued the legitimate aim of protecting the country's economic well-being. Regard being had to the wide margin of appreciation left to States in the matter of land-use changes, the Court's task was to determine whether the grounds put forward in justification of the interference were relevant and whether it was proportionate to the aim pursued, while remaining mindful of the fact that the transfer of the municipality's residents affected a minority. The process which had led up to the decision to push the extraction of lignite into the municipality's territory had taken a number of years and had been marked by a broad debate in the *Land* parliament and among leading public figures in general. The *Land* parliament's Environment Committee, for example, had listened to what the representatives of associations and interest groups had had to say about the bill which had eventually passed into law as the Lignite Act. Moreover, the applicants had been able to challenge the

implementing decrees and lodge an appeal concerning the constitutionality of the Lignite Act with the *Land* Constitutional Court. With regard to protection of the rights of the Sorbian minority, the Constitutional Court had carefully considered in its judgment whether parliament had duly taken into account the constitutional provisions guaranteeing the minority's rights, whether it had weighed the aim of the Act against their other fundamental rights and whether the result was not disproportionate. A decisive factor was that the residents were to be transferred to a municipality about twenty kilometres from their own, situated in the minority's homeland. Moreover, the ancillary measures made provision for preserving and fostering the village community and Sorbian cultural identity. In the final analysis, while the interference had been distressing for the applicants, it had not been disproportionate to the legitimate aim pursued, regard being had to the State's margin of appreciation in the matter: manifestly ill-founded.
Inadmissible under Article 1 of Protocol No. 1: Any interference, including interference arising from compulsory purchase for the purpose of carrying out large-scale public works projects, had to maintain a fair balance between the requirements of the general interest and protection of the fundamental rights of the individual. In the present case the Lignite Act made provision for compensation to be offered and required the company operating the mine to pay all the costs of transfer. However, the proceedings concerning the transfers of individual landholdings were only at the initial stage and the amounts of compensation payable or the nature of the land being offered in exchange had not yet been clearly defined. Consequently, domestic remedies had not yet been exhausted regarding the complaint under Article 1 of Protocol No. 1.

ARTICLE 10

FREEDOM OF EXPRESSION
Defamation of cosmetic surgeon: *violation*.

BERGENS TIDENDE and others - Norway (N° 26132/95)
*Judgment 2.5.2000 [Section III]

Facts: The applicants are a newspaper, its former editor and one of its journalists. In March 1986 the newspaper published an article on the work of a cosmetic surgeon, R., and the advantages of cosmetic surgery. It was then contacted by some women who had been operated on by R. and had been dissatisfied. In May 1986 the newspaper published another article about three women who claimed to have been disfigured by operations performed by R. and who also complained about the poor after-care. An article by another doctor and an interview with R., stressing the risks of cosmetic surgery, were also printed, and further articles were subsequently published, including some in which women stated that they were satisfied with the work of R. A number of former patients submitted administrative complaints, but a medical expert concluded that there was no reason to criticise the treatment provided by R. and no further action was taken. However, as a result of the media attention R. had fewer patients and eventually had to close his clinic. He had in the meantime brought defamation proceedings against the applicants. He was successful at first instance, but the High Court found in favour of the applicants. R. appealed to the Supreme Court, which found in his favour and awarded substantial damages against the applicants. It considered that there was a lack of balance in the reporting and that R. had not been given any proper opportunity to defend himself.
Law: Article 10 - There was an interference which was prescribed by law and pursued the legitimate aim of protecting the rights and reputation of others. As to necessity, the articles concerned an important aspect of human health and thus raised serious issues affecting the public interest, and the Court could not accept the submission that the grievances of a few

patients were private matters between patient and surgeon, nor could it agree that the fact the articles were not part of an ongoing general debate on cosmetic surgery meant that they did not relate to matters of general public interest. Moreover, the articles must be seen against the background of the earlier article on R. and cosmetic surgery. Article 10 does not guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern: "duties and responsibilities" also apply to the press, and assume particular significance when there is question of attacking the reputation of private individuals. Journalists must act in good faith in order to provide accurate and reliable information. In this case, the criticisms of R. were in fact found to a large extent to be justified by the national courts: the High Court found that the women were credible and that the newspaper report gave an accurate account of their experiences, and the Supreme Court considered itself bound by this assessment. The difference of view between the two courts related to whether the unsuccessful operations resulted from a lack of surgical skill, and while the Supreme Court's view was one which was reasonably open to it, the Court's function is to determine whether the measures it applied were proportionate. None of the articles actually stated that the unsatisfactory results were attributable to negligent surgery, the Supreme Court deriving this meaning from their general tenor; rather, the common theme was the lack of proper post-surgical treatment to remedy the results. Although the articles did not make it explicitly clear that the accounts were not to be taken as suggesting a lack of surgical skills, it is not for the Court to say what techniques journalists should use, and the Court could not accept that the reporting showed a lack of proper balance. The newspaper had printed another article highlighting the risks of cosmetic surgery and also an interview with R., as well as subsequent articles defending him. The Court could not agree that he had been denied the opportunity of properly defending himself. The articles had serious consequences for him, but given the justified criticisms of his post-surgical care it was inevitable that substantial damage would in any event be done to his professional reputation. His undoubted interest in protecting that reputation was not sufficient to outweigh the important public interest in the freedom of the press to impart information on matters of legitimate public concern.
Conclusion: violation (unanimous).
Article 41 - The Court awarded the applicants the total amount of the payments they had been ordered to make to R. It also made an award in respect of costs.

FREEDOM OF EXPRESSION
Unavailability of legal aid for defamation actions: *communicated*.

McVICAR - United Kingdom (N° 46311/99)
[Section III]
(See Article 6(1) [civil], above).

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

<u>THOMA - Luxembourg</u> (N° 38432/97)
Decision [Section II]

A German-language daily newspaper published an article by B. about reafforestation techniques used after storms had devastated part of the national woodlands. Among other things, the article suggested that all but one of the civil servants from the Water and Forestry Commission were corruptible. The applicant, who was a radio-show presenter and had previously denounced serious problems in the reafforestation sector, decided to quote in one of his shows extracts, in the Luxemburgish language, from B.'s article, which he described as "explosive". Sixty-three civil servants from the authority concerned issued defamation proceedings against the applicant. They complained that in quoting the accusations made in the article he had passed them off as his own and had thus informed public opinion that all forest wardens and engineers were, with one exception, corruptible. The court delivered 63 judgments in which it awarded each of the plaintiffs one franc in nominal damages and ordered the applicant to pay costs and expenses. It found that the applicant had suggested without evidence and without qualifying his statements that all the plaintiffs were corruptible; he had thus gone beyond the bounds of his right to impart reliable information. The applicant appealed and sought joinder of the cases. The court of appeal made an order for joinder but upheld the judgments, finding that the applicant had not distanced himself from the quoted passages and therefore could not seek to escape liability by alleging that he had merely quoted from B.'s article. His appeals to the Court of Cassation were dismissed. The applicant complains, *inter alia*, that there has been a violation of his right to freedom of expression and contends that the Court of Cassation is not an impartial court as habitually two (three in the instant case) of its five judges are from the court of appeal and it is called upon to review and, if appropriate, overrule decisions delivered by judges with whom it works.
Admissible under Article 10.
Inadmissible under Article 6(1): With regard to the alleged impartiality of the Court of Cassation, the law on the organisation of the judiciary, drafted with the size of the country and the limited number of cassation cases in mind, contains provisions aimed at guaranteeing the objective impartiality of the judges in the Court of Cassation. Furthermore, the fact that those judges are required to review judgments given by other judges with whom they work regularly or occasionally or that they may have known about a case before it was referred to them, since the Court of Appeal and the Court of Cassation are grouped together in the same body, cannot justify fears as to the court's impartiality: manifestly ill-founded.

FREEDOM OF EXPRESSION
Election declared void, the elected candidate having accepted an interview shortly before it: *communicated*.

<u>LOVERIDGE - United Kingdom</u> (N° 39641/98)
[Section III]

The applicant stood as a candidate in a local authority by-election. Shortly before the election, he took part in an interview which was later broadcast on both radio and television. The interview was made in relation to a waste tip which fell within the "relevant electoral area" for the purposes of section 93 of the Representation of the People Act 1983. The journalist responsible for the interview was unaware of the pending election, and no mention was made of the by-election, the applicant's candidacy or his party affiliation. Both the interview and the broadcasts took place after the latest time for delivery of nomination papers and without the consent of the other nominated candidate, in violation of section 93 of the 1983 Act. The

applicant was elected by a majority of one vote. The election was later declared void pursuant to section 93(1)(b) of the 1983 Act; it was held proven that the applicant had consented to the broadcast and that one of the reasons for taking part in it was to promote his election. As a consequence, the applicant lost the right to vote and to be a member of the local authority for five years. His applications for leave to apply for judicial review were rejected.
Communicated under Article 10.

ARTICLE 11

FREEDOM OF ASSOCIATION
Forfeiture by Members of Parliament of their seats following the dissolution of their party by the Constitutional Court: *admissible*.

SADAK and others - Turkey (N° 25144/94)
TOGUÇ - Turkey (N° 26149/95)
GÜNES - Turkey (N° 26150/95)
KILINÇ - Turkey (N° 26151/95)
AYDAR - Turkey (N° 26152/95)
YIĞIT - Turkey (N° 26153/95)
KARTAL - Turkey (N° 26154/95)
SADAK - Turkey (N° 27100/95)
YURTTAŞ - Turkey (N° 27101/95)
Decision 30.5.2000 [Section III]

The applicants are former members of the Turkish National Assembly and members of the Democracy Party (DEP – *Demokrasi partisi*). The DEP was founded in May 1993. In November of the same year the Principal Public Prosecutor asked the Constitutional Court to dissolve it. In March 1994, on an application by the Principal Public Prosecutor of the competent National Security Court, the National Assembly lifted the applicants' parliamentary immunity. All the applicants were arrested and taken into police custody when they left the parliament building, apart from two who remained inside under the protection of the Speaker. In June 1994 the Constitutional Court ordered the DEP's dissolution for undermining the territorial integrity and unity of the State and forfeiture by all the applicants of their Assembly seats. In July 1994 the Principal Public Prosecutor filed written submissions in which he accused the applicants of separatism and of undermining the integrity of the State. The National Security Court sentenced the applicants to various terms of imprisonment ranging from three to fifteen years. On appeal by the applicants and the Principal Public Prosecutor, the Court of Cassation quashed the convictions of two of the applicants (Türk and Yurttaş) and upheld those of the others.
Admissible under Articles 6, 7, 9, 10, 11 and 14 of the Convention and Articles 1 and 3 of Protocol No. 1.

ARTICLE 30

RELINQUISHMENT OF JURISDICTION BY A CHAMBER
IN FAVOUR OF THE GRAND CHAMBER
Non-notification of submissions of the *commissaire du Gouvernement*: *relinquishment.*

<u>KRESS - France</u> (N°39594/98)
[Section III] (JPC/CR)

While in hospital in Strasbourg, after undergoing an operation under a general anaesthetic, the applicant suffered vascular complications resulting in ninety per cent disability and a shoulder burn. On an application for the appointment of an expert; the President of the Strasbourg Administrative Court appointed a doctor who found no medical malpractice. In 1987 the applicant lodged an appeal with the Administrative Court for compensation for damage caused by the hospital. In May 1990 the Administrative Court ordered a new expert opinion and in September 1991 the Court delivered its opinion in which it ordered compensation only for the damage resulting from the shoulder burn. In April 1993 the Nancy Administrative Court of Appeal dismissed the applicant's appeal. She lodged an appeal on points of law with the *Conseil d'Etat*. She had no knowledge of the submissions of the *commissaire du Gouvernement* before he delivered them at the hearing, at a time when the applicant no longer had the right to address the court. She nevertheless made a final point in a note sent to the court while it was deliberating and before it reached a decision. The *Conseil d'Etat* rejected the appeal in its decision of 30 July 1997.

ARTICLE 34

VICTIM
Partial reparation in respect of violation.

<u>ROTARU - Romania</u>
Judgment 4.5.2000 [Grand Chamber]
(See Appendix).

VICTIM
Failure to inform an accused's curator of criminal proceedings against him, thus depriving him of the possibility of organising his defence: *admissible*.

<u>VAUDELLE - France</u> (N° 35683/97)
Decision 23.5.2000 [Section III]
(See Article 6(3), above).

VICTIM
Relatives of deceased person having received compensation in settlement of civil claim: *inadmissible*.

POWELL - United Kingdom (N° 45305/99)
Decision 4.5.2000 [Section III]

The applicants' son died as a result of medical negligence resulting from a lack of co-ordination among the various doctors treating his condition both as regards their diagnoses and their approach to his treatment. The applicants initiated proceedings before the Medical Services Committee, an internal professional disciplinary body, in order to establish the doctors' responsibility for their son's death and to have a finding that there had been a cover-up of the exact circumstances surrounding his death. Only one of the accused doctors was found to have failed to comply with the terms of her service in treating the child. The applicants appealed to a higher health authority, arguing that the doctors had wilfully falsified their son's medical records after his death in order to shield themselves from liability for their clinical errors. The applicants, believing their chances of obtaining justice were slim, decided to withdraw their appeal. A two-year police inquiry into the cover-up allegations was carried out. The conclusion reached was that there was insufficient evidence to bring charges against the doctors for attempting to pervert the course of justice. The applicants introduced civil proceedings against the doctors for negligence and post-death misconduct for having falsified their son's medical reports. The Health Authority admitted liability on the basis of failure to diagnose and treat the child's disease and agreed to pay the applicants compensation. The applicants accepted the payment and the action against the doctors in respect of the alleged medical negligence was consequently discontinued. The applicants maintained their claim for damages against the doctors in respect of the alleged cover-up and falsification of their son's medical records. However, the High Court struck out the statement of claims as showing no cause of action. The applicants' subsequent appeal was dismissed by the Court of Appeal, and their application for leave to appeal to the House of Lords was rejected.
Inadmissible under Article 2: Where a Contracting State has made adequate provision for securing high professional standards among health professionals and the protection of the lives of patients, matters such as an error of judgement on the part of a health professional or negligent co-ordination among health professionals in the treatment of a particular patient cannot be sufficient of themselves to call a Contracting State to account from the standpoint of its positive obligations under Article 2. The procedural obligation in issue extends to the need for an effective independent system for establishing the cause of death of an individual under the care and responsibility of health professionals and any liability on the part of the latter. The examination of the applicants' complaint was limited under this Article to the events leading to the death of their son. Given the applicants' decision to withdraw their appeal to the higher health authority, it could not be speculated on whether the appeal would have provided them with a full account of the doctors' handling of their son's condition. By withdrawing their appeal, they closed one of the options which may have uncovered the extent of the lack of co-ordination among the doctors. Furthermore, the applicants did not pursue claims against the doctors themselves, which would have enabled them to have a full adversarial hearing, to subject the doctors to cross-examination under oath and obtain disclosure of all documents relevant to their claim. Therefore, it was not open to them to complain that there was no effective investigation into their son's death. Finally, where a relative of a deceased person accepts compensation in settlement of a civil claim based on medical negligence he or she is in principle no longer able to claim to be a victim in respect of the circumstances surrounding the treatment administered to the deceased person or with regard to the investigation carried out into his or her death. Thus, the applicants could no longer claim to be victims: incompatible *ratione personae.*
Inadmissible under Article 8: Even assuming this provision applies to the circumstances and can be considered to denote a positive obligation on the authorities to make a full, frank and complete disclosure of the medical records of a deceased child to its parents, the applicants

denied themselves the possibility of confirming their concerns about the integrity of the medical records by withdrawing their appeal and then by settling their civil action in negligence against the health authorities. A civil action in particular would have offered them a realistic chance of subjecting the doctors to cross-examination under oath and of requesting discovery of all the original records compiled at the material time. They could thus no longer claim to be victims: incompatible *ratione personae*.
Inadmissible under Article 6(1): The applicants contended before the domestic courts that they had a right to compensation on account of the damage they personally had suffered as a result of the alleged cover-up by the doctors. However, the statement of claims was struck out as not giving rise to a cause of action, this decision being confirmed on appeal. The Court of Appeal found that the applicants had not established that they were in a relation of proximity with the doctors or that the harm which they had sustained was reasonably foreseeable. Therefore, no action in negligence could lie against the doctors under domestic law. The applicants could not invoke an arguable right for the purposes of the applicability of Article 6. The applicants' submission that the outcome of the decision of the domestic courts was to bestow an immunity on doctors who deliberately mislead the relatives of a deceased patient about the circumstances in which the latter died was untenable. Doctors and health authorities are liable to account for their acts and omissions in the context of civil actions in negligence and deliberate falsification of documents is punishable under domestic law. Although the applicants were critical of the way the police investigations were handled, the evidence they adduced to support their claim was insufficient. The circumstances of the case were to be distinguished from those which led the Court to find a violation of Article 6 in its Osman v. the United Kingdom judgment. In the instant case, there was no question of the domestic courts bestowing an immunity on the doctors for culpable behaviour: manifestly ill-founded.

ARTICLE 35(1)

EXHAUSTION OF DOMESTIC REMEDIES

Members of association which represented throughout the whole domestic proceedings presenting their case to the Court as individuals: *inadmissible*.

LOULMET, FOUSSARD, FABRE, FREBEAU and SARRAZAC - France
(N° 51609/99, 51615/99, 51618/99, 51620/99 and 51625/99)
Decision 16.5.2000 [Section III]

The applicants were formerly members of an association set up to challenge a decree of May 1994 in which the *Conseil d'Etat* had declared that the construction of a new motorway section would be in the public interest. Each of the applicants was the owner of property adjoining the line of the future motorway. In June 1994 the association and a joint committee formed by a number of municipalities to work for improvement of the road network and protection of the environment lodged an application to have the decree set aside. The members of the association had unanimously agreed not to submit a collection of individual applications but to support a common one. In October 1998 the *Conseil d'Etat* dismissed the application to set aside. The association, which had been set up for the sole purpose of bringing those proceedings, was wound up after the *Conseil d'Etat* had given judgment.
Inadmissible under Article 6(1): Only the association had lodged an application to set aside the decree in issue, and the applicants had not intervened at all in the proceedings before the *Conseil d'Etat*. Consequently, they could not be considered to have exhausted the remedies available to them under French law. Furthermore, the applicants had asserted that the association could not apply to the Court itself because it had ceased its activities when the *Conseil d'Etat* had given judgment. That argument could not be validly put forward to justify applications to the Court by individual applicants who had been neither parties to nor

interveners in the domestic proceedings, since it was precisely by the decision of the association's members, including the applicants, that the association had ceased its activities. Moreover, the applicants had not sought compensation in the domestic courts for the potential loss of value of their properties as they would have been entitled to do on the ground of abnormal and special damage. The applicants had therefore not exhausted domestic remedies on that point: non-exhaustion.

ARTICLE 41

JUST SATISFACTION
Agreement between the parties: *striking out of the list*.

MIRAGALL ESCOLANO and others - Spain (N° 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41487/98 and 41509/98)
Judgment 25.5.2000 [Section IV]

In a judgment of 25 January 2000 (see Information Note No. 14) the Court held that on account of the particularly inflexible interpretation of a procedural rule by the domestic courts the applicants had been deprived of the right of access to a court with a view to obtaining adjudication of their compensation claims following the annulment of a ministerial decree reducing the profit margins of pharmacists in Spain, and that there had accordingly been a violation of Article 6(1). As the question of application of Article 41 of the Convention was not ready for decision as regards pecuniary damage, the Court reserved that part of the question and invited the Government to submit to it, within three months, its written observations on the issue and asked the parties to inform it of any agreement they might reach. The parties subsequently reached a friendly settlement entailing payment to the applicants of the following sums in compensation:

Mr Juan MIRAGALL ESCOLANO	3 204 629 pesetas
Mrs María Cinta ANDREU ROCAMORA	3 166 977 pesetas
Mrs María Victoria BONET VILAR	1 020 016 pesetas
Mr Valentín GÓMEZ LÓPEZ	1 265 893 pesetas
Mr José Antonio SORIANO RAMS	1 203 846 pesetas
Mr Francisco MONTFORTE SANCHO	2 236 887 pesetas
Mrs María Dolores GARCÍA MORENO	1 772 678 pesetas
Mr José ROIG ESPERT	1 759 173 pesetas
Mr Salvador ROIG ESPERT	6 999 318 pesetas
Mrs Ana María ICARDO GARCÍA	983 053 pesetas

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. 15):

THERY - France (N° 33989/96)
Judgment 1.2.2000 [Section III]

MAZUREK - France (N° 34406/97)
Judgment 1.2.2000 [Section III]

CAPOCCIA - Italy (Nº 41802/98)
Judgment 8.2.2000 [Section I]

PUPILLO - Italy (Nº 41803/98)
Judgment 8.2.2000 [Section I]

MONTI - Italy (Nº 41815/98)
Judgment 8.2.2000 [Section I]

A.B. - Italy (Nº 41809/98)
Judgment 8.2.2000 [Section I]

MOSCA - Italy (Nº 41810/98)
Judgment 8.2.2000 [Section I]

STEFANELLI - San Marino (N°35396/97)
Judgment 8.2.2000 [Section II]

PARADISO - Italy (Nº 41816/98)
Judgment 8.2.2000 [Section IV]

CALIRI - Italy (Nº 41817/98)
Judgment 8.2.2000 [Section IV]

KURT NIELSEN - Denmark (Nº 33488/96)
Judgment 15.2.2000 [Section II]

FUENTES BOBO - Spain (Nº 39293/98)
Judgment 29.2.2000 [Section IV]

FERNANDES MAGRO - Portugal (Nº 36997/97)
Judgment 29.2.2000 [Section IV]

Article 44(2)(c)

On 17 May 2000 the Panel of the Grand Chamber rejected a request for revision of the following judgment, which has consequently become final:

SLIMANE-KAÏD - France (N° 29507/95)
Judgment 25.1.2000 [Section III]

Facts: The applicant was the director of two public limited companies which entered into contractual relations with a third enterprise, the IVECO company. The latter made a complaint and the applicant was prosecuted, notably for fraud causing losses to IVECO. The Regional Criminal Court, while finding the applicant guilty of various offences, found IVECO's application to join the proceedings as a civil party inadmissible on the ground that the applicant was under receivership. The decision of inadmissibility was upheld on appeal but the Criminal Division of the Court of Cassation overturned that part of the decision. The Court of Cassation referred the case back to a second court of appeal which found IVECO's application admissible and ordered the applicant to pay IVECO over twenty million French francs. An appeal on points of law against that decision was rejected by the Criminal Division. The applicant complains that during the course of the second set of proceedings before the Court of Cassation, neither the judge rapporteur's report nor the *avocat général*'s conclusions were communicated to him before the hearing.
Law: Article 6(1) - In the Reinhardt and Slimane-Kaïd v. France (DR 1998-II) judgment, the Court found a violation of Article 6 on the basis of the same complaints - in that case regarding the first appeal on points of law and the criminal part of the proceedings. The Court held that communication of the judge rapporteur's report and draft judgment to the *avocat général* only, in the light of the influence that the latter could have over the former, created an imbalance to the detriment of the applicants which was incompatible with the rule of fair trial. The Court moreover criticised the fact that the *avocat général's* conclusions were not communicated to the applicants. The Court found that there appeared to be no development in the proceedings in the Criminal Division and therefore found no grounds to depart from the conclusions it had reached in the above-mentioned judgment.
Conclusion : Violation (unanimous).
Article 41 - The applicant claimed reimbursement of the sum he was ordered to pay to the civil party. The Court noted that it was not its task to speculate as to what the outcome would have been of proceedings which complied with the provisions of Article 6. It also noted that a causal link between the alleged damage and a violation had not been established. As to the non-pecuniary damage suffered by the applicant, the Court's finding of a violation in itself constituted just satisfaction.

ARTICLE 1 OF PROTOCOL No. 1

POSITIVE OBLIGATIONS

Alleged failure of authorities to indicate necessary steps to be taken to make a building comply with anti-seismic regulations: *inadmissible*.

BIELECTRIC SRL - Italy (N° 36811/97)
Decision 4.5.2000 [Section II]

In 1983, the applicant company commissioned the construction of a factory building from another company. A number of defects appeared in the building in the course of the works, which the applicant company reported to the competent local authorities. Intricate

administrative procedures and judicial proceedings have started from that point. As regards such issues, the regional authorities are empowered to ensure that new constructions comply with the anti-seismic legislation, while the municipal authorities are competent to ensure that the general rules on public safety are not infringed. Accordingly, it is for the regional authorities to indicate in case of defects contrary to the anti-seismic legislation what improvements need to be made so that standards set by the legislation be met. In the instant case, the municipal authorities found the building to be dangerous and unfit for use and warned the applicant company that the works had to be stopped until all identified defects had been rectified; they have maintained their initial opinion since then. On the other hand, the regional authorities affirmed on several occasions that the faults pertaining to the building were merely aesthetic, only minor formal violations having occurred. The applicant company alleged that as a result of these contradictory opinions it could not resume its normal activity and make use of the building for over ten years. The applicant company argued that it never obtained any indications from the regional authorities as regards the steps to be taken in order to make the building comply with anti-seismic regulations.
Inadmissible under Article 1 of Protocol N° 1: It was always the applicant company which took the initiative of raising the issue of non-compliance of the building with the anti-seismic legislation. The regional authorities never stated that the building was not in compliance with the aforementioned legislation, except for minor formal breaches. On no occasion did the regional authorities prevent the applicant company from using the building or starting its manufacturing activities. However, the applicant company complained about the lack of action of the Region, i.e. that it failed to indicate the steps to be taken to meet the requirements of the anti-seismic legislation. A State may be found to have positive obligations where there is a direct and immediate link between the measures sought by an applicant and the latter's enjoyment of his possessions. In the instant case, the applicant company failed to prove that such a link existed. Admittedly, the applicant company could have carried out the consolidation works itself and consequently start its manufacturing activity with no further delay. Considering that the Region did not take any measures with a view to preventing the applicant company from using the building, the existence of violations of the anti-seismic legislation was a matter between the applicant company and the building company. The applicant failed to bring the issue before the first instance courts, and as a result the upper courts rejected it. Overall, it could not be said that Region was responsible for any interference with the company's right to peaceful enjoyment of its possessions, nor could any positive obligations be said to be incumbent on the Region. Numerous orders delivered by the municipal authorities prevented the applicant company from using the building. They amounted to control of the use of property and had the legitimate aim of public safety in the general interest. The adaptations needed in order to meet the requirements of the relevant law were specified by the municipal authorities and the applicant company could have carried them out itself and thus started its manufacturing activity immediately. Although, it was true that the building company should have been liable for these works, this was a matter between two private parties which had been dealt with by the civil courts. Finally, the conflicting views of the administrative authorities about whether or not the building was in compliance with anti-seismic legislation, though regrettable, did not have any impact on the applicant company's property rights in a disproportionate manner: manifestly ill-founded.
Admissible under Article 6(1) (length of proceedings).

DEPRIVATION OF PROPERTY
Deprivation of property without compensation following German reunification: *communicated*.

FORRER-NIEDENTHAL - Germany (N° 47316/99)
[Section IV]

The applicant was the legal successor of the co-owners of a piece of land situated in the territory of the former GDR. In 1959 the land was allocated to a State-owned institute, even though two co-owners, including the applicant's grandmother, had not been duly represented during the sale. After the reunification of Germany ownership of the land was transferred to the institute, which had become the property of the Federal Republic of Germany. The Federal Court of Justice held that in deciding a number of applications from the applicant the ordinary courts had been wrong to rule that she had lost ownership of the land to the State on account of adverse possession. However, it went on to rule that any defects of the sale effected at the time of the GDR had been made good by the Civil Code Act and that in the final analysis the applicant could not claim ownership of the land. The Federal Constitutional Court decided not to entertain an appeal by the applicant. At no time did the applicant receive any compensation for the deprivation of her property.
Communicated under Article 1 of Protocol No. 1 and Article 6(1).

PEACEFUL ENJOYMENT OF POSSESSIONS
Claim for compensation following the classification of land as a construction-free zone: *communicated*.

BAHIA NOVA - Spain (N° 50924/99)
[Section IV]

In the early 1970s the applicant company purchased an agricultural property on the island of Majorca with a view to developing a residential tourist site. By a government decree the applicant was able to obtain the designation of the site as a centre of national tourist interest. It then carried out part of the expensive work required to put in waste-water drainage and develop the site. In 1988 the Majorcan parliament adopted a law declaring the applicant company's property a protected nature reserve, while granting planning permission for the development of a limited part of the site. The applicant company lodged a compensation claim on account of the considerable financial loss the law had caused, but received no response from the local authorities. It then brought an action in the administrative courts, which refused its application. On the other hand, an appeal on points of law was upheld by the Supreme Court, which ordered the local authorities to pay compensation for the costs of developing the part of the applicant's site which could not be built on. It dismissed the claims for compensation in respect of the work carried out in the part where planning permission had been obtained and for the loss of value resulting from the reclassification of the property as a protected nature reserve.
Communicated under Article 1 of Protocol No.

PEACEFUL ENJOYMENT OF POSSESSIONS
Loss of funds used to promote a referendum, in the event of its annulment: *communicated*.

COMITATO PROMOTORE REFERENDUM ANTIPROPORZIONALE (del 21/5/2000)
COMITATO PROMOTORE REFERENDUM MAGGIORITARIO (del 18/4/1999) - Italy (N°56507/00)
Decision 27.4.2000 [Section II]
(See Article 3 of Protocol No. 1, below).

CONTROL THE USE OF PROPERTY
Staggering of the granting of police assistance to enforce eviction order: *friendly settlement*.

ESPOSITO - Italy (N° 20855/92)
Judgment 25.5.2000 [Section II]
(See Article 6(1), above).

CONTROL THE USE OF PROPERTY
Staggering of the granting of police assistance to enforce eviction order: *violation*.

A.O. - Italy (N° 22534/93)
*Judgment 30.5.2000 [Section II]

Facts: The applicant served a notice to quit on the tenant of an apartment which he owned. In April 1987 a magistrate confirmed the notice to quit and ordered the tenant to vacate the premises. A bailiff subsequently attempted on nine occasions to enforce the eviction order, but was unsuccessful since, as a result of the statutory provisions on the suspension and staggering of evictions, the applicant was not entitled to police assistance. The applicant finally recovered possession in 1995.
Law: Government's preliminary objection - The Court recalled that it had found in the case of Immobiliare Saffi (judgment of 28 July 1999) that challenging the refusal of police assistance in the administrative courts was not an effect remedy. In the absence of any new arguments, it saw no reason to reach a different conclusion in this case.
Article 1 of Protocol No. 1 - The interference with the applicant's property rights constituted a control of use which had a legitimate aim in the general interest. However, the applicant had for several years been in a state of uncertainty as to when he would recover possession and he could not apply to either the judge dealing with the enforcement proceedings or to the administrative court and had no prospects of obtaining compensation through the courts. An excessive burden had therefore been placed on him and the balance between his rights and the general interest had been upset.
Article 41 - The Court awarded the applicant 50 million lire (ITL) in respect of pecuniary damage and 6 million lire in respect of non-pecuniary damage. It also made an award in respect of costs.

DEPRIVATION OF PROPERTY
De facto expropriation of land: *violation*.

BELVEDERE ALBERGHIERA S.r.l. - Italy (N° 31524/96)
*Judgment 30.5.2000 [Section II]

Facts: The Italian Court of Cassation has established what is known as the constructive-expropriation rule (*accessione invertita* or *occupazione acquisitiva*) in expropriation cases. The rule lays down that where the authorities take possession of land under an expedited procedure and perform building works on it in the public interest, then, irrespective of the validity of the resolution to take possession, the land may no longer be returned to the owner. The latter is entitled to compensation but must apply to the courts for it, the limitation period being five years from the date the works in the public interest were completed. The applicant company complained of the application of that case-law in its case. The municipality had taken possession of land owned by the company under an expedited procedure with a view to building a road on it. The applicant company obtained an order from the administrative court quashing the resolution to take possession on the ground that the scheme was unlawful and not in the public interest. As the municipality took no action pursuant to that order, the applicant company brought enforcement proceedings before the same administrative court seeking restitution of the land. The court noted that the municipality had since built the road and held that there had been a constructive expropriation, which precluded restitution. The applicant company appealed unsuccessfully to the *Consiglio di Stato* against that decision arguing *inter alia*, that the application of the rule rendered the administrative court's judgment devoid of purpose. The *Consiglio di Stato* found that the road-building works had been largely completed before the administrative court's first judgment was delivered and therefore concluded that the transfer of property had at that point become irreversible and that there had been no denial of justice.
Law: Article 1 of Protocol No.1 – as a result of the judgment of the *Consiglio di Stato* applying the constructive-expropriation rule the applicant company had been deprived of the possibility of obtaining restitution of its land. The effect of the judgment had therefore been to deprive the applicant company of its possessions within the meaning of the second sentence of the first paragraph of the present Article. The first and most important requirement of Article 1 of Protocol No. 1 was that any interference by a public authority with the peaceful enjoyment of possessions should be lawful. The requirement of lawfulness meant that rules of domestic law had to be sufficiently accessible, precise and foreseeable. However, in the case before the Court, the fluctuating case-law on constructive expropriations had evolved in a way that had led to the rule being applied inconsistently, a factor which could result in unforeseeable or arbitrary outcomes and deprive litigants of effective protection of their rights. It was consequently inconsistent with the requirement of lawfulness. Under the rule established by the Court of Cassation every constructive expropriation followed the unlawful taking of possession of the land. The Court had reservations as to the compatibility with the requirement of lawfulness of a mechanism which enabled the authorities to benefit from an unlawful situation in which the landowner was presented with a *fait accompli*. In the case before the Court, the regional administrative court had quashed with retrospective effect the resolution passed by the authorities as being unlawful and not in the public interest. However, that finding had not resulted in restitution of the land, since the *Consiglio di Stato* had held that the transfer of property to the authorities had become irreversible. The Court considered that the interference in question was not compatible with Article 1 of Protocol No. 1.
Conclusion: violation (unanimously).
Article 41: the issue of the application of Article 41 was reserved.

DEPRIVATION OF PROPERTY
De facto expropriation of land: *violation*.

CARBONARA and VENTURA - Italy (N° 24638/94)
Judgment 30.5.2000 [Section II]

Facts: The applicants owned agricultural land in the municipality of Noicattaro. The town council decided to build a school on adjoining land, which, once the works were under way, was found to be too small. By a decree issued in May 1970, the prefecture authorised the council to take possession, under an expedited procedure, of part of the applicants' land for a maximum of two years with a view to its expropriation in the public interest. The school was finished after the authorised period had expired without there being any formal expropriation. In 1980 the applicants brought an action in damages against the council in the civil courts. In 1989 the court of first instance found in favour of the applicants. However, the court of appeal upheld the town council's appeal. It accepted that the two-year period had expired and that the possession of the land had therefore become unlawful, but, applying the constructive-expropriation rule established by the courts, held that the council had acquired ownership of the land from the date the works were completed. While the applicants had initially been entitled to seek damages, their right was now time-barred because the five-year limitation period had started to run in October 1972 when the works were completed. In January 1992 the applicants appealed to the Court of Cassation, which dismissed their appeal on the ground that their action in damages was time-barred.
Law: Article 1 of Protocol No. 1 – as a result of the judgment of the *Consiglio di Stato* applying the constructive-expropriation rule the applicants had been deprived of the possibility of obtaining restitution of their land. The effect of the judgment had therefore been to deprive the applicants of their possessions within the meaning of the second sentence of the first paragraph of the present Article. The first and most important requirement of Article 1 of Protocol No. 1 was that any interference by a public authority with the peaceful enjoyment of possessions should be lawful. The requirement of lawfulness meant that rules of domestic law had to be sufficiently accessible, precise and foreseeable. However, in the case before the Court, the fluctuating case-law on constructive expropriations had evolved in a way that had led to the rule being applied inconsistently, a factor which could result in unforeseeable or arbitrary outcomes and deprive litigants of effective protection of their rights. It was consequently inconsistent with the requirement of lawfulness. Under the rule established by the Court of Cassation every constructive expropriation followed the unlawful taking of possession of the land. The Court had reservations as to the compatibility with the requirement of lawfulness of a mechanism which enabled the authorities to benefit from an unlawful situation in which the landowner was presented with a *fait accompli*. Furthermore, compensation for deprivation of property was not paid automatically by the authorities, but had to be claimed by the landowner within five years, and as such might prove to be inadequate protection. Applying the constructive-expropriation rule, the Court of Cassation had held that the applicants had been deprived of their land from October 1972. That transfer of property to the authorities had therefore occurred during the period of possession without title, automatically, following completion of the public works. That situation could not be regarded as "foreseeable" as it was only in the final decision, the judgment of the Court of Cassation, that the constructive-expropriation rule could be regarded as having being effectively applied, since a case-law rule did not bind the courts as regards its application. Consequently, the applicants had not been certain that they had been deprived of their land until November 1993, when the Court of Cassation's judgment was lodged with the registry. In addition, the situation in issue had enabled the authorities to derive a benefit from taking possession of the land which they had held without title since the expiry in 1972 of the period fixed by the prefecture's order. Lastly, the Court of Cassation had applied the five-year limitation period from the date of completion of the works (October 1972), thereby denying the applicants any possibility of obtaining damages. That interference could be described as arbitrary.

Conclusion : violation (unanimously).
Article 41: the issue of the application of Article 41 was reserved.

ARTICLE 2 OF PROTOCOL No. 1

RESPECT FOR THE PARENTS' RELIGIOUS CONVICTIONS

Sex education lessons in State school allegedly infringing the parents' convictions: *inadmissible*.

JIMENEZ ALONSO and JIMENEZ MERINO - Spain (N° 51188/99)
Decision 25.5.2000 [Section IV]

During the 1996-97 school year the first applicant, then aged 13, the daughter of the second applicant, was a pupil in a public junior high school. The science syllabus included sex education lessons. A brochure published by the authorities was distributed to the pupils. The second applicant considered that the content of the brochure went beyond the strict framework of science teaching and offended her moral and religious beliefs. The first applicant, who did not attend the rest of the sex education lessons and declined to answer the questions on them in her end-of-year examination, was obliged to repeat the year. An administrative appeal lodged by the second applicant was dismissed. He then applied to the High Court of Justice with no more success. Lastly, a *recurso de amparo* to the Constitutional Court was likewise dismissed.
Inadmissible under Article 2 of Protocol No. 1: The content of the school curriculum was in principle a question for the Contracting States to decide. To a large extent the problem lay in deciding what was appropriate and different countries could legitimately adopt different solutions at different times. Nevertheless, it was not permissible for States to use teaching to pursue an aim of indoctrination which could be considered incompatible with parents' religious and philosophical convictions. In the present case the sex education lessons complained of had been aimed at giving the pupils objective and scientific information about human sexual behaviour, sexually-transmitted diseases and AIDS. They were not a source of indoctrination in favour of a specific form of sexual behaviour. Moreover, they did not prevent parents from informing and advising their children, instructing and guiding them in a direction consistent with their own religious or philosophical convictions. Furthermore, the Spanish Constitution guaranteed natural and legal persons the right to set up schools in accordance with constitutional principles and the right of everyone to receive religious and moral instruction in accordance with his own beliefs. As provided by the Constitution, there was a large network of private schools in Spain which co-existed with the public education system run by the State. In the present case, the applicants had not mentioned any obstacle which had prevented the second applicant from attending such a school. As the parents had opted for the public education system, the right to respect for their beliefs and ideas as guaranteed by Article 2 of Protocol No. 1 could not be interpreted so as to confer on them the right to demand different lessons for their daughter in line with their own convictions: manifestly ill-founded.

ARTICLE 3 OF PROTOCOL No. 1

STAND FOR ELECTION
Termination of Member of Parliament's mandate on basis of letter of resignation which he denied sending: *friendly settlement*.

GAULIEDER - Slovakia (N° 36909/97)
Judgment 16.5.2000 [Section II]

In 1994 the applicant was elected a member of the National Council of the Slovak Republic. Prior to the election, he had signed an undated letter of resignation from the National Council. In 1996 he informed the President of the National Council that he did not intend to resign from his office. However, the Office of the National Council received a letter stating that the applicant did wish to resign and the National Council subsequently adopted a resolution taking note of the resignation. As from that date, the applicant's mandate was terminated. He continued to deny any intention of resigning. The Constitutional Court found that the National Council had violated the applicant's constitutional rights but the National Council failed to adopt a draft resolution proposing that the applicant's mandate be renewed. Following the 1998 elections, in which the applicant did not stand as a candidate, the newly elected National Council expressed its regret that during the previous term it had not remedied the violation of the applicant's rights, and it later quashed the resolution which had resulted in the termination of his mandate.
The parties have reached a friendly settlement whereby the applicant will be met by the Prime Minister and the Government will issue a press release expressing their regret about the termination of his mandate as well as about the failure to redress the violation of the principles of the State of law in the applicant's case without delay. The Government will further express their regret as regards inappropriate statements made by their Agent in respect of the applicant. Both parties expressed their gratitude to the President of the European Commission of Human Rights, Mr S. Trechsel, for his efforts which contributed to the settlement of the case. Furthermore, the Government will pay the applicant within seven days of the settlement of the case compensation of 1,399,148 Slovak korunas (SKK) for pecuniary damage and one koruna for non-pecuniary damage. Finally, the Government will pay the applicant's legal costs of SKK 141,877.40 within seven days of the settlement of the case.

FREE EXPRESSION OF OPINION OF PEOPLE
Electoral quorum required in order for referendum to be valid, allegedly raised as a result of inclusion in electoral lists of "untraceable" voters: *communicated*.

COMITATO PROMOTORE REFERENDUM ANTIPROPORZIONALE (del 21/5/2000)
COMITATO PROMOTORE REFERENDUM MAGGIORITARIO (del 18/4/1999) - Italy (N° 56507/00)
Decision 27.4.2000 [Section II]

The first applicant was the promoter of the referendum of 21 May 2000 on the question whether to abolish the proportional element of the procedure for the election of members of parliament in favour of a simple-majority ("first-past-the-post") system. The second applicant was the promoter of the 1999 referendum on the same subject, which was invalidated by the Court of Cassation because the minimum turnout had not been reached. The applicants feared that the 2000 referendum would likewise be invalidated for the same reason as in 1999, and that as a result there would not be time to change the electoral system before the next elections, in 2001. They maintained that the minimum turnout required for the May 2000

referendum was higher than it should have been because the figure was expressed as a proportion of the total number of electors on the electoral rolls, which included Italians resident abroad classified as "untraceable" (who could be presumed dead or who should have been struck off the electoral rolls because the statutory limit for keeping their names on them had expired). The applicants alleged a violation of Article 3 of Protocol No. 1 (in respect of the 2001 parliamentary elections and not of the referendum itself, since the referendum in question was to be a legislative procedure to lay down the rules for the parliamentary elections of 2001) and of Article 1 of Protocol No. 1 (because if the referendum were invalidated they would not be reimbursed the sum they had spent to promote it). They also asked the Court to apply Rule 39 of the Rules of Court by enjoining Italy to take the necessary measures to alter the rules for compiling the electoral rolls before the holding of the May 2000 referendum.
Communicated under Articles 1 and 3 of Protocol No. 1; refusal to apply Rule 39, but application of Rule 41 (priority).

VOTE
Impossibility for a long-term psychiatric patient to use either the hospital's address or his previous address for purposes of registration on the electoral roll: *struck out of list*.

MOORE - United Kingdom (Nº 37481/97)
Decision 30.5.2000 [Section III]

The applicant has been detained in a psychiatric hospital in Colchester since 1993. Prior to his detention, he was registered on the electoral roll in the Uttlesford area, but claimed that after his release he would go and live in the Colchester area and consequently asked the Colchester authorities to include him in the relevant electoral roll. He gave the hospital's address as his residential address. He was told to contact the Uttlesford authorities as, pursuant to section 7 of the Representation of the People Act 1983, detained patients could not be considered as "resident" at their place of detention. The Uttlesford authorities refused to register him on the grounds that he had been detained for more than 6 months outside this area and had not expressed a wish to live there after his release.
A Bill substituting a new section 7 of the Representation of the People Act 1983 has received the Royal Assent. It enables both voluntary and detained mental patient to be registered on the electoral roll in respect of the hospital where they reside. As a consequence, the applicant informed the Court that he did not wish to continue his application. The Court accordingly struck his application out of its list of cases.

ARTICLE 2 OF PROTOCOL No. 7

REVIEW OF CONVICTION
Absence of possibility of review by the Supreme Court of the imposition of a fine by a Labour Court: *friendly settlement*.

SIGLFIRÐINGUR EHF - Iceland (N° 34142/96)
Judgment 30.5.2000 [Section I]

The Labour Federation took legal action against the applicant company after it dismissed several fishermen who had gone on strike. The court ordered the applicant to pay a fine of 500,000 kronur (ISK) and costs of 100,000 kronur. There was no possibility of appeal to the Supreme Court.

The parties have reached a friendly settlement providing for an *ex gratia* payment to the applicant of a global sum of 1,600,000 kronur, covering both legal costs and loss of opportunity. Furthermore, amendments to the law, providing for the possibility of review by the Supreme Court of the imposition of fines by Labour Courts, have been submitted to the *Althing*.

REVIEW OF CONVICTION
Cassation appeal as sole appeal against judgments of a *Cour d'assises*: *inadmissible*.

LOEWENGUTH - France (N° 53183/99)
Decision 30.5.2000 [Section III]

The applicant was convicted by an assize court of a number of counts of aggravated rape and sentenced to fifteen years' imprisonment and the loss of his civic, civil and family rights for a period of ten years. An appeal on points of law was dismissed on the ground that he had submitted no statement of the grounds of appeal. The applicant submitted that the failure to state the grounds was due to his lawyer's negligence. He complained that he had not had access to a second level of jurisdiction, appeals on points of law being the only remedy available against assize court judgments.
Inadmissible under Article 2 of Protocol No. 7: the applicant had not had the opportunity to appeal on the merits against the assize court's judgment, since the only remedy available against an assize court judgment was an appeal to the Court of Cassation. Reconsideration of his case was therefore limited to points of law. However, under this provision the States Party had reserved the right to lay down the conditions for exercise of the right of appeal and were entitled to restrict its scope. Consequently, the fact that the applicant had had the opportunity to appeal on points of law satisfied the requirements of Article 2 of Protocol No. 7: manifestly ill-founded.

ARTICLE 4 OF PROTOCOL No. 7

RIGHT NOT TO BE TRIED OR PUNISHED TWICE
Concurrent criminal sanction and withdrawal of driving licence by administrative authority for drunken driving: *inadmissible*.

R.T. - Switzerland (N° 31982/96)
Decision 30.5.00 [Section II]

The applicant was stopped by the police while he was driving under the influence of alcohol. The District Office imposed a suspended prison sentence and a fine for drunken driving and his driving licence was temporarily withdrawn by the Road Traffic Office. He unsuccessfully filed an appeal with the Administrative Appeals Commission (hereafter "the commission") against the decision ordering the withdrawal of his driving licence. He subsequently lodged an administrative law appeal with the Federal Court, complaining, *inter alia*, that there had been no public hearing. The court quashed the commission's decision. The proceedings were resumed before the commission, which scheduled a hearing during which it would be open to the applicant's lawyer to comment on the evidence produced. The applicant's lawyer replied that he intended to plead the case in its entirety and not merely comment on the evidence. The commission however emphasised that the public hearing remained written, and that it would not be possible to repeat or add appeal grounds in open court. The applicant's lawyer insisted upon having an oral hearing in the manner of criminal proceedings and stated that he would present a complaint relating to *ne bis in idem* at the hearing. The commission informed him

that it was left open whether that statement would be declared admissible in court. The applicant's appeal was finally dismissed after a hearing; his lawyer managed to present the complaint based on the *ne bis in idem* principle. The commission found that the withdrawal of the applicant’s driving licence was an administrative measure, which called for written proceedings. As to the *ne bis in idem* issue, the principle was not considered as breached, the withdrawal of the driving licence being distinct from the penal sanction. The commission concluded that the applicant could not be acquitted on this ground without discussing whether it was admissible to raise the matter in open court. The applicant lodged an administrative law appeal, relying on the *ne bis in idem* complaint and the fact that during the hearing his lawyer had been interrupted and admonished not to make any pleadings. The Federal Court rejected his appeal on the ground that his lawyer had been able to comment on the *ne bis in idem* issue and, as regards the interruptions, that he had not claimed that he had been unable to comment on the points relevant to the judgment.

Inadmissible under Article 6(1): At the hearing before the Administrative Appeals Commission, the applicant’s lawyer was able to raise in open court the complaint concerning *ne bis in idem*. In its judgment the commission discussed and then dismissed the complaint on the merits, while leaving open whether such a complaint in open court was admissible. The commission did effectively deal with the complaint on *ne bis in idem*. In so far as the applicant stated that he had been interrupted by the judges of the commission, he did not demonstrate any particular issue or complaint which he had not been able to raise but which had not been considered by the commission: manifestly ill-founded.

Inadmissible under Article 4 of Protocol N° 7: The Swiss authority merely determined the three different sanctions envisaged by law for the offence of drunken driving, namely a prison sentence, a fine and the withdrawal of the driving licence. The sanctions were issued at the same time by two different authorities, i.e. an administrative and a criminal authority. Therefore, it could not be said that criminal proceedings were being repeated contrary to this provision: manifestly ill-founded.

APPENDIX

Case of Rotaru v. Romania - Extract from press release

Facts: The applicant, Aurel Rotaru, a Romanian national, was born in 1921 and lives in Bârlad (Romania). In 1992 the applicant, who in 1948 had been sentenced to a year's imprisonment for having expressed criticism of the communist regime established in 1946, brought an action in which he sought to be granted rights that Decree no. 118 of 1990 afforded persons who had been persecuted by the communist regime. In the proceedings which followed in the Bârlad Court of First Instance, one of the defendants, the Ministry of the Interior, submitted to the court a letter sent to it on 19 December 1990 by the Romanian Intelligence Service, which contained, among other things, information about the applicant's political activities between 1946 and 1948. According to the same letter, Mr Rotaru had been a member of the Christian Students' Association, an extreme right-wing "legionnaire" movement, in 1937.

The applicant considered that some of the information in question was false and defamatory – in particular, the allegation that he had been a member of the legionnaire movement – and brought proceedings against the Romanian Intelligence Service, claiming compensation for the non-pecuniary damage he had sustained and amendment or destruction of the file containing the untrue information. The claim was dismissed by the Bârlad Court of First Instance in a judgment that was upheld by the Bucharest Court of Appeal on 15 December 1994. Both courts held that they had no power to order amendment or destruction of the information in the letter of 19 December 1990 as it had been gathered by the State's former security services, and the Romanian Intelligence Service had only been a depositary.

In a letter of 6 July 1997 the Director of the Romanian Intelligence Service informed the Ministry of Justice that after further checks in their registers it appeared that the information about being a member of the "legionnaire" movement referred not to the applicant but to another person of the same name.

In the light of that letter the applicant sought a review of the Court of Appeal's judgment of 15 December 1994 and claimed damages. In a decision of 25 November 1997 the Bucharest Court of Appeal quashed the judgment of 15 December 1994 and declared the information about the applicant's past membership of the "legionnaire" movement null and void. It did not rule on the claim for damages.

The applicant complained of an infringement of his right to private life in that the Romanian Intelligence Service held a file containing information on his private life and that it was impossible to refute the untrue information. He relied on Article 8 of the European Convention on Human Rights. He also complained of the lack of an effective remedy before a national authority which could rule on his application for amendment or destruction of the file containing untrue information and of the courts' refusal to consider his applications for costs and damages, which he said infringed his right to a court. He relied on Articles 13 and 6 of the Convention.

Law: The Government's preliminary objections

(i) Applicant's victim status

The Court noted that the applicant complained of the holding of a secret register containing information about him, whose existence had been publicly revealed during judicial proceedings. It considered that he could on that account claim to be the victim of a violation of the Convention.

As to the Bucharest Court of Appeal's judgment of 25 November 1997, assuming that it could be considered that it did to some extent afford the applicant redress for the existence in his file of information that proved false, the Court took the view that such redress was only partial and that at all events it was insufficient under the case-law to deprive him of his status of victim.

The Court concluded that the applicant could claim to be a "victim" for the purposes of Article 34 of the Convention.

(ii) Exhaustion of domestic remedies

As to the Government's submission that the applicant had not exhausted domestic remedies, because he had not brought an action based on Decree no. 31/1954 on natural and legal persons, the Court noted that there was a close connection between the Government's argument on this point and the merits of the complaints made by the applicant under Article 13 of the Convention. It accordingly joined this objection to the merits.

Article 8 of the Convention - The Court noted that the RIS's letter of 19 December 1990 contained various pieces of information about the applicant's life, in particular his studies, his political activities and his criminal record, some of which had been gathered more than fifty years earlier. In the Court's opinion, such information, when systematically collected and stored in a file held by agents of the State, fell within the scope of "private life" for the purposes of Article 8 § 1 of the Convention. Article 8 consequently applied.

The Court considered that both the storing of that information and the use of it, which were coupled with a refusal to allow the applicant an opportunity to refute it, had amounted to interference with his right to respect for family life as guaranteed by Article 8 § 1.

If it was not to contravene Article 8, such interference had to have been "in accordance with the law", pursue a legitimate aim under paragraph 2 and, furthermore, be necessary in a democratic society in order to achieve that aim.

In that connection, the Court noted that in its judgment of 25 November 1997 the Bucharest Court of Appeal had confirmed that it was lawful for the RIS to hold the information as depositary of the archives of the former security services. That being so, the Court could conclude that the storing of information about the applicant's private life had had a basis in Romanian law.

As regards the requirement of foreseeability, the Court noted that no provision of domestic law laid down any limits on the exercise of those powers. Thus, for instance, domestic law did not define the kind of information that could be recorded, the categories of people against whom surveillance measures such as gathering and keeping information could be taken, the circumstances in which such measures could be taken or the procedure to be followed. Similarly, the Law did not lay down limits on the age of information held or the length of time for which it could be kept.

Section 45 empowered the RIS to take over for storage and use the archives that had belonged to the former intelligence services operating on Romanian territory and allowed inspection of RIS documents with the Director's consent. The Court noted that the section contained no explicit, detailed provision concerning the persons authorised to consult the files, the nature of the files, the procedure to be followed or the use that could be made of the information thus obtained.

It also noted that although section 2 of the Law empowered the relevant authorities to permit interferences necessary to prevent and counteract threats to national security, the ground allowing such interferences was not laid down with sufficient precision.

The Court also noted that the Romanian system for gathering and archiving information did not provide any safeguards, no supervision procedure being provided by Law no. 14/1992, whether while the measure ordered was in force or afterwards.

That being so, the Court considered that domestic law did not indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities. The Court concluded that the holding and use by the RIS of information on the applicant's private life had not been "in accordance with the law", a fact that sufficed to constitute a violation of Article 8. Furthermore, in the instant case that fact prevented the Court from reviewing the legitimacy of the aim pursued by the measures ordered and determining whether they had been – assuming the aim to have been legitimate – "necessary in a democratic society". There had consequently been a violation of Article 8.

Conclusion: violation (16 votes to 1).

Article 13 of the Convention - The Court noted that Article 54 of the decree provided for a general action in the courts, designed to protect non-pecuniary rights that had been unlawfully infringed. The Bucharest Court of Appeal, however, had indicated in its judgment of 25 November 1997 that the RIS was empowered by domestic law to hold information on the

applicant that came from the files of the former intelligence services. The Government had not established the existence of any domestic decision that had set a precedent in the matter. It had therefore not been shown that such a remedy would have been effective. That being so, the relevant preliminary objection by the Government had to be dismissed.
As to the machinery provided in Law no. 187/1999, assuming that the council provided for was set up, the Court noted that neither the provisions relied on by the respondent Government nor any other provisions of that law made it possible to challenge the holding, by agents of the State, of information on a person's private life or the truth of such information. The supervisory machinery established by sections 15 and 16 related only to the disclosure of information about the identity of some of the *Securitate*'s collaborators and agents.
The Court had not been informed of any other provision of Romanian law that made it possible to challenge the holding, by the intelligence services, of information on the applicant's private life or to refute the truth of such information. The Court consequently concluded that the applicant had been the victim of a violation of Article 13.
Conclusion: violation (unanimous).
Article 6 of the Convention - The applicant's claim for compensation for non-pecuniary damage and costs was a civil one within the meaning of Article 6 § 1, and the Bucharest Court of Appeal had had jurisdiction to deal with it.
The Court accordingly considered that the Court of Appeal's failure to consider the claim had infringed the applicant's right to a fair hearing within the meaning of Article 6 § 1. There had therefore been a violation of Article 6 § 1 of the Convention also.
Conclusion: violation (unanimous).
Article 41 of the Convention - The Court therefore considered that the events in question had entailed serious interference with Mr Rotaru's rights and that the sum of FRF 50,000 would afford fair redress for the non-pecuniary damage sustained. The Court awarded the full amount claimed by the applicant, that is to say FRF 13,450, less the sum already paid by the Council of Europe in legal aid.
Judges Wildhaber, Lorenzen and Bonello expressed separate opinions and these are annexed to the judgment. Judges Makarczyk, Türmen, Costa, Tulkens, Casadevall and Weber joined the opinion of Judge Wildhaber.

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