CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 30
on the case-law of the Court
May 2001

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

Statistical information[1]

		May	2001
I. Judgments delivered			
Grand Chamber		3	13(15)
Chamber I I		12	119(122)
Chamber II		9	107
Chamber III		7	71(75)
Chamber IV		7(13)	49(56)
Total		**38(44)**	**359(375)**
II. Applications declared admissible			
Section I		11	72(80)
Section II		17	132(133)
Section III		40(41)	141(146)
Section IV		11	106(108)
Total		**79(80)**	**451(467)**
III. Applications declared inadmissible			
Section I	- Chamber	5(6)	20(21)
	- Committee	184	597
Section II	- Chamber	7	48(49)
	- Committee	241	490
Section III	- Chamber	16	50
	- Committee	260	796(797)
Section IV	- Chamber	15	40(50)
	- Committee	198	740
Total		**926(927)**	**2781(2794)**
IV. Applications struck off			
Section I	- Chamber	2	8
	- Committee	2	17
Section II	- Chamber	4(12)	32(214)
	- Committee	0	11
Section III	- Chamber	6	6
	- Committee	4	16
Section IV	- Chamber	2	4(6)
	- Committee	0	4
Total		**20(28)**	**98(282)**
Total number of decisions[2]		**1025(1035)**	**3330(3543)**
V. Applications communicated			
Section I		70(73)	198(206)
Section II		23	133(134)
Section III		21	81(83)
Section IV		23	128(132)
Total number of applications communicated		**137(140)**	**540(555)**

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

Judgments delivered in May 2001					
	Merits	Friendly Settlements	Struck out	Other	Total
Grand Chamber	3	0	0	0	3
Section I	2	10	0	0	12
Section II	4	4	0	1[1]	9
Section III	7	0	0	0	7
Section IV	5(11)	2	0	0	7(13)
Total	**21(27)**	**16**	**0**	**1**	**38(44)**

Judgments delivered in January - May 2001 / Arrêts rendus janvier - mai 2001					
	Merits/Fond	Friendly settlements/ Règlements amiables	Struck out/ Radiation	Other/autres	Total
Grand Chamber / Grande Chambre	11(13)	0	1	1[1]	13(15)
Section I	97(99)	20	1	1(2)[1]	119(122)
Section II	72	34	0	1[2]	107
Section III	64(68)	6	1	0	71(75)
Section IV	41(47)	8(9)	0	0	49(56)
Total	**285(299)**	**68(69)**	**3**	**3(4)**	**359(375)**

[1] Just satisfaction.
[2] Revision.

Note: Of the 274 judgments on merits delivered by Sections, 19 were final judgments.

[* = judgment not final]

ARTICLE 2

LIFE
Disappearances following Turkish invasion of Cyprus in 1974 and lack of effective investigation: *no violation/violation*.

CYPRUS - Turkey (Nº 25781/94)
Judgment 10.5.2001 [Grand Chamber]
(See Appendix I).

LIFE
Shooting by police and effectiveness of investigation: *no violation/violation.*

HUGH JORDAN - United Kingdom (Nº 24746/95)
McKERR - United Kingdom (Nº 28883/95)
KELLY and others - United Kingdom (Nº 30054/96)
SHANAGHAN - United Kingdom (Nº 37715/97)
*Judgments 4.5.2001 [Section III]
(See Appendix II).

LIFE
Shooting by unidentified assailants and effectiveness of investigation: *no violation*.

DENIZCI and others - Cyprus (Nº 25316-21/94 and 27207/95)
*Judgment 23.5.2001 [Section IV]
(See Article 3, below).

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

AKDENIZ and others - Turkey (Nº 23954/94)
Judgment 31.5.2001 [Section II]

Facts: The applicants are relatives of eleven persons who went missing in October 1993 during a massive security operation against the PKK in south-east Turkey. The applicants maintain that the missing persons were taken away by the security forces and that while in detention they were allegedly kept tied up (except for one) in the open air and were in a state of distress. The Government assert that the missing persons were probably kidnapped by the PKK. A delegation of the European Commission of Human Rights took evidence and considered the testimony of the applicants to be credible and reliable, whereas that of the members of the security forces was not regarded as reliable. The Commission found it established that the eleven men had been taken into detention by the security forces and treated in the manner alleged. It also found evidence of beating, although the nature and extent was not apparent. The Commission found that the men had last been seen in detention. The applicants approached numerous authorities in an effort to find out about their relatives. However, few steps were taken to investigate. Moreover, the applicants were questioned by the authorities about their applications to the Commission and two of them were detained in that connection.

Law: The Court found that the Commission had approached its task of assessing the evidence with the requisite caution and that the Government's criticisms did not raise any matters of substance which might warrant the Court exercising its own powers of verifying the facts. It accepted the facts as established by the Commission.

Article 2 (disappearances) – The Commission had established that the missing persons were last seen in the custody of the security forces in 1993. The Court noted that there were no records of that custody. It drew very strong inferences from the length of time which had elapsed, the lack of documentary evidence and the inability of the Government to provide a satisfactory and plausible explanation. It concluded that the missing men must be presumed dead and that the responsibility of the State was engaged. Liability for the deaths was attributable to the Government.

Conclusion: violation (6 votes to 1).

Article 2 (effective investigation) – The applicants brought the substance of their complaints to the notice of numerous authorities but one public prosecutor ceded jurisdiction to another, who did not take any statements until August 1994 and then declined jurisdiction in April 1997. No substantive progress was made after the file was returned to the first prosecutor. Having regard to the inactivity of the prosecutors and their reluctance to pursue any lines of enquiry concerning the involvement of the security forces, the investigation did not provide any safeguard in respect of the right to life.

Conclusion: violation (6 votes to 1).

Article 3 (missing persons) – The Commission had established that the missing persons were detained in the open and that most of them were bound. Moreover, some beating occurred. This, in addition to the fear and anguish, reached the threshold of inhuman and degrading treatment.

Conclusion: violation (6 votes to 1).

Article 3 (applicants) – While it is not disputed that the applicants suffered, and continue to suffer, distress as a result of the disappearances, the Court was not satisfied that the case disclosed the special circumstances referred to in the Çakiçi judgment and did not consider that the applicants could claim to be victims of the authorities' conduct to an extent which disclosed a breach of Article 3.

Conclusion: no violation (6 votes to 1).

Article 5 – The Court's reasoning and findings in relation to Article 2 leave no doubt that the detention of the applicants' relatives was also in breach of this provision. The relatives were detained, there has been no plausible explanation for their whereabouts and the investigation was not adequate. Moreover, the lack of custody records is particularly serious. There has thus been a particularly grave violation of the right to liberty and security of person.

Conclusion: violation (unanimously).

Article 13 – There can be no doubt that the applicants have an arguable complaint and were entitled to an effective remedy. No effective criminal investigation can be considered to have been conducted in accordance with this provision, the requirements of which may be broader than the obligation to investigate imposed by Article 2.

Conclusion: violation (6 votes to 1).

Article 34 (former Article 25) – The applicants were questioned by police and public prosecutors about their applications to the Commission and two were held in custody. They must have felt intimidated by these contacts with the authorities, which went beyond an investigation of the facts underlying their complaints. This constituted undue interference.

Conclusion: failure to comply with obligations (6 votes to 1).

The Court found it unnecessary to determine whether the failings identified were part of a practice.

Article 41 – The Court found that there was a causal link between the violations and the loss by the families of the financial support of the missing persons. While the figures put forward in respect of income derived from their farming activities were not supported by any documentary evidence and involved a degree of speculation, the Government had not provided any detailed arguments to contradict the basis of the calculations or suggested a

figure they would regard as reasonable. The Court found it appropriate to make awards in this respect and awarded the applicants between £12,000 and £80,000 (GBP). As regards non-pecuniary damage, it awarded each applicant £20,000 to be held for the widows, children or heirs of the missing persons, and also £2,500 in respect of the applicant's own suffering. Finally, the Court made an award in respect of costs and expenses.

ARTICLE 3

INHUMAN TREATMENT
Ill-treatment in detention: *violation*.

DENIZCI and others - Cyprus (Nº 25316-21/94 and 27207/95)
*Judgment 23.5.2001 [Section IV]

Facts: The applicants, who are Turkish Cypriots, allege that in 1994 they (or in the case of the ninth applicant, Mrs Tufansoy, her son) were arrested and ill-treated by the Cypriot authorities – and in particular officers of the Central Intelligence Service – before being expelled to the northern part of Cyprus. They were told that they would be shot if they returned. The ninth applicant's son did return and was later shot and killed by unidentified assailants. Others who returned claim they were forced to give statements that they had been ill-treated on the north. The Government maintain that the applicants left voluntarily. A report by the United Nations Force in Cyprus was transmitted to the Cypriot Government and an investigation was carried out jointly by a police officer and a forensic pathologist, who did not examine the applicants himself but concluded on the basis of photographs that there was no evidence of beating or torture. He carried out an autopsy on the ninth applicant's son but a criminal investigation failed to disclose incriminating evidence against anyone. An inquest was held and a verdict of death by premeditated criminal acts by unknown persons was returned. A delegation of the European Commission of Human Rights heard a number of witnesses.
Law: As the Commission had not completed its examination of the case by 31 October 1999, the Court was required to assess the evidence and establish the facts in the light of all the materials before it. It based its findings on the oral and written evidence, but noted that several witnesses had failed to appear and that it had not been provided with the case file of any detailed investigation on the domestic level. It noted that all the applicants had provided the same account of events during the hearing and considered that there were serious doubts about the credibility of the statements they had given to the Cypriot authorities. The Court found that the arrests and expulsions appeared to have been carried out according to a similar plan.
Ill-treatment: The Court noted that the medical evidence revealed that the applicants presented a number of injuries of various degrees. It relied mainly on the findings of the UN doctors and to a lesser extent on the medical examinations which some applicants underwent in the northern part of Cyprus. It took into account that the forensic pathologist had not personally examined the applicants but had been dependent on photographs, so that his findings inevitably carried less weight. Moreover, he had rejected the applicants' allegations in an over-assertive and dogmatic manner, making a number of comments which were not of a medical nature. His evidence therefore had to be treated with caution. In the light of these considerations, the Court found it established or reasonable to conclude that the applicants had been beaten or assaulted in detention, although the precise manner could not be determined.
Confiscation of belongings: The Court found no evidence to support the contention of one of the applicants that the police had taken money from him. It did find it established, however,

that another applicant had been deprived of the use and enjoyment of his property due to his forcible expulsion.
Control of movement: The Court was not convinced that the CIS officers had acted only as social workers in relation to Turkish Cypriots and found no evidence to support the assertion that surveillance had been for the purpose of protecting the applicants. It appeared that the Cypriot authorities closely monitored the applicants' movements.
Killing of the ninth applicant's son: There was no evidence from the investigation file allowing any finding as to the identify of the killers. On the other hand, there was no significant omission or lack of care in the conduct of the investigation, which was followed by an inquest.
Government's preliminary objection – Despite the conclusions of the UN report that there was adequate material to support the plausibility of the allegations, the Attorney General had not at any time enquired into them and it could not be considered important that the applicants had not formally addressed a complaint to him. Moreover, the Government's argument that proceedings would have been doomed to failure in the absence of the applicants' cooperation lacked substantiation. As to a civil action, against the background of a lack of prosecution against any State official the prospects of success had to be considered negligible. Finally, a complaint to the Ombudsman, who has no power to order any measures or impose any sanctions, could not be regarded as an effective remedy either. Consequently, there were no effective remedies in respect of the Article 3 complaints. As for the complaint under Article 2, an investigation had been opened at the authorities' initiative, but no incriminating evidence had been found against any person and the ninth applicant was not therefore required to pursue any domestic remedies in that respect.
As far as one of the applicants was concerned, in view of his failure to appear before the delegates and the time which had elapsed since then without any further information being forthcoming, it could be concluded that he did not intend to pursue his application, which was therefore struck out.
Article 2 – While it had not been possible to establish who killed the ninth applicant's son, it had to be determined whether the State had complied with its positive obligations. Firstly, as far as protective measures were concerned, there was nothing to suggest that he had feared for his life or had reported such fears to the police, nor was there anything to indicate that the Cypriot authorities ought to have known he was at risk. There was therefore no violation on that account. As to the effectiveness of the investigation, various steps had been taken by the authorities, including an examination of the scene and an autopsy, and there was no element to allow the Court to conclude that the investigation was inadequate.
Conclusion: no violation (unanimously).
Article 3 – The Court found that police officers had intentionally subjected the applicants to ill-treatment of varying degrees of severity, but it had not been established that their aim was to extract confessions. Moreover, the precise manner of infliction could not be determined, there was uncertainty as to the severity of the injuries sustained by some of the applicants and no evidence had been adduced to show any long-term consequences. The ill-treatment could not be qualified as torture but was nonetheless serious enough to be considered inhuman.
Conclusion: violation (unanimously).
Article 5 – The Government had not advanced any lawful basis for the applicants' arrest and detention.
Conclusion: violation (unanimously).
Article 8 – The Court found it unnecessary to examine this complaint (physical and moral integrity).
Conclusion: not necessary to examine (unanimously).
Article 1 of Protocol No. 1 – The Court found the factual basis for one applicant's complaint to be insufficient to reach the conclusion that this provision had been violated, and with regard to another applicant it considered that the deprivation of property was a consequence of his expulsion and did not require separate examination from the complaint under Article 2 of Protocol No. 4.

Conclusion: not necessary to examination (unanimously).
Article 2 of Protocol No. 4 – The Cypriot authorities had closely monitored the applicants' movements between the north and south and within the south and the applicants were not allowed to move freely in the south. The restrictions on their movement fell under this provision and constituted an interference. No lawful basis had been advanced by the Government and it was not claimed that the measures were necessary to achieve one of the legitimate aims in paragraphs 3 and 4.
Conclusion: violation (unanimously).
Article 3 of Protocol No. 4 – The applicants had not claimed that they were expelled to another State and the Republic of Cyprus, sole legitimate government of Cyprus, was itself bound to respect international standards in the field of human and minority rights. In the circumstances, it was unnecessary to determine whether this provision applied and, if so, whether it had been complied with.
Conclusion: not necessary to examine (unanimously).
Article 34 (former Article 25) – As far as the ninth applicant's son was concerned, he had not lodged an application with the Commission when he made a statement to the Cypriot authorities. As for another of the applicants, no evidence had been adduced to support his allegation that he had made his statements under pressure from the Cypriot police or that any of the applicants had been threatened in relation to his application. It had not been sufficiently established that they were subjected to improper pressure to withdraw their allegations.
Conclusion: no failure to comply with obligations (unanimously).
Article 41 – The Court awarded each of the applicants 20,000 Cypriot pounds (CYP) in respect of non-pecuniary damage and also made an award in respect of costs and expenses.

INHUMAIN TREATMENT
Head injury sustained while applicant in the hands of the police: *violation*.

ALTAY - Turkey (N° 22279/93)
*Judgment 22.5.2001 [Section I]

Facts: On 2 February 1993 the applicant was forcibly arrested by the police and detained in custody at the police's anti-terrorist branch until 16 February. The doctor who examined him fourteen days after his arrest noted the presence of three scars resulting from head injuries. The applicant lodged a complaint alleging ill-treatment by the officers responsible for him during his time in police custody. In June 1993 the provincial governor decided to take no action on the complaint because there was insufficient evidence against the police officers; he noted that the officers had used force to arrest the applicant and that the latter had banged his head against a door while attempting to escape during questioning. That decision was taken following proceedings to which the applicant had no access, and was not served on him. In May 1994 the Istanbul National Security Court found the applicant guilty of seeking to overthrow the constitutional order and sentenced him to the death penalty, commuted to life imprisonment. That decision was upheld by a judgment of the Court of Cassation.
Law: Preliminary objection (failure to exhaust domestic remedies) – the administrative authorities had decided to take no action on the applicant's complaint to the public prosecutor's office and their decision had not been served on either the applicant or his lawyer.
Article 3 – The Government were required to provide a plausible explanation as to the cause of the applicant's injuries. However, they merely referred to the outcome of domestic proceedings, in which the injuries were said to have resulted from the use of force during the applicant's arrest and from the incident that had occurred while he was trying to escape during questioning. Those explanations did not appear convincing. Having regard to the authorities' duty to account for individuals under their supervision and for all evidence adduced, in the instant case the respondent State bore responsibility for the head injuries

which the applicant had sustained while under police supervision. Yet those injuries to a vital organ had been observed only on the applicant's fourteenth day in custody, even though the applicant had been in a particularly vulnerable position in that he had been dependent on police officers and had had no contact with a doctor for fourteen days and a lawyer for fifteen days. The treatment to which he had been subjected had therefore been inhuman.
Conclusion: violation (unanimously).
Article 5(3) – A period of fifteen days in police custody without appearing before a judge was incompatible with the notion of promptness.
Conclusion: violation (unanimously).
Article 6(1) – One of the three members of the Istanbul National Security Court had been a military judge. Although the provisions governing the composition of national security courts had since been amended, the Court was solely concerned with the particular facts of the case. As in the Incal and Çiraklar cases, the applicant was a civilian; appearing before a court among whose members was a military judge (a regular officer in the armed forces), on charges of attempting to overthrow the constitutional order and undermine national unity, he could legitimately have feared that the court might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. Accordingly, the applicant's misgivings as to the National Security Court's lack of independence and impartiality could be regarded as objectively justified.
Conclusion: violation (unanimously).
Not necessary to examine the other complaints (unanimously).
Article 41 – The applicant sustained non-pecuniary damage which, assessed as a whole, warranted payment of a sum of FRF 100,000. The Court also awarded a lump sum of FRF 10,000 in respect of costs and expenses which the applicant had claimed without quantifying them or providing documentary evidence.

INHUMAN TREATMENT
Ill-treatment in detention: *violation*.

AKDENIZ and others - Turkey (Nº 23954/94)
Judgment 31.5.2001 [Section II]
(See Article 2, above).

INHUMAN TREATMENT
Mental suffering due to disappearance of relatives: *no violation*.

CYPRUS/CHYPRE - Turkey (Nº 25781/94)
Judgment 10.5.2001 [Grand Chamber]
(See Appendix I).

INHUMAN TREATMENT
Mental suffering due to disappearance of relatives: *no violation*.

AKDENIZ and others - Turkey (Nº 23954/94)
Judgment 31.5.2001 [Section II]
(See Article 2, above).

INHUMAN TREATMENT
Failure of social services to remove children from parents known to be neglecting them: *violation*.

Z. and others - United Kingdom (Nº 29392/95)
*Judgment 10.5.2001 [Grand Chamber]
(See Appendix III).

INHUMAN TREATMENT
Conditions of detention of detainee suffering from withdrawal symptoms: *communicated*.

McGLINCHEY and others - United Kingdom (N° 50390/99)
[Section III]

Judith McGlinchey, mother of two of the applicants and daughter of the third one, was convicted of theft and sentenced to four months' imprisonment. She had a long history of heroin addiction and was asthmatic. On 7 December 1998, at the first health screening on arrival at the prison, the applicant complained of swelling to her left arm, withdrawal symptoms and severe asthma. The following medical report showed that she was complaining of withdrawal and vomiting repeatedly. On 8 December 1998, she was not given the prescribed drug for withdrawal, allegedly as a punishment for having been very loud and demanding during the night. The next day, she refused to clean her cell and was consequently confined to it all day; she declined every meal. She carried on vomiting in the following days. On 14 December 1998, she had a particularly serious bout of vomiting during which she lost consciousness and had to be taken to hospital. A lot of vomit was found on her bed. The following day, she had a cardiac arrest but was resuscitated. However, she died on 3 January 1999. An inquest into her death was held before a jury; the jurors reached an open verdict. Legal aid was granted to the applicants to pursue domestic remedies for compensation. However, in the light of an expert medical report, counsel for the applicants advised them that there was insufficient evidence to establish a causal link between Judith McGlinchey's death and alleged negligent care in custody. They decided not to pursue their claims in negligence.
Communicated under Articles 3, 13 and 35(1) (exhaustion of domestic remedies).

INHUMAN TREATMENT
Alleged ill-treatment in police custody: *admissible*.

OKKALI - Turkey (N° 52067/99)
Decision 15.5.2001 [Section I]

In 1995 the applicant, then aged twelve, was handed over to the police by his employer, who accused him of having stolen a sum of money from him. At the police station the applicant was questioned by Superintendent İ.D. and Constable M.Y. One hour after taking him to the police station, the employer returned with the applicant's father, with whom he had agreed a friendly settlement. The employer withdrew the complaint he had lodged against the applicant. The applicant's father signed a statement confirming that his son was in good health on being returned to him. However, once they arrived home, the applicant admitted that he had been beaten by the police officers who had questioned him. His father accordingly took him to hospital, where the presence of bruises was noted. The applicant was kept under observation in the paediatrics department. His father lodged a complaint with the public prosecutor against İ.D. and the officers under his orders. The public prosecutor interviewed the applicant when he was discharged from hospital. The applicant was then examined by two experts from the Institute of Forensic Medicine. It was noted in their medical reports that he

had a large number of bruises and had sustained a muscle injury to his left forearm. The public prosecutor interviewed İ.D., who denied that he had ill-treated the applicant. M.Y., when questioned, also denied that the applicant had been ill-treated. Other officers from the police station were summoned for questioning; their statements were favourable to İ.D. The final medical report that was drawn up confirmed the previous reports and noted the presence of other haematomas and bruises on the applicant's body. The public prosecutor committed İ.D. and M.Y. for trial in the Assize Court, in accordance with the Criminal Code, on a charge of extraction of confessions by public officials through the use of torture. The court acknowledged that the police officers had beaten the applicant, but amended the legal classification of the offence to "assault and ill-treatment". It imposed the minimum penalty on them: three months' imprisonment and three months' suspension from duties. Those penalties were reduced to two months and fifteen days on account of the defendants' good conduct during the trial, as provided for by the Criminal Code. The Assize Court then commuted the penalties to fines before ordering a stay of execution, since the defendants did not have a criminal record and the judges were satisfied that they would "hesitate" before reoffending. The Court of Cassation allowed an appeal on points of law by the applicant's lawyer and set aside the judgment on the ground that the offence had been given the wrong legal classification. After re-examining the case file, the Assize Court held that the offence should be classified as "extracting confessions". It again imposed the minimum penalties: one year's immediate imprisonment and three months' suspension from duties. Those penalties were reduced to ten months' imprisonment and two months and fifteen days' suspension from duties for the same reasons as before. The applicant's lawyer again appealed on points of law, this time unsuccessfully. The Court of Cassation's judgment, which was not served on the applicant's lawyer, did not address the grounds of appeal which he had raised. An application for compensation submitted to the administrative courts by the applicant's lawyer was dismissed at first instance. The appeal proceedings are still pending.
Admissible under Articles 3 and 13. *Inadmissible* under Article 5(1)(c).

INHUMAN TREATMENT
Continued detention of very elderly convict: *inadmissible*.

SAWONIUK - United Kingdom (N° 63716/00)
Decision 29.5.2001 [Section III]

In 1921, the applicant was born in Domachevo, a town situated in Poland at the time. Between 1941 and 1944, the town was occupied by the Germans. The applicant joined the local police established by the Germans and became local commander of the force. The Nazi policy of genocide against the Jewish population was implemented in the town by the local police. The applicant left the region in 1944 and settled in the United Kingdom in 1946. In 1996, in accordance with the War Crimes Act 1991, he was interviewed by the British police concerning his activities in Domachevo during the German occupation. He was subsequently charged with four counts of murder. Witnesses for the prosecution alleged that he had been directly involved in the executions of Jewish persons. Two of the counts however were dropped due to insufficient evidence. The proceedings continued in respect of the two other counts against him. One of the witnesses made a reference to a document according to which the applicant had been member of the Waffen SS; this document however had not been put in evidence. The trial judge directed the jury so that they would not use the said document as evidence to reach their verdict. During cross-examination of the applicant, the prosecution asked whether the applicant had served in the German army and asked questions concerning the impugned document. After the closing speeches of the parties, the judge decided to withdraw the applicant's bail. He considered it to be in the applicant's own interest and took into account his advanced age (79 at the time), his state of health, the fact that he lived alone at an address known by the press and that he would be held in the hospital wing of the prison

where he would be sent. Review of the decision withdrawing his bail was rejected. The jury convicted the applicant of the remaining counts against him. He was sentenced to a mandatory term of life imprisonment. His appeal of the conviction was rejected by the Court of Appeal. The House of Lords later refused the petition for leave to appeal; no reasons were given for the refusal.

Inadmissible under Article 6(1): As regards the applicant's complaint that he was unable to obtain a fair hearing due to the length of time between the events under examination and the trial, the Convention does not impose any time-limit in respect of war crime prosecutions. In the instant case, the burden of proof laid on the prosecution to establish beyond reasonable doubt that the applicant had committed the offences charged and that he was afforded a fair and effective opportunity, through his counsel and solicitors, to put forward the matters in his favour, notably concerning the reliability of the evidence of witnesses. The judge adequately emphasised these points in his summing-up to the jury. No issue arose under the present Article insofar as the jury was left to decide for itself whether the evidence dating back to 1943 was credible and reliable. The applicant further submitted that evidence went before the jury of wrongdoing not concerned by the indictment and the nature of the evidence was such as to cause his standing with the jury irreparable prejudice. However, the judge clearly indicated in his summing-up to the jury the evidence that could be relied on to convict him. As to the evidence concerning the context of the incidents, in the trial of a person for war crimes, it is not realistic to expect that the evidence can be restricted to the specific counts alleged without the context of the incidents being examined. As regards the document in which it appeared that he had been a member of the Waffen SS, the brief reference to this document during the trial would not have had such an impact on the jury as to improperly or unfairly influence them against the applicant. Finally, there was no right for the applicant to an appeal to the house of lords. It was a second and exceptional level of appeal for which leave was required and for which special requirements of public importance were imposed. Given that the applicant's appeal in the Court of Appeal had been examined in a hearing and a lengthy judgment given, the refusal of leave to appeal without specific reasons being given did not infringe Article 6. Overall, the applicant was not deprived of a fair trial: manifestly ill-founded.

Inadmissible under Articles 3 and 5: The applicant referred to his advanced age (79-80), health problems and inadequacies of treatment in prison rendering imprisonment an exceptional hardship. There is no prohibition in the Convention against the detention in prison of persons who attain an advance age. Nevertheless, a failure to provide the necessary medical care to prisoners may constitute inhuman treatment and there is an obligation on States to adopt measures to safeguard the well being of persons deprived of their liberty. However, the applicant has not taken proceedings in the courts where due to the Human Rights Act 1998 in force since October 2000, he would have be able to rely directly on the provisions of the Convention. He therefore failed to exhaust domestic remedies. There was no basis for finding that the imposition of a sentence of imprisonment on the applicant infringed the prohibition contained in Article 3. Nor, given the seriousness of the offences having led to his conviction, can the life sentence be regarded arbitrary or disproportionate. Besides, there was no indication that the life imprisonment sentence removed any prospect of release for the applicant: manifestly ill-founded.

DEGRADING TREATMENT

Discrimination against Greek Cypriots in northern Cyprus: *violation*.

CYPRUS - Turkey (Nº 25781/94)
Judgment 10.5.2001 [Grand Chamber]
(See Appendix I).

DEGRADING TREATMENT
Hostility displayed towards persons belonging to the Roma minority: *communicated*.

LACKO, DEMETEROVÁ and LACKO - Slovakia (N° 47237/99)
[Section II]

The applicants belong to the Roma minority. In 1981, several Roma families, including those of the first and second applicants, went to work in an agricultural cooperative situated in Krásny Brod. The cooperative offered them accommodation. The first and second applicants were granted permanent residence respectively in Ňagov and Rokytovce, villages which, until 1990, were part of the municipality of Krásny Brod. When the cooperative ceased its activities in 1989, they lost both their jobs and their accommodation. Thereafter, they were unable to settle anywhere in the area, non-Roma residents proving extremely hostile and forcing them to leave whenever they tried to settle in any of the nearby municipalities. In June 1997, the municipal council of Rokytovce adopted a resolution according to which Roma would be expelled if they tried to settle in the village. The council considered that only two of the Roma, including the second applicant, had permanent residence in Rokytovce. At the same time, the municipality of Ňagov issued a similar resolution forbidding Roma to settle in Ňagov. In July 1997, the dwellings which the first and second applicants had built in one of the municipalities of the area were destroyed by unidentified persons. According to the applicants, the authorities did not investigate the matter.. The first applicant and the third applicant (who worked for a legal defence foundation for ethnic minorities) filed a petition with the Constitutional Court challenging the resolution issued by the municipal council of Rokytovce; the second applicant concurrently lodged a constitutional petition against the resolution of the municipal council of Ňagov. The Constitutional Court dismissed them both, considering that the first and second applicants had not been affected by the impugned resolutions. As to the third applicant, it held that he had permanent residence in another district and had not established that he intended to settle in Ňagov or that he had been prevented from doing so. The court therefore considered that he could not claim to be a victim.
Communicated under Articles 34 (victim), 35(1) (exhaustion of domestic remedies), 3, 8, 2 of Protocol N° 4, 14 and 13.

EXPULSION
Deportation to Georgia where the applicants allege a risk of persecution and inhuman treatment due to their belonging to the Yezidi religious minority: *inadmissible*.

KATANI and others - Germany (N° 67679/01)
Decision 31.5.2001 [Section IV]

The applicants are six Georgian families belonging to the Yezidi religious minority who arrived in Germany between 1994 and 1996. The Federal Office for Refugees rejected their application for refugee status as there was no evidence of systematic persecution of Yezidis on the part of the Georgian State. Administrative appeals lodged by the applicants against those decisions were dismissed at first instance and on appeal. The courts concerned based their decisions on various recent sources of information (from Germany, non-governmental organisations, the United States and the European Union) on the situation regarding the Yezidis in Georgia. They found that there were serious doubts as to the credibility of the facts as set out by the applicants and that the applicants' membership of the Yezidi religious community did not make them a target for persecution. The Federal Constitutional Court dismissed an appeal by the applicants.
Inadmissible under Article 3: In finding that there was no persecution of the Yezidi religious community, the German authorities and courts had relied on various sources of up-to-date

information on the general situation in Georgia and the specific situation regarding the Yezidis. The sources showed that the applicants' situation was no worse than that of other members of the Yezidi community, nor perhaps even than that of other inhabitants of Georgia, and was not such as to engage the responsibility of the State under the Convention. The fact that the Georgian authorities had still not taken necessary and sufficient steps to prosecute individuals or groups for offences against members of that minority was the result of the country's general structural weakness rather than of any deliberate action against them as a religious minority: manifestly ill-founded.
Inadmissible under Article 6(1): that provision did not apply to proceedings involving political asylum: *ratione materiae*.

ARTICLE 5

SECURITY OF PERSON
Disappearance following abduction by unidentified kidnappers: *no violation*.

ŞARLI - Turkey (Nº 24490/94)
Judgment 22.5.2001 [Section I]

Facts: The applicant's son and daughter disappeared in 1993 after being abducted by six unidentified armed men. The European Commission of Human Rights concluded, on the basis of evidence taken by a delegation, that it had not been established beyond a reasonable doubt that the men belonged to the security forces, there being more evidence that they were members of the PKK, although that had not been established either. Few steps appear to have been taken to trace the missing persons. Moreover, in 1996 the applicant's lawyer was accused of making propaganda against the State. It was asserted that he had prepared an application to the Commission on behalf of the applicant's husband without there being any lawyer-client relationship. He was later acquitted.
Law: The Court accepted the facts as established by the Commission.
Preliminary objection (non-exhaustion) – The applicant was not required to bring administrative proceedings, which could not have led to the identification and punishment of those responsible. Moreover, it is not apparent that there was any basis for a civil claim against any State official with any reasonable prospects of success. As for criminal law remedies, the matter was sufficiently brought to the attention of the public prosecutor but few steps appear to have been taken to elucidate the facts. In the absence of any prompt or effective investigation, there was no basis for any meaningful recourse to the range of remedies referred to by the Government and the preliminary objection must be dismissed.
Article 5 – In view of the finding that it has not been established beyond a reasonable doubt that the missing persons were taken away by the security forces, it is not appropriate to examine whether the safeguards of Article 5 were complied with. As to the effectiveness of the procedures for investigation, these are examined under Article 13.
Conclusion: no violation (unanimously).
Article 13 – The applicant may be regarded as having an arguable claim that his children disappeared after allegedly being taken into custody, so that the authorities were under an obligation to conduct an effective investigation. No criminal investigation can be considered to have been conducted in accordance with Article 13 and the applicant has therefore been denied an effective remedy and thereby access to any other available remedies.
Conclusion: violation (6 votes to 1).
Having regard to the findings under Article 13, it is not necessary to determine whether the failings identified are part of a practice.

Article 34 (former Article 25) – The Court cannot agree with the assertion that the proceedings against the lawyer were unrelated to the application. It is not material that he was not named as the applicant's representative in the proceedings before the Commission and Court: his role in submitting the petition was instrumental in assisting the applicant's lawyers in the United Kingdom in introducing the application. Nor does the fact that the lawyer was eventually acquitted alter the fact that for over a year he was the subject of a criminal investigation and trial and lived under the deterrent and intimidatory effect thereof. The pursuit of criminal proceedings in those circumstances must be considered an interference with the right of petition.
Conclusion: failure to comply with obligations (6 votes to 1).
Article 41 – The Court awarded the applicant £5,000 (GBP) in respect of non-pecuniary damage and also made an award in respect of costs.

SECURITY OF PERSON
Alleged detention of missing persons and lack of effective investigation: *no violation/violation*.

CYPRUS - Turkey (Nº 25781/94)
Judgment 10.5.2001 [Grand Chamber]
(See Appendix I).

SECURITY OF PERSON
Disappearances: *violation*.

AKDENIZ and others - Turkey (Nº 23954/94)
Judgment 31.5.2001 [Section II]
(See Article 2, above).

LAWFUL ARREST OR DETENTION
Unlawful arrest and detention: *violation*.

DENIZCI and others - Cyprus (Nº 25316-21/94 and 27207/95)
*Judgment 23.5.2001 [Section IV]
(See Article 3, above).

LAWFUL DETENTION
Continued detention of post-tariff lifer after non-violent offence: *admissible*.

STAFFORD - United Kingdom (N° 46295/99)
Decision 29.5.2001 [Section III]

In 1967, the applicant was convicted of murder and sentenced to life imprisonment. In 1979, he was released on a life licence. In breach of his licence, he left the country and went to South Africa. Consequently, in 1980, his licence was revoked. In 1989, he was arrested in the United Kingdom in possession of a false passport. He was fined for being in possession of a false passport but remained in custody by reason of the revocation of his life licence. In March 1991, the applicant was released on a life licence again. In 1993, he was convicted for forgery and sentenced to six years' imprisonment. In 1994, the applicant's licence was revoked, further review being fixed at the parole eligibility date of his six year sentence. Consequently, in 1996, the Parole Board reviewed the applicant's case and recommended his

release on life licence. In February 1997, the Secretary of State rejected the Board's recommendation. Thereafter, the applicant remained in prison on the basis of his previous life sentence, given that he had served the minimum three years applicable to his sentence for forgery. In September 1997, following his request for judicial review, the decision of the Secretary of State was quashed. It was held that it was beyond the Secretary of State's power to detain a post-tariff lifer other than on the basis that there was a significant risk that the applicant would commit an offence involving a risk to the life or limb of the public. However, in November 1997, the Court of Appeal allowed the Secretary of State's appeal. It held that domestic law conferred a broad discretion on the Secretary of State to direct the release of mandatory life sentence prisoners and that his decision not to release the applicant was in accordance with the policy whereby the risk of re-offending was taken into account, such risk not having been expressed as being limited to offences of a violent or sexual nature. The House of Lords dismissed the applicant's appeal against the Court of Appeal's decision. In December 1998, the applicant was released on licence.
Admissible under Article 5(1) and (4).

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Proceedings concerning requests for refugee status: *inadmissible*.

KATANI and others - Germany (N° 67679/01)
Decision 31.5.2001 [Section IV]
(see Article 3, above).

ACCESS TO COURT
Striking out of claims against a local authority on the ground that no duty of care was owed by social services in exercising their statutory powers in relation to the care of children: *no violation*.

Z. and others - United Kingdom (Nº 29392/95)
T.P. and K.M. - United Kingdom (Nº 28945/95)
Judgments 10.5.2001 [Grand Chamber]
(See Appendix III).

ACCESS TO COURT
Rejection by the Supreme Court of an appeal on points of law as out of time, although it had been lodged within the time-limit with the duty judge: *communicated*.

STONE COURT SHIPPING COMPANY , S. A. - Spain (N° 55524/00)
[Section IV]

In December 1996 the *Audiencia Nacional* dismissed an appeal by the applicant company against a decision rejecting an application it had submitted for compensation from the State. In a decision served on the applicant company on 6 March 1997 the *Audiencia Nacional* took note of the company's intention to appeal on points of law and summoned the parties to appear before the Supreme Court to lodge the appeal within the statutory period of thirty

working days. On Friday 11 April 1997, the day before the expiry of that period, the applicant company lodged its appeal at the duty court. The appeal was not filed at the registry of the Supreme Court until Monday 14 April 1997. It was declared inadmissible by the Supreme Court, which held that the applicant company had failed to comply with the deadline for lodging the appeal. The court pointed out that, according to the applicable law, it was only possible to lodge appeals at duty courts on the actual date of the deadline, and outside the hearing times of the court in which the appeals were supposed to be lodged. The Supreme Court did not allow a *súplica* appeal by the applicant company, and its constitutional appeal was dismissed.
Communicated under Article 6(1).

ACCESS TO COURT
Failure to notify the applicant of proceedings resulting in the annulment of the competitive exam through which she had obtained a teaching position: *communicated*.

CAÑETE DE GOÑI - Spain (N° 55782/00)
[Section IV]

The applicant, a geography and history teacher, passed the competitive examination for teachers and was appointed to a permanent teaching post. However, following legal proceedings instituted by a number of unsuccessful candidates, the Andalusia High Court of Justice declared the examination void in a judgment of March 1995, with the result that the applicant lost her permanent teaching post. Complaining that she had not been summoned to appear before the High Court of Justice as a person with an interest in the proceedings, in accordance with section 64(1) of the Administrative Courts Act, the applicant lodged an *amparo* appeal with the Constitutional Court, which declared the appeal admissible. However, in a judgment of September 1999 the Constitutional Court dismissed the appeal on the merits, holding that since the applicant had had extrajudicial knowledge of the proceedings, the failure to summon her had not breached of Article 24 of the Constitution (right to a fair trial).
Communicated under Article 6(1).

ACCESS TO COURT
Impossibility for the applicant to have his case examined either by ordinary courts or arbitration courts: *communicated*.

CHUKHLOVA - Ukraine (N° 56879/00)
[Section IV]

In November 1997 the applicant, a trader, applied to the Aleksandriya Court to challenge the lawfulness both of the tax authorities' confiscation of part of her goods and of a fine imposed on her for illegal trade. The court found in her favour and ordered the authorities to repay her the amount of the fine and to return the confiscated goods. In January 1998 the Regional Court upheld that decision, which became final and was executed. However, in August 1999 the same court, at the request of its Deputy President, set aside the decision of the Aleksandriya Court and its own decision of January 1998 on the ground of lack of jurisdiction, finding that the case should have been heard by the arbitration courts. In November 1999 the applicant therefore lodged the same application with the Regional Arbitration Court as the one she had lodged with the ordinary courts. The Regional Arbitration Court rejected her application, holding that the case fell within the jurisdiction of the ordinary courts. In January 2000 the applicant requested the Supreme Court and the Supreme Arbitration Court to determine which court had jurisdiction to deal with the case.

The Supreme Arbitration Court replied that the arbitration courts had since December 1997 been under instructions to reject any applications similar to the one lodged by the applicant, since such cases fell within the jurisdiction of the ordinary courts. The applicant accordingly applied to the Aleksandriya Court for compensation from the tax authorities. Her application was rejected; the court held that the case was a matter for the arbitration courts.
Communicated under Article 6(1) (applicability, fair hearing, access to court) and Article 34 (victim).

ACCESS TO COURT
Annulment by court of final and enforced court decision: *communicated*.

CHUKHLOVA - Ukraine (N° 56879/00)
[Section IV]
(See above).

FAIR HEARING
Early hearing of cassation appeal, depriving the appellant of the possibility of participating: *communicated*.

ANDREJEVA - Latvia (N° 55707/00)
[Section II]
(See Article 14, below).

ADVERSARIAL PROCEEDINGS
Non-communication to party of opinions obtained by courts in administrative proceedings: *violation*.

K.S. - Finland (Nº 29346/95)
*Judgment 31.5.2001 [Section IV]

Facts: The applicant appealed to the Board for Unemployment Benefits against a refusal to pay him unemployment benefits. The Board refused his appeal after obtaining opinions from the Unemployment Fund and the Employment Commission, neither of which was communicated to the applicant. The applicant then appealed to the Insurance Court, which dismissed the appeal after obtaining a further opinion from the Unemployment Fund. This opinion was not communicated to the applicant either.
Law: Article 6(1) – The opinions were reasoned opinions which were manifestly aimed at influencing the decisions of the courts and, whatever the actual effect they had, it was for the applicant to assess whether they required his comments.
Conclusion: violation (unanimously).
Article 41 – The Court found no causal link between the violation and the alleged pecuniary loss. It awarded the applicant FIM 5,000 in respect of non-pecuniary damage and made an award in respect of costs and expenses.

K.P. - Finland (Nº 31764/96)
*Judgment 31.5.2001 [Section IV]

The case raises issues similar to those in K.S. v. Finland, above.

FAIR HEARING
Self-incrimination – obligation to submit documents to the tax authorities: *violation*.

J.B. - Switzerland (Nº 31827/96)
*Judgment 3.5.2001 [Section II]

Facts: Tax evasion proceedings were brought against the applicant by the District Tax Commission, which requested him to submit all documents relating to investments in particular companies. The applicant admitted that he had made investments without properly declaring the income, but did not submit the documents. When again requested to declare the source of the income, he did not reply. The District Tax Commission decided to issue a supplementary tax but later withdrew this. After the applicant had failed to reply to two further requests, the Cantonal Administration imposed a disciplinary fine of 1,000 Swiss francs. The District Tax Commission admonished the applicant on four occasions as he still had not submitted the required information and then imposed two further disciplinary fines of 2,000 Swiss francs. The applicant's appeal against the second fine was dismissed by the Tax Appeals Commission. He then filed an administrative law appeal with the Federal Court, which dismissed the appeal. A fourth fine was subsequently imposed but did not acquire legal force. In the meantime, the applicant and the tax authorities had reached an agreement closing all tax and criminal proceedings and fixing the amount to be paid by the applicant, including a fine of over 20,000 Swiss francs. It was expressly stated that the proceedings before the European Court of Human Rights would not be affected.
Law: Article 6(1) – The proceedings at issue served the purposes both of establishing the taxes due by the applicant and, if the conditions were met, of imposing a supplementary tax and a fine for tax evasion on him. Nevertheless, the proceedings were not expressly classified as constituting either supplementary tax proceedings or tax evasion proceedings. From the beginning and throughout the proceedings the tax authorities could have imposed a fine on the applicant on account of the criminal offence of tax evasion and, according to the settlement, the applicant incurred such a fine, which was not intended as pecuniary compensation but was essentially punitive and deterrent in nature. Moreover, the amount was not inconsiderable and there can be no doubt that it was "penal" in character. Whatever other purposes the proceedings served, by enabling the imposition of such a fine they determined a criminal charge. Article 6 therefore applies.
It appears that the authorities were attempting to compel the applicant to submit documents which would have provided information as to his income in view of the assessment of his taxes. While it is not for the Court to speculate on what the nature of such information would have been, the applicant could not exclude that any additional income which it transpired from the documents came from untaxed sources would have constituted the offence of tax evasion. While an agreement was reached which closed the various proceedings, it expressly excluded the application to the Court. The situation in the present case differs from that in which there is an obligation to produce material which has an existence independent of the person concerned, such as a blood test. Moreover, in view of the persistence with which the tax authorities attempted to achieve their aim, the Court was unconvinced by the argument that the applicant was not obliged to incriminate himself since the authorities were in fact already aware of the information. Finally, as to the alleged impracticability of a separation of regular tax and criminal tax proceedings, it is not the Court's task to indicate what means a State should use in order to fulfil its obligations under the Convention.
Conclusion: violation (unanimously).
Article 41 – The Court ordered reimbursement of the fine which the applicant had contested before the Federal Court. It also made an award in respect of costs and expenses.

FAIR HEARING
Trial concerning war crimes taking place fifty years after the events: *inadmissible*.

SAWONIUK - United Kingdom (N° 63716/00)
Decision 29.5.2001 [Section III]
(See Article 3, above).

IMPARTIAL TRIBUNAL
Judges deciding on the merits of a case after having rejected appeals lodged by the accused during the investigation: *admissible*.

PEROTE PELLON - Spain (N° 45238/99)
Decision 3.5.2001 [Section IV]

Between 1983 and 1991 the applicant, a regular member of the armed forces, was a head of section at the Spanish military intelligence headquarters (CESID), a position in which he was responsible for a number of classified documents. In 1995 the director of the CESID lodged a complaint with the military courts against the applicant for revealing secrets or information relating to national defence and security. Investigation proceedings were started against him in which he was charged and detained pending trial. He was found guilty by the Central Military Court, sentenced to seven years' imprisonment and dismissed from the armed forces. However, two of the judges of the chamber of the Central Military Court which had found the applicant guilty, namely the President and a reporting judge, had previously sat on a bench of judges of the same court which had upheld the order by which the applicant had been charged and other investigative measures such as the extension of his time in pre-trial detention.
Admissible under Article 6(1).

Article 6(3)(c)

FREE LEGAL ASSISTANCE
Amparo appeal declared inadmissible because not lodged by a lawyer, despite two requests by the applicant for a lawyer to be appointed by the court on the ground of his lack of means: *communicated*.

BOER AUSBURGER - Spain (N° 57217/00)
[Section III]

The applicant was prosecuted for drug trafficking and convicted at first instance. He was sentenced to nine years' imprisonment, had his voting rights suspended and was ordered to pay a fine of 100 million pesetas. He had been represented by an officially assigned lawyer. On appeal, he complained *inter alia* that his request for his wife and parents to give evidence at the trial had been rejected and that the evidence had been assessed incorrectly. His appeal was dismissed. The Supreme Court found that he had not lodged an appeal, within the time allowed by domestic law, against the order rejecting his request to adduce certain pieces of evidence, and further held that the evidence was irrelevant as it was not directly connected to the trial. It added that the judgment had been based on sufficient, clear and reasonable grounds. With a view to lodging an *amparo* appeal, the applicant requested the Constitutional Court to assign him counsel and a solicitor. In January 2000 the Constitutional Court decided that the appeal should be lodged by the barrister and solicitor who had acted on behalf of the applicant in the trial court, and gave him ten days to notify it of their names. In February 2000

the applicant informed the Constitutional Court that, owing to his insufficient financial resources, he had not been assisted by counsel of his choosing in the trial court. He therefore reiterated his request for the court to assign him counsel. In March 2000 the Constitutional Court found that the applicant had not satisfied the requirements set out in its decision of January 2000 and declared the *amparo* appeal inadmissible.

ARTICLE 8

PRIVATE AND FAMILY LIFE AND HOME
Situation of Greek Cypriots in northern Cyprus: *violation*.

CYPRUS - Turkey (Nº 25781/94)
Judgment 10.5.2001 [Grand Chamber]
(See Appendix I).

PRIVATE LIFE
Footage from municipal surveillance system involving the applicant provided by local authority to the media: *admissible*.

PECK - United Kingdom (N° 44647/98)
Decision 15.5.2001 [Section III]

A surveillance system of video cameras was installed in Brentwood by the local authority. The monitoring operator has a direct visual and audio link to the police. The applicant was filmed at a central junction with a kitchen knife in his hands. He had just attempted to commit suicide by cutting his wrists with the knife but that particular action was not filmed. The police, who had been warned by the monitoring operator, arrived at the junction and gave him assistance on the spot before taking him to the police station. Two photographs from the footage were later published in a press feature of the local authority aiming to promote the surveillance system. The title of the article emphasised that, thanks to the surveillance system and the intervention of the police, a "potentially dangerous situation" had been defused. It was specified in the article that copies of the pictures could be obtained from the local authority. Similar articles were published together with the same pictures in two local newspapers. The local authority also provided the footage of the incident for a local television programme. The masking of the applicant's face, done at the authority's request, was later considered inadequate by the Independent Television Commission to which the applicant had complained. The commission nonetheless found that no further action needed to be taken, the station having apologised to the applicant. The local authority also gave the footage for a programme to be broadcast on a national television channel and orally requested the producers to ensure that the applicant remained unidentifiable. His face, however, was not masked in the trailers of the programme. The Broadcasting Standards Commission, to which the applicant had complained, considered that the masking in the main programme was inadequate and that the programme itself constituted an unwarranted infringement on his privacy. The television station was directed to broadcast a summary of the adjudication and to have a summary published in a national newspaper. The applicant's complaint against one of the local newspapers was rejected by the Press Complaints Commission. He unsuccessfully made an application for judicial review of the municipality's disclosure of footage of the surveillance system. His applications for leave to appeal were turned down.
Admissible under Articles 8 and 13.

FAMILY LIFE
Failure to involve parent in decision-making process following removal of child on grounds of suspected sexual abuse: *violation*.

T.P. and K.M. - United Kingdom (Nº 28945/95)
Judgment 10.5.2001 [Grand Chamber]
(See Appendix III).

FAMILY LIFE
Orphan's pension granted from the date of lodging of the application for entitlement rather than from the earlier date of the parents' death: *inadmissible*.

DOMENECH PARDO - Spain (N° 55996/00)
Decision 3.5.2001 [Section IV]

The applicant, who had been appointed as the statutory guardian of her orphan grandson, was awarded an orphans' pension payable from the date on which she had submitted her application (with three months' retroactive effect). Having submitted the application more than one year and four months after the death of the child's parents, the applicant lodged an administrative appeal with a view to obtaining payment of the pension with effect from the date of the parents' death. The court of first instance found in her favour, but its decision was set aside on appeal. An appeal by the applicant against the appellate court's judgment on the ground that it conflicted with existing case-law was dismissed. The applicant lodged an *amparo* appeal, arguing that the delay between the parents' death and the date on which she had submitted her application for the orphans' pension had been the result of factors beyond her control for which she could not be held responsible, and that she was therefore entitled, in accordance with the constitutional principles of the equality of children before the law and the economic and legal protection of the family, to claim the orphans' pension with effect from the date of the child's parents' death – the event which had given rise to her entitlement to the pension.
Inadmissible under Article 8: the Convention did not guarantee the right to a pension as such. It was not inconceivable that a refusal to award a social-security benefit, such as an orphans' pension, might in some circumstances raise an issue under Article 8, for example if the normal development of the child's private and family life became impossible as a result of the refusal. In the instant case, the applicant had been awarded the pension for which she had applied; she had not adduced any evidence to prove that the refusal to award the pension with effect from the date on which the parents of her orphan grandson had died had adversely affected her private and family life and that of her grandson: manifestly ill-founded.

HOME
Denial of access to homes of Greek Cypriots in northern Cyprus: *violation*.

CYPRUS - Turkey (Nº 25781/94)
Judgment 10.5.2001 [Grand Chamber]
(See Appendix I).

HOME
Alleged absence of investigation into criminal destruction by unidentified persons of dwellings belonging to Roma: *communicated*.

LACKO, DEMETEROVÁ and LACKO - Slovakia (N° 47237/99)
[Section II]
(See Article 3, above).

HOME
Demolition of house, used by applicant and situated on estate owned jointly by her and relatives, ordered by authorities despite pending court proceedings concerning the ownership of the house and division of the estate: *admissible*.

ALLARD - Sweden (N° 35179/97)
Decision 22.5.2001 [Section I]

The applicant owned jointly with relatives, including her mother, an estate inherited from her father. In 1988, a house was built for her on the part of the estate which her mother administered. In 1989, after her mother had died, some of the joint owners started proceedings against the applicant in order to have the house pulled down. They submitted that it had been built without their consent, contrary to domestic law requirements. In May 1990, the District Court issued a decision whereby the applicant was to remove the house. If she failed to do so, the house would be demolished and she would have to bear the costs. In 1994, the decision was upheld by the Court of Appeal. In the meantime, in October 1990, the applicant had brought proceedings to have the joint ownership dissolved and the individual plots distributed amongst the joint owners. However, the competent authority refused to create a plot where the house was situated, on the ground that it had been decided by court decision that it should be removed. The applicant then appealed to the Real Estate Court. In 1995, she also had requested the District Court to determine the ownership of the house in question. As regards the initial proceedings, she lodged an appeal with the Supreme Court requesting that they be suspended until the outcome of the proceedings dealing with the division of the estate or those regarding the establishment of the ownership of the house. In March 1996, the Supreme Court rejected her request and refused her leave to appeal. The Enforcement Office fixed a deadline for the applicant to remove the house. The office agreed to postpone the deadline once but rejected the applicant's following request. In May 1996, the District Court also refused to postpone the fixed deadline. The office finally ordered that the house be pulled down. The applicant lodged an appeal asking for an immediate stay of the demolition order. The Court of Appeal turned down her request and refused to grant her leave to appeal against the District Court's decision of May 1996. The applicant was refused leave to appeal by the Supreme Court. The house was finally pulled down and she was asked by the Enforcement Office to bear the costs of the enforcement. She unsuccessfully appealed against the office's decision and was refused legal aid. In November 1996, the Real Estate Court issued a decision by which the applicant was awarded a plot where the house had been. As regards the proceedings concerning the ownership of the house, the District Court found, in July 1997, that the house was part of the estate of the applicant's mother. Accordingly, at the time of the District Court's judgment of May 1990, the house did not belong to the applicant. In February 1997 and 2000, the competent authority granted the applicant building permits for the plot of land.
Admissible under Articles 8 and 1 of Protocol N° 1.

ARTICLE 9

FREEDOM OF RELIGION
Restrictions on religious activities of Greek Cypriots and Maronites in northern Cyprus: *violation/no violation*.

CYPRUS - Turkey (Nº 25781/94)
Judgment 10.5.2001 [Grand Chamber]
(See Appendix I).

FREEDOM OF RELIGION
Conviction of Jehovah's Witness for refusing to do military service: *friendly settlement*.

STEFANOV - Bulgaria (Nº 32438/96)
Judgment 3.5.2001 [Section IV]

The applicant, a Jehovah's Witness, refused on conscientious grounds to perform military service. He was sentenced to one and a half year's imprisonment in 1995. On appeal, the sentence was suspended for three years. The applicant's petition for review was dismissed by the Supreme Court in November 1996. The applicant considered that his conviction was unlawful, since the 1991 Constitution provided that the conditions and procedure for exemption from military service or for its replacement by substitute service should be regulated by Act of Parliament. An Act regulating substitute service came into force on 1 January 1999.
The parties have reached a friendly settlement on the following basis:

> a) all criminal proceedings and judicial sentences in Bulgaria of Bulgaria citizens since 1991 (especially but not limited to the applicant and three applicants in other cases for refusing military service by virtue of their individual conscientious objection but who were willing at the same time to perform alternative civilian service shall be dismissed and all penalties and/or disabilities heretofore imposed in these cases shall be eliminated as if there was never a conviction for a violation of the law, thus the Council of Ministers of the Republic of Bulgaria undertakes the responsibility to introduce draft legislation before the National Assembly for a total amnesty for these cases;
>
> b) That the alternative civilian service in Bulgaria is performed under a purely civilian administration and the military authority is not involved in civilian service and such service shall be similar in duration to that required for military service by the law on military service then in force;
>
> c) That conscientious objectors have the same rights as all Bulgarian citizens to manifest their beliefs whether alone or in union with others after hours and on days off during the term of performing said civilian service without prejudice, sanction or another disability or impediment. (see ... Kokkinakis v. Greece [judgment]), ...
>
> e) That the respondent Government will pay ... [to the applicant] the sum of 2,500 Bulgarian levs ... for costs and expenses;
>
> f) The applicant[ ]..., having the Bulgarian Government fully complying with the conditions listed above on points a, b, c, ... and e, agree to withdraw [his] petition[...] against Bulgaria, filed with the European Court of Human Rights."

ARTICLE 10

FREEDOM TO RECEIVE INFORMATION
Censorship of school books for Greek Cypriots in northern Cyprus: *violation*.

CYPRUS - Turkey (Nº 25781/94)
Judgment 10.5.2001 [Grand Chamber]
(See Appendix I).

FREEDOM TO IMPART INFORMATION
Injunction preventing newspaper from publishing pictures of a person along with articles in which allegations are made against him: *admissible*.

KRONE VERLAGS GmbH & CoKG -. Austria (N° 34315/96)
Decision 15.5.2001 [Section III]

The applicant company owns and publishes a newspaper. On several occasions, it published articles on the financial situation of P. who was at the same time both a teacher and a member of the European Parliament. The articles contained, *inter alia*, allegations whereby he received a salary as a teacher although under domestic law he was not entitled to it whilst being a member of the European Parliament. Photographs of P. were added to the impugned articles. At P.'s request, the Regional Court issued an injunction prohibiting the publication of his picture together with articles such as those that had been published. The court found that the P.'s interest in having prohibited the publication of his photograph outweighed the applicant company's interest in the publication of articles illustrated with his photograph. It held that the photographs had no specific information value that could justify their publication. The appeal lodged by the applicant company was dismissed and its appeal on points of law was declared inadmissible by the Supreme Court.
Admissible under Article 10.

ARTICLE 13

EFFECTIVE REMEDY
Availability of effective remedies for Greek Cypriots in northern Cyprus: *violation/no violation*.

CYPRUS - Turkey (Nº 25781/94)
Judgment 10.5.2001 [Grand Chamber]
(See Appendix I).

EFFECTIVE REMEDY
Effective remedy in respect of shooting by police: *violation.*

HUGH JORDAN - United Kingdom (Nº 24746/95)
McKERR - United Kingdom (Nº 28883/95)
KELLY and others - United Kingdom (Nº 30054/96)
SHANAGHAN - United Kingdom (Nº 37715/97)
*Judgments 4.5.2001 [Section III]
(See Appendix II).

EFFECTIVE REMEDY
Lack of effective remedy in respect of failures of local authorities in relation to care of children: *violation*.

Z. and others - United Kingdom (Nº 29392/95)
T.P. and K.M. - United Kingdom (Nº 28945/95)
Judgments 10.5.2001 [Grand Chamber]
(See Appendix III).

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

ŞARLI - Turkey (Nº 24490/94)
Judgment 22.5.2001 [Section I]
(See Article 5, above).

AKDENIZ and others - Turkey (Nº 23954/94)
Judgment 31.5.2001 [Section II]
(See Article 2, above).

ARTICLE 14

DISCRIMINATION (Article 6)
Applicant obliged to pay court fees for unsuccessful appeals lodged by the Government: *communicated*.

RUSATOMMET Ltd. - Russia (N° 61651/00)
[Section III]
(See Article 1 of Protocol No. 1, below).

DISCRIMINATION (Article 8)
Impossibility for child to inherit from natural father having died intestate: *communicated*.

G.N. - Ireland (N° 52787/99)
[Section IV]

The applicant was born out of wedlock. In 1987, his natural father died intestate. According to the legislation applicable at the time of death, the applicant, as a natural child, had no

inheritance rights. In 1989, he brought proceedings to obtain a declaration of paternity and in January 1998 the High Court declared that the deceased was the father of the applicant. The applicant introduced his application to the Court in July 1998.
Communicated under Article 35(1) (six months, exhaustion of domestic remedies) and Article 8 in conjunction with Article 14.

DISCRIMINATION (Article 1 of Protocol No. 1)
Entitlement to retirement pension for periods of work outwith Latvia restricted to nationals: *communicated*.

ANDREJEVA - Latvia (N° 55707/00)
[Section II]

The applicant is a former USSR national and has been living in Latvia since 1954. Prior to her retirement, she worked in firms based in Riga, except between January 1973 and November 1990 when she worked for employers with a registered office in Kiev or Moscow. In 1990 Latvia declared its independence. In 1995, when the law on the status of citizens of the former USSR without Latvian or any other nationality was passed, she was granted the status of a "permanently resident non-citizen". In 1997 she retired and asked the Latvian authorities to calculate her pension entitlement. The authorities applied the transitional provisions of the State Pensions Act, by which only periods of work in Latvia were taken into account in the calculation of pensions for foreigners who had been resident in Latvia on 1 January 1991. The applicant's pension was therefore calculated solely in respect of her periods of work before January 1973 and after November 1990, the dates between which her employers had had their registered office outside Latvia. She appealed to a higher administrative authority to review that decision. Her appeal was dismissed on the ground that the mere fact of having lived and worked within Latvian territory during the period in issue was of no consequence, since her employer had had its registered office outside Latvia and had accordingly not paid tax to the Latvian authorities. Court proceedings brought by the applicant were unsuccessful both at first instance and on appeal. She appealed on points of law to the Senate of the Supreme Court. The registry informed her in writing that the case would be set down for trial on 6 October 1999 and gave the exact time at which the examination of her appeal was due to start. On that day, however, the hearing began earlier than scheduled and the Senate decided to try the case before the parties had even arrived. The public prosecutor expressed the opinion that the appeal was well-founded, but after deliberation, the Senate dismissed the appeal. The applicant requested that her appeal on points of law be re-examined; her request was refused on the ground that no possibility existed for the revision of a judgment in such circumstances. She was assured that all the submissions of the parties had been taken into consideration.
Communicated under Article 14 taken together with Article 1 of Protocol No. 1.

NATIONAL MINORITY
Discrimination against residents of Roma origin: *communicated*.

LACKO, DEMETEROVÁ and LACKO - Slovakia (N° 47237/99)
[Section II]
(See Article 3, above).

ARTICLE 33

INTER-STATE CASE

CYPRUS - Turkey (Nº 25781/94)
Judgment 10.5.2001 [Grand Chamber]
(See Appendix I).

ARTICLE 34

VICTIM
Annulment of final and enforced decision by which applicant had obtained reimbursement of fine and restitution of confiscated goods: *communicated*.

CHUKHLOVA - Ukraine (N° 56879/00)
[Section IV]
(See Article 6(1), above).

HINDER EXERCISE OF THE RIGHT OF PETITION
Proceedings brought against applicant's lawyer: *failure to comply with obligations*.

ŞARLI - Turkey (Nº 24490/94)
Judgment 22.5.2001 [Section I]
(See Article 5, above).

HINDER EXERCISE OF THE RIGHT OF PETITION
Applicants allegedly compelled to make statements to authorities: *no failure to comply with obligations*.

DENIZCI and others - Cyprus (Nº 25316-21/94 and 27207/95)
*Judgment 23.5.2001 [Section IV]
(See Article 3, above).

HINDER EXERCISE OF THE RIGHT OF PETITION
Questioning of applicants about their applications: *failure to comply with obligations*.

AKDENIZ and others - Turkey (Nº 23954/94)
Judgment 31.5.2001 [Section II]
(See Article 2, above).

ARTICLE 35

Article 35(1)

EXHAUSTION OF DOMESTIC REMEDIES
Effectiveness of remedies in the "Turkish Republic of Northern Cyprus".

CYPRUS - Turkey (Nº 25781/94)
Judgment 10.5.2001 [Grand Chamber]
(See Appendix I).

SIX MONTH PERIOD
Use by applicant of remedy offering no possible redress but providing an element favourable to his application to the Court: *communicated*.

G.N. - Ireland (N° 52787/99)
[Section IV]
(See Article 14, above).

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. 27):

FERNANDES CASCÃO - Portugal (Nº 37845/97)
Judgment 1.2.2001 [Section IV]

BENSAID - United Kingdom (Nº 44599/98)
Judgment 6.2.2001 [Section III]

KROMBACH - France (N° 29731/96)
RICHET - France (Nº 34947/97)
GOMBERT and GOCHGARIAN - France (Nº 39779/98 and Nº 39781/98)
EZZOUHDI - France (Nº 47160/99)
Judgments 13.2.2001 [Section III]

PIALOPOULOS and others - Greece (Nº 37095/97)
Judgment 15.2.2001 [Section II]

CANKOÇAK - Turkey (Nº 25182/94 and Nº 26956/95)
Judgment 20.2.2001 [Section I]

KURZAC - Poland (Nº 31382/96)
SZELOCH - Poland (Nº 33079/96)
Judgments 22.2.2001 [Section IV]

ECER and ZEYREK - Turkey (Nº 29295/95 and Nº 29363/95)
İSMİHAN ÖZEL and others - Turkey (Nº 31963/96)
LUCÀ - Italy (N° 33354/96)
GALATÀ and others - Italy (Nº 35956/97)
GIAMPETRO - Italy (Nº 37170/97)
CIOTTA - Italy (Nº 41804/98)
ARIVELLA - Italy (Nº 41805/98)
ALESIANI and 510 others - Italy (Nº 41806/98)
COMITINI - Italy (Nº 41811/98)
PETTIROSSI - Italy (Nº 44380/98)
CORNAGLIA - Italy (Nº 44385/98)
LIBERATORE - Italy (Nº 44394/98)
VISENTIN - Italy (Nº 44395/98)
G.B. - Italy (Nº 44397/98)
VALENTINO - Italy (Nº 44398/98)
M. S.R.L. - Italy (Nº 44406/98)
TAGLIABUE - Italy (Nº 44417/98)
SBROJAVACCA-PIETROBON - Italy (Nº 44419/98)
MAURI - Italy (Nº 44420/98)
MARZINOTTO - Italy (Nº 44422/98)
MICHELE TEDESCO - Italy (Nº 44425/98)
BELUZZI - Italy (Nº 44431/98)
BERLANI - Italy (Nº 44435/98)
BUFFALO S.R.L. - Italy (Nº 44436/98)
BOCCA - Italy (Nº 44437/98)
TRASPADINI - Italy (Nº 44439/98)
BEVILACQUA - Italy (Nº 44442/98)
MARCHI - Italy (Nº 44443/98)
W.I.E. S.N.C. - Italy (Nº 44445/98)
IANNITI and others - Italy (Nº 44447/98)
ADRIANI - Italy (Nº 46515/98)
GIANNI - Italy (Nº 47773/98)
CONTI - Italy (Nº 47774/98)
ILARDI - Italy (Nº 47777/98)
Judgments 27.2.2001 [Section I]

DONNADIEU - France (Nº 39066/97)
CULTRARO - Italy (Nº 45880/99)
JERUSALEM - Austria (Nº 26958/95)
Judgments 27.2.2001 [Section III]

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Denial of access for Greek Cypriots to property in northern Cyprus: *violation*.

CYPRUS - Turkey (Nº 25781/94)
Judgment 10.5.2001 [Grand Chamber]
(See Appendix I).

PEACEFUL ENJOYMENT OF POSSESSIONS
Unilateral change by Government of conditions for liquidation of bonds, depriving applicant company from obtaining liquidation of its bond: *communicated*.

RUSATOMMET Ltd. - Russia (N° 61651/00)
[Section III]

In May 1993, the Ministry of Finance issued bonds. In July 1999, the applicant company acquired a bond and later the same month asked for its liquidation. However, no payment was made, the ministry having allegedly ordered that all payments of bonds be suspended. However, on the applicant company's request, the City Commercial Court ordered payment of the bond. The ministry was exempted from paying court costs on the ground that public bodies were legally exempted from the requirement to pay them. The City Commercial Court dismissed the subsequent appeal of the ministry. In November 1999, the Government issued an Order whereby the bonds issued in 1993 were to be converted into new bonds with extended maturity dates. Upon the ministry's appeal, the Federal Commercial Court quashed the decisions of the two lower instances and dismissed the applicant company's complaint. The court relied on the 1999 Order and considered that the Government had not refused to honour their debt but had decided, after negotiations with bond holders, to convert the existing debt into new bonds. The applicant company was ordered to pay the court costs of the three instances. Its request for supervisory review was rejected. In October 2000, the Government issued another Order by which the time-limit for issuing the new bonds was set for the end of October 2000. In January 2001, the applicant company which had re-applied for liquidation of its bond was informed that the deadline for the issuing of the new bonds had expired and that no payment could be made for the bond it was holding.
Communicated under Article 1 of Protocol N° 1 and Article 6 in conjunction with Article 14.

PEACEFUL ENJOYMENT OF POSSESSIONS
Demolition of house, used by applicant and situated on estate owned jointly by her and relatives, ordered by authorities despite pending court proceedings concerning the ownership of the house and division of the estate: *admissible*.

ALLARD - Sweden (N° 35179/97)
Decision 22.5.2001 [Section I]
(See Article 8, above).

ARTICLE 2 OF PROTOCOL No. 1

EDUCATION
Absence of secondary education in Greek for Greek Cypriots in northern Cyprus: *violation*.

CYPRUS - Turkey (Nº 25781/94)
Judgment 10.5.2001 [Grand Chamber]
(See Appendix I).

ARTICLE 2 OF PROTOCOL No. 4

Article 2(1) of Protocol No. 4

FREEDOM OF MOVEMENT
Restrictions on movement of Turkish Cypriots: *violation*.

DENIZCI and others - Cyprus (Nº 25316-21/94 and 27207/95)
*Judgment 23.5.2001 [Section IV]
(See Article 3, above).

FREEDOM TO CHOOSE RESIDENCE
Impossibility for Slovak nationals of Roma origin to settle where they have been granted permanent residence: *communicated*.

LACKO, DEMETEROVÁ and LACKO - Slovakia (N° 47237/99)
[Section II]
(See Article 3, above).

ARTICLE 4 OF PROTOCOL No. 7

NE BIS IN IDEM
Conviction in criminal proceedings following imposition of a fine in administrative proceedings arising out of the same incident: *violation*.

FISCHER - Austria (Nº 37950/97)
*Judgment 29.5.2001 [Section II]

Facts: The applicant fatally injured a cyclist while driving under the influence of alcohol. The District Administrative Authority imposed a fine in respect of several road traffic offences, including driving under the influence of alcohol. Subsequently, the Regional Court convicted the applicant of causing death by negligence with the aggravating circumstance of being intoxicated through the consumption of alcohol. It sentenced him to 6 months' imprisonment. His appeal was dismissed by the Court of Appeal. However, the sentence was reduced to five months by the Federal President exercising his prerogative of pardons.

Law: The Government's preliminary objection, to the effect that the reduction in the applicant's sentence equated to the part of the fine relating to driving under the influence of alcohol, was joined to the merits.
Article 4 of Protocol No. 7 – The mere fact that a single act constitutes more than one offence is not contrary to this provision. However, there are cases where one act appears at first sight to constitute more than one offence, but closer examination shows that only one offence should be prosecuted because it encompasses all the wrongs contained in the others. Thus, where different offences based on one act are prosecuted consecutively, the Court has to examine whether or not such offences have the same essential elements. The question whether or not the *ne bis in idem* principle is violated concerns the relationship between the two offences at issue and does not depend on the order in which the respective proceedings are conducted. In the present case, the applicant was tried and punished twice on the basis of one act, since the administrative offence of drunken driving and the special circumstances applying under the Criminal Code do not differ in their essential elements. Moreover, the Court was not convinced that the case was resolved by the reduction of the prison sentence by one month, since that reduction could not alter the fact that the applicant was tried twice for essentially the same offence and the fact that both convictions stand. The preliminary objection must therefore be dismissed and there has been a violation.
Conclusion: violation (unanimously).
Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage. It made an award in respect of costs and expenses.

Other judgments delivered in May 2001

Revision

E.P. - Italy (Nº 31127/96)
Judgment 3.5.2001 [Section II]

The judgment of 16 November 1999 was revised to the effect that no award of just satisfaction was made, the applicant having died prior to adoption of that judgment without leaving any heirs.

Article 5(3)

ÖZATA and others - Turkey (Nº 30453/96)
DEĞERLİ - Turkey (Nº 31896/96)
ŞANLI and EROL - Turkey (Nº 36760/97)
Judgments 22.5.2001 [Section I]

KORTAK - Turkey (Nº 34499/97)
Judgment 31.5.2001 [Section II]

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

Article 6(1)

KAYSIN and others - Ukraine (Nº 46144/99)
*Judgment 3.5.2001 [Section IV]

The case concerned the failure of the authorities to pay invalidity pensions awarded by a court – friendly settlement.

C. - /Poland (Nº 31827/96)
Judgment 3.5.2001 [Section IV]

The case concerns the length of civil proceedings – violation.

REMŠÍKOVÁ - Slovakia (Nº 46843/99)
Judgment 17.5.2001 [Section II]

The case concerns the length of civil proceedings – friendly settlement.

VERMEERSCH - France (Nº 39273/98)
*Judgment 22.5.2001 [Section III]

The case concerns the length of administrative proceedings – violation.

STOIDIS - Greece (Nº 46407/99)
*Judgment 17.5.2001 [Section II]

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

SCHEELE - Luxembourg (Nº 41761/98)
*Judgment 17.5.2001 [Section II]

The case concerns the length of criminal proceedings which the applicant joined as a party seeking damages – violation.

METZGER - Germany (Nº 37591/97)
*Judgment 31.5.2001 [Section IV]

The case concerns the length of criminal proceedings – violation.

Article 6 and Article 1 of Protocol No. 1

COLANGELO - Italy (Nº 29671/96)
CASTELLI - Italy (Nº 30920/96)
Judgment 31.5.2001 [Section II]

The cases concern the prolonged inability for the applicants, to recover possession of their apartments, as a result of the absence of police assistance – friendly settlement.

Articles 3 and 8 and Article 1 of Protocol No. 1

KEMAL GÜVEN - Turkey (Nº 31847/96)
CEMAL and NURHAYAT GÜVEN - Turkey (Nº 31848/96)
AYGÖRDÜ and others - Turkey (Nº 33323/96)
AĞGÜL and others - Turkey (Nº 33324/96)
İNCE and others - Turkey (Nº 33325/96)
Judgments 22.5.2001 [Section I]

These cases concern the alleged destruction of the applicants' homes and possessions – friendly settlement.

Article 1 of Protocol No. 1

CIVELEK and others - Turkey (Nº 37050/97)
KISA and others - Turkey (Nº 39328/98)
Judgment 22.5.2001 [Section I]

The case concerns the delay in payment of supplementary compensation for expropriation – friendly settlement.

APPENDIX I

Cyprus v. Turkey judgment - extract from press release

In a Grand Chamber judgment delivered at Strasbourg on 10 May 2001 in the case of ***Cyprus v. Turkey*** (application no. 25781/94), the European Court of Human Rights held, by sixteen votes to one, that the matters complained of by Cyprus in its application entailed Turkey's responsibility under the European Convention on Human Rights.
The Court held that there had been the following 14 violations of the Convention (see **Decision of the Court** for details):

Greek-Cypriot missing persons and their relatives

- a continuing **violation of Article 2** (right to life) of the Convention concerning the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances;
- a continuing **violation of Article 5** (right to liberty and security) concerning the failure of the Turkish authorities to conduct an effective investigation into the whereabouts and fate of the Greek-Cypriot missing persons in respect of whom there was an arguable claim that they were in Turkish custody at the time of their disappearance;
- a continuing **violation of Article 3** (prohibition of inhuman or degrading treatment) in that the silence of the Turkish authorities in the face of the real concerns of the relatives attained a level of severity which could only be categorised as inhuman treatment.

Home and property of displaced persons

- a continuing **violation of Article 8** (right to respect for private and family life, home and correspondence) concerning the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus;
- a continuing **violation of Article 1 of Protocol No. 1** (protection of property) concerning the fact that Greek-Cypriot owners of property in northern Cyprus were being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights;
- a **violation of Article 13** (right to an effective remedy) concerning the failure to provide to Greek Cypriots not residing in northern Cyprus any remedies to contest interferences with their rights under Article 8 and Article 1 of Protocol No. 1.

Living conditions of Greek Cypriots in Karpas region of northern Cyprus

- a **violation of Article 9** (freedom of thought, conscience and religion) in respect of Greek Cypriots living in northern Cyprus, concerning the effects of restrictions on freedom of movement which limited access to places of worship and participation in other aspects of religious life;
- a **violation of Article 10** (freedom of expression) in respect of Greek Cypriots living in northern Cyprus in so far as school-books destined for use in their primary school were subject to excessive measures of censorship;
- a **continuing violation of Article 1 of Protocol No. 1** in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possessions was not secured in case of their permanent departure from that territory and in that, in case of death, inheritance rights of relatives living in southern Cyprus were not recognised;
- a **violation of Article 2 of Protocol No. 1** (right to education) in respect of Greek Cypriots living in northern Cyprus in so far as no appropriate secondary-school facilities were available to them;
- a **violation of Article 3** in that the Greek Cypriots living in the Karpas area of northern Cyprus had been subjected to discrimination amounting to degrading treatment;
- a **violation of Article 8** concerning the right of Greek Cypriots living in northern Cyprus to respect for their private and family life and to respect for their home;

- a **violation of Article 13** by reason of the absence, as a matter of practice, of remedies in respect of interferences by the authorities with the rights of Greek Cypriots living in northern Cyprus under Articles 3, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1.

Rights of Turkish Cypriots living in northern Cyprus

- a **violation of Article 6** (right to a fair trial) on account of the legislative practice of authorising the trial of civilians by military courts.

The Court further held that there had been **no violation** concerning a number of complaints, including all those raised under: Article 4 (prohibition of slavery and forced labour), Article 11 (freedom of assembly and association), Articles 14 (prohibition of discrimination), Article 17 (prohibition of abuse of rights) and Article 18 (limitation on use of restrictions on rights) read in conjunction with all those provisions. As regards a number of other allegations, the Court held that it was not necessary to consider the issues raised.

The Court also decided, unanimously, that the question of the possible application of Article 41 (just satisfaction) of the Convention was not ready for decision.

Principal facts

The case relates to the situation that has existed in northern Cyprus since the conduct of military operations there by Turkey in July and August 1974 and the continuing division of the territory of Cyprus. In connection with that situation, Cyprus maintained that Turkey had continued to violate the Convention in northern Cyprus after the adoption of two earlier reports by the European Commission of Human Rights, which were drawn up following previous applications brought by Cyprus against Turkey.
In the Convention proceedings, Cyprus contended that Turkey was accountable under the Convention for the violations alleged notwithstanding the proclamation of the "Turkish Republic of Northern Cyprus" in November 1983 and the subsequent enactment of the "TRNC Constitution" in May 1985. Cyprus maintained that the "TRNC" was an illegal entity from the standpoint of international law and pointed to the international community's condemnation of the establishment of the "TRNC". Turkey, on the other hand, maintained that the "TRNC" was a democratic and constitutional State, which was politically independent of all other sovereign States, including Turkey. For that reason, Turkey stressed that the allegations made by Cyprus were imputable exclusively to the "TRNC" and that Turkey could not be held accountable under the Convention for the acts or omissions on which those allegations were based.

Complaints

Before the Court, Cyprus alleged violations of the Convention under Articles 1 (obligation to respect human rights), 2, 3, 4, 5, 6, 8, 9, 10, 11, 13, Articles 1 and 2 of Protocol No. 1, and Articles 14, 17, and 18. According to Cyprus, these Articles were violated as a matter of administrative practice by the respondent State.
The allegations concerned the following issues:

(a) Greek-Cypriot missing persons and their relatives

In respect of Greek-Cypriot missing persons, it was alleged that, if any were still in Turkish custody, this would constitute a form of slavery or servitude contrary to Article 4 and a grave breach of their right to liberty under Article 5. In addition, Cyprus maintained that there had been a violation of Articles 2 and 5 on account of Turkey's failure to carry out an investigation into the disappearance of these persons in life-threatening circumstances and to account for their whereabouts.
In respect of the relatives of missing persons, Cyprus alleged violations of Articles 3, 8 and 10 on account of the Turkish authorities' consistent and continuing failure to provide information on the fate of the missing persons.

(b) Home and property of displaced persons

Cyprus complained, among other things, under Article 8 (the continuing refusal to allow Greek Cypriots to return to their homes and families in northern Cyprus; implantation of Turkish settlers in northern Cyprus to the detriment of the demographic and cultural environment of northern Cyprus), Article 1 of Protocol No. 1 (denial of access to and enjoyment of property, re-assignment of property, withholding of compensation and deprivation of title), Article 13 of the Convention (failure to provide any remedy to displaced persons in respect of the alleged violations of Article 8 and Article 1 of Protocol No. 1) and Article 14 taken in conjunction with the preceding Articles (discrimination against Greeks and Greek Cypriots as regards, among other things, enjoyment of their property). Cyprus further invoked Article 3 (discrimination against displaced persons amounting to ill-treatment), and Articles 17 (abuse of rights) and 18 (impermissible use of restrictions on rights).

(c) Living conditions of Greek Cypriots in the Karpas region of northern Cyprus

As regards the Karpas Greek Cypriots, Cyprus relied on, among other things, Articles 2 (denial of adequate medical treatment and services), 3 (discriminatory treatment; in particular in view of their advanced age, the restrictions placed on them and methods of coercion used were said to amount to inhuman and degrading treatment), 5 (threat to security of person and absence of official action to prevent this), 6 (lack of a fair hearing before an independent and impartial tribunal established by law for the determination of their civil rights), 8 (interference with their right to respect for their private and family life, home and correspondence), 9 (interference with their right to manifest their religion on account of restrictions on their freedom of movement and access to places of worship), 10 (excessive censorship of school-books and restrictions on importation of Greek-language newspapers and books), 11 (impediments to their participation in bi or inter-communal events or gatherings), 13 (denial of an effective remedy in respect of their complaints) and 14 (discrimination on racial, religious and linguistic grounds), and Articles 1 (interference with the property of deceased Greek Cypriots as well as with the property of such persons who permanently leave northern Cyprus) and 2 (denial of secondary-education facilities to Greek-Cypriot children) of Protocol No. 1.

(d) Complaints relating to Turkish Cypriots, including members of the Gypsy community, living in northern Cyprus

Cyprus alleged, among other things, violations in relation to Turkish Cypriots who are opponents of the "TRNC" *régime* of Articles 5 (arbitrary arrest and detention), 6 (trial by "military courts"), 8 (assaults and harassment by third parties), 10 (prohibition of Greek-language newspapers and interference with the right to freedom of expression), 11 (denial of the right to associate freely with Greek Cypriots), Article 1 of Protocol No.1 (failure to allow Turkish Cypriots to return to their properties in southern Cyprus). Violations were also alleged of Articles 3, 5, 8 and 13 and Article 2 of Protocol No. 1 in relation to the treatment of Turkish-Cypriot Gypsies living in northern Cyprus.

Decision of the Court

Preliminary issues

The Court considered, unanimously, that, notwithstanding Turkey's failure either to submit a memorial to the Court or to attend the oral hearing held on 20 September 2000 and to plead these issues afresh, it had jurisdiction to examine those preliminary issues raised by Turkey in the proceedings before the Commission which the Commission reserved for the merits stage.

The Court held, unanimously, that the applicant Government had both *locus standi* to bring the application, given that the Republic of Cyprus was the sole legitimate government of Cyprus, and a legitimate legal interest in having the merits of the application examined since neither of the resolutions adopted by the Committee of Ministers of the Council of Europe on the Commission's previous reports had resulted in a decision which could be said to be dispositive of the issues raised in the application. Furthermore, the Court, unanimously, confirmed the Commission's conclusion that situations which ended more than six months before the date of introduction of the application (22 May 1994) fell outside the scope of its examination.

As to Turkey's denial of liability under the Convention for the allegations made against it, the Court held, by sixteen votes to one, that the facts complained of in the application fell within the "jurisdiction" of Turkey within the meaning of Article 1 of the Convention and therefore entailed the respondent State's responsibility under the Convention. In reaching this conclusion, the Court noted that such a finding was consistent with its earlier statements in its ***Loizidou v. Turkey*** (*merits*) judgment. In that judgment, the Court had noted that Turkey exercised effective overall control of northern Cyprus through its military presence there, with the result that its responsibility under the Convention was engaged for the policies and actions of the "TRNC" authorities. In the instant case, the Court stressed that Turkey's responsibility under the Convention could not be confined to the acts of its own soldiers and officials operating in northern Cyprus but was also engaged by virtue of the acts of the local administration ("the TRNC"), which survived by virtue of Turkish military and other support.
The Court further held, by ten votes to seven, that, for the purposes of the exhaustion requirements under the former Article 26 (current Article 35 § 1), remedies available in the "TRNC" may be regarded as "domestic remedies" of the respondent State and that the question of the effectiveness of these remedies had to be considered in the specific circumstances where it arose, on a case-by case basis. The majority of the Court, in line with the majority viewpoint of the Commission, considered, among other things, and with reference to the Advisory Opinion of the International Court of Justice in the Namibia case, that in situations similar to those arising in the present case, the obligation to disregard acts of *de facto* entities, like the "TRNC", was far from absolute. For the Court, life went on in the territory concerned for its inhabitants and that life must be made tolerable and be protected by the *de facto* authorities, including their courts. It considered that, and in the interests of the inhabitants, the acts of those authorities could not simply be ignored by third States or by international institutions, especially courts. To hold otherwise would amount to stripping the inhabitants of the territory of all their rights whenever they were discussed in an international context, which would amount to depriving them even of the minimum standard of rights to which they were entitled. In reaching this conclusion, the Court's majority stressed that its reasoning did not in any way legitimise the "TRNC" and reaffirmed the view that the government of the Republic of Cyprus remained the sole legitimate government of Cyprus.

(a) Greek-Cypriot missing persons and their relatives

The Court, unanimously, found that there had been **no violation of Article 2** by reason of an alleged violation of a substantive obligation under that Article in respect of any of the missing persons. The evidence before it did not substantiate to the required standard that any of the missing persons were killed in circumstances engaging the respondent State's liability.
On the other hand, the Court found, by sixteen votes to one, that there had been a **continuing violation of Article 2** on account of the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances.
The Court concluded, unanimously, that **no violation of Article 4** had been established.
Although it found, unanimously, that it had not been established that, during the period under consideration, any of the missing persons were actually in detention, the Court ruled, by sixteen votes to one, that there had been a **continuing violation of Article 5** by virtue of the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of the Greek-Cypriot missing persons in respect of whom there was an arguable claim that they were in Turkish custody at the time of their disappearance.
As to the relatives of the Greek-Cypriot missing persons, the Court held, by sixteen votes to one, that there had been a **continuing violation of Article 3**. In the Court's opinion, the silence of the authorities of the respondent State in the face of the real concerns of the relatives attained a level of severity which could only be categorised as inhuman treatment.
Having regard to that conclusion, the Court held, unanimously, that it was not necessary to examine whether Articles 8 and 10 of the Convention had been violated in respect of the relatives of the Greek-Cypriot missing persons.

(b) Home and property of displaced persons

The Court held, by sixteen votes to one, that there had been a **continuing violation of Article 8** by reason of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus. Having regard to that conclusion, the Court found, unanimously, that it was not

necessary to examine whether there had been a further violation of that Article by reason of the alleged manipulation of the demographic and cultural environment of the Greek-Cypriot displaced persons' homes in northern Cyprus. As to the applicant Government's complaint under Article 8 concerning the interference with the right to respect for family life on account of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus, the Court held, unanimously, that this complaint fell to be considered in the context of their allegations in respect of the living conditions of the Karpas Greek Cypriots.
Furthermore, the Court held, by sixteen votes to one, that there had been a **continuing violation of Article 1 of Protocol No. 1** by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus were being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights.
The Court also held, by sixteen votes to one, that there had been a **violation of Article 13** by reason of the failure to provide to Greek Cypriots not residing in northern Cyprus any remedies to contest interferences with their rights under Article 8 and Article 1 of Protocol No. 1. It did not find it necessary (unanimously) to examine whether in this case there had been a violation of Article 14 taken in conjunction with Articles 8 and 13 and Article 1 of Protocol No. 1, or whether the alleged discriminatory treatment of Greek-Cypriot displaced persons also gave rise to a breach of Article 3. It was also of the unanimous view that it was not necessary to examine separately the applicant Government's complaints under Articles 17 and 18, having regard to its findings under Articles 8 and 13 and Article 1 of Protocol No. 1.

(c) Living conditions of Greek Cypriots in Karpas region of northern Cyprus

The Court held, by sixteen votes to one, that there had been a **violation of Article 9** in respect of Greek Cypriots living in northern Cyprus. As regards Maronites living in northern Cyprus it found, unanimously, **no violation of Article 9**. The Court also held, by sixteen votes to one, that there had been a **violation of Article 10** in respect of Greek Cypriots living in northern Cyprus in so far as school-books destined for use in their primary school were subject to excessive measures of censorship.
The Court further held, by sixteen votes to one, that there had been a **continuing violation of Article 1 of Protocol No. 1** in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possessions was not secured in case of their permanent departure from that territory and in that, in case of death, inheritance rights of relatives living in southern Cyprus were not recognised.
The Court also ruled, by sixteen votes to one, that there had been **a violation of Article 2 of Protocol No. 1** in respect of Greek Cypriots living in northern Cyprus in so far as no appropriate secondary-school facilities were available to them.
In addition, the Court found, by sixteen votes to one, that there had been **a violation of Article 3** in that the Greek Cypriots living in the Karpas area of northern Cyprus had been subjected to discrimination amounting to degrading treatment. It observed in this connection that the Karpas Greek-Cypriot population was compelled to live in a situation of isolation and that its members were controlled and restricted in their movements and had no prospect of renewing or developing their community. For the Court, the conditions under which the population was condemned to live were debasing and violated the very notion of respect for the human dignity of its members. The discriminatory treatment attained a level of severity which amounted to degrading treatment.

The Court further held, by sixteen votes to one, that, from an overall standpoint, there had been a **violation of Article 8** concerning the right of Greek Cypriots living in northern Cyprus to respect for their private and family life and to respect for their home. In this connection the Court noted that the population concerned was subjected to serious restrictions on the exercise of these rights, including monitoring of its members' movements and contacts. The surveillance effected by the authorities even extended to the physical presence of State agents in the homes of Greek Cypriots on the occasion of social or other visits paid by third parties, including family members. Having regard to that conclusion, the Court found, unanimously, that it was not necessary to examine separately the applicant Government's complaint under Article 8 concerning the effect of the respondent State's alleged colonisation policy on the demographic and cultural environment of the Greek Cypriots' homes. The Court further found, unanimously, **no violation of Article 8** concerning the right to respect for correspondence by reason of an alleged practice of interference with the right of Greek Cypriots living in northern Cyprus to respect for their correspondence.

The Court found, by sixteen votes to one, that there had been a **violation of Article 13** by reason of the absence, as a matter of practice, of remedies in respect of interferences by the authorities with the rights of Greek Cypriots living in northern Cyprus under Articles 3, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1. On the other hand, it held, by eleven votes to six, that **no violation of Article 13** had been established by reason of the alleged absence of remedies in respect of interferences by private persons with the rights of Greek Cypriots living in northern Cyprus under Article 8 and Article 1 of Protocol No. 1.
The Court held, by sixteen votes to one, that **no violation of Article 2** had been established by reason of an alleged practice of denying access to medical services to Greek Cypriots and Maronites living in northern Cyprus and, by the same margin, that there had been **no violation of Article 5**. Furthermore, by eleven votes to six, it held that **no violation of Article 6** had been established in respect of Greek Cypriots living in northern Cyprus by reason of an alleged practice of denying them a fair hearing by an independent and impartial tribunal in the determination of their civil rights and obligations. The Court also held, unanimously, that **no violation of Article 11** had been established by reason of an alleged practice of denying Greek Cypriots living in northern Cyprus the right to freedom of association and that **no violation of Article 1 of Protocol No. 1** had been established by virtue of an alleged practice of failing to protect the property of Greek Cypriots living in northern Cyprus against interferences by private persons.
The Court decided, unanimously, that it was not necessary to examine whether there had been a violation of Article 14 taken in conjunction with Article 3 in respect of Greek Cypriots living in northern Cyprus, having regard to its finding under Article 3 and, by fourteen votes to three, that, having regard to the particular circumstances of this case, it was not necessary to for it to examine whether there had been a breach of Article 14 taken in conjunction with other relevant Articles.

(d) Right of displaced Greek Cypriots to hold elections

The Court held, unanimously, that it was not necessary to examine whether the facts disclosed a violation of the right of displaced Greek Cypriots to hold free elections, as guaranteed by Article 3 of Protocol No. 1.

(e) Rights of Turkish Cypriots, including members of Gypsy community, living in northern Cyprus

Under this heading, the Court, unanimously, declined jurisdiction to examine those aspects of the applicant Government's complaints under Articles 6, 8, 10 and 11 in respect of political opponents of the regime in the "TRNC" as well as their complaints under Articles 1 and 2 of Protocol No. 1 in respect of the Turkish-Cypriot Gypsy community, which were held by the Commission not to be within the scope of the case as declared admissible.
The Court found, by sixteen votes to one, that there had been a **violation of Article 6** on account of the legislative practice of authorising the trial of civilians by military courts.
The Court further held, unanimously, that there had **been no violation of Articles 3, 5, 8, 10 and 11** concerning the rights of Turkish Cypriot opponents of the regime in northern Cyprus by reason of an alleged administrative practice, including an alleged practice of failing to protect their rights under these Articles. By sixteen votes to one, the Court found **no violation of Articles 3, 5, 8 and 14** concerning the rights of members of the Turkish-Cypriot Gypsy community by reason of an alleged administrative practice, including an alleged practice of failing to protect this group's rights under these Articles.
It held, unanimously, that: **no violation of Article 10** had been established by reason of an alleged practice of restricting the right of Turkish Cypriots living in northern Cyprus to receive information from the Greek-language press; **no violation of Article 11** had been established by reason of an alleged practice of interference with the right to freedom of association or assembly of Turkish Cypriots living in northern Cyprus; **no violation of Article 1 of Protocol No. 1** had been established by reason of an alleged administrative practice, including an alleged practice of failing to secure enjoyment of their possessions in southern Cyprus to Turkish Cypriots living in northern Cyprus.
By eleven votes to six, the Court found that **no violation of Article 13** had been established by reason of an alleged practice of failing to secure effective remedies to Turkish Cypriots living in northern Cyprus.

(f) Alleged violations of Articles 1, 17, 18 and former Article 32 § 4

The Court held unanimously that it was not necessary to examine separately the applicant Government's complaints under these Articles.

Judges Palm, Costa, Jungwiert, Panțîru, Levits, Kovler, Fuad and Marcus-Helmons expressed partly dissenting opinions, which are annexed to the judgment.

APPENDIX II

Hugh Jordan v. the United Kingdom, McKerr v. the United Kingdom, Kelly and others v. the United Kingdom and Shanaghan v. the United Kingdom judgments of 4 May 2001 – extract from press release

The Court held, unanimously, that there had been:

- A violation of Article 2 (right to life) of the European Convention on Human Rights, concerning the failure to conduct a proper investigation into the circumstances of the deaths in question, in all four cases;
- No violation of Article 6 § 1 (right to a fair trial), in the cases of *Hugh Jordan* and *Kelly & Others;*
- No violation of Article 14 (freedom from discrimination) in all four cases;
- No violation of Article 13 (right to an effective remedy) in all four cases.

Under Article 41 (just satisfaction) of the Convention, the Court awarded 10,000 pounds sterling (GBP) to each applicant for non-pecuniary damage and, for costs and expenses, GBP 30,000 to Hugh Jordan, GBP 25,000 to Jonathan McKerr, a global sum of GBP 30,000 to the applicants in *Kelly & Others* and GBP 20,000 to Mary Shanaghan.

1. Principal facts

Hugh Jordan - Hugh Jordan, who has dual Irish and United Kingdom nationality and was born in 1941, lives in Belfast, Northern Ireland.
On 25 November 1992, the applicant's son, Pearse Jordan, aged 22, while unarmed, was shot three times in the back and killed in Belfast by officers of the Royal Ulster Constabulary (the RUC). On 16 November 1993, the Director of Public Prosecutions (DPP) issued a direction of no prosecution on the basis of insufficient evidence to warrant prosecution. On 4 January 1995, the Coroner's inquest into the death commenced. It was adjourned on 26 May 1995 for the applicant to take judicial review proceedings concerning the Coroner's refusal to give the family prior access to witness statements and his grant of anonymity to RUC witnesses. The inquest proceedings have still not been concluded. On 7 December 1992, the applicant had instituted civil proceedings, alleging death by wrongful act. These are at the discovery stage.
McKerr - Jonathan McKerr, an Irish national born in 1974, lives in Lurgan, Armagh, Northern Ireland.
On 11 November 1982, the applicant's father, Gervaise McKerr, was driving a car with two passengers, Eugen Toman and Sean Burns. They were unarmed. In an incident, during which a reported 109 rounds were fired into the car by RUC officers, all three men were killed. Three officers were prosecuted for the murder of Eugen Toman. On 5 June 1984, the judge found at the conclusion of the prosecution case that there was insufficient evidence to establish guilt and acquitted the officers. On 24 May 1984, John Stalker, then Deputy Chief Constable of Greater Manchester Police, was appointed to head an inquiry into this and two other incidents of the use of lethal force by RUC officers. He was later replaced by Colin Sampson, Chief Constable of West Yorkshire Police. The final inquiry reports were submitted to the RUC and DPP on 23 March 1987. In a statement in the House of Commons, the Attorney-General announced that no further prosecutions were warranted.
On 4 June 1984, an inquest had opened into the deaths of the three men. On 9 November 1988 and 5 May 1994, the Secretary of State for Northern Ireland issued public interest immunity certificates prohibiting the disclosure of sensitive security materials including the Stalker and Sampson reports. The inquest was finally abandoned by the Coroner on 8 September 1994, following an unsuccessful attempt by the Coroner to obtain disclosure of the Stalker and Sampson inquiry materials. On 19 August 1991, civil proceedings were issued by the applicant's mother in respect of his father's death. No further steps were taken.
Kelly & Others - the nine applicants are all Irish nationals - Vincent Kelly, born in 1926, lives in Dungannon, County Tyrone; Kevin McKearney, born in 1924, lives in Moy, Co. Tyrone; Amelia Arthurs, born in 1941, lives in Dungannon, Co. Tyrone; Letitia Donnelly, born in 1936, lives in Dungannon, Co. Tyrone; Mary Kelly, born in 1936, lives in Dungannon, Co. Tyrone; Annie Gormley, born in 1926, lives in Dungannon, Co. Tyrone; Patrick O'Callaghan, born in 1913, lives in Benburb,

Co. Tyrone; Carmel Lynagh, born in 1934, lives in Clones; and Brigid Hughes, born in 1946, lives in Moy, Co. Tyrone.
On 8 May 1987, 24 soldiers and three RUC officers set up an ambush to surprise a terrorist attack on Loughgall RUC station. After the arrival of an armed IRA unit at the station with a quantity of explosives, eight members of the IRA (Patrick Kelly, Michael Gormley, Seamus Donnelly, Patrick McKearney, James Lynagh, Eugene Kelly, Declan Arthurs, Gerard O'Callaghan) were killed. A ninth individual, Antony Hughes, a passing civilian, was also killed by bullets fired by the security forces. On 2 December 1988, 20 March 1990 and 2 May 1990, seven families of the deceased issued civil proceedings. On 22 September 1990, the DPP concluded that the evidence did not warrant any prosecution. On 24 September 1990, the Coroner adjourned the inquest pending judicial review proceedings brought by relatives concerning the admittance in evidence of written statements. On 2 June 1995, the inquest was concluded.
Shanaghan - Mary Theresa Shanaghan, an Irish national born in 1924, lives in Castlederg, Northern Ireland.
Her son, Patrick Shanaghan, a member of Sinn Fein, was suspected by the RUC of being a member of the IRA and involved in acts of terrorism. In or about December 1990, the RUC informed Patrick Shanaghan that security force materials, containing personal information, including a photo montage, had accidentally fallen out the back of an army vehicle. He was later warned that he might be targeted by loyalist terrorists. On 12 August 1991, he was shot dead by a masked gunman. The inquest was held from 26 March to 20 June 1996. On 22 July 1994, the applicant had issued proceedings claiming damages in respect of the killing of her son.

Complaints

Hugh Jordan - the applicant complained, among other things, that his son was killed by an excessive use of force contrary to Article 2 of the Convention. He also complained under Article 2 that there had been no prosecution in relation to the unjustified killing and that there had been a failure to comply with the procedural requirement under Article 2 to provide an effective investigation into the circumstances of his son's death. He submitted in particular that the inquest proceedings were flawed due to the limited scope of the enquiry, the lack of legal aid for relatives, the lack of advance disclosure to the family of inquest statements and the lack of compellability as a witness of the police officer who fired the shots. He also complained under Article 6 that his son was deprived of a fair trial, under Article 14 that the high number of killings by the security forces of civilians in the Catholic or nationalist community taken with the low number of prosecutions and convictions disclosed discrimination and, under Article 13, that there was no effective remedy in respect of these matters.
McKerr - the applicant complained, among other things, that his father, Gervaise McKerr was killed by an excessive use of force contrary to Article 2 of the Convention. He also complained under Article 2 that the prosecution brought against the RUC officers was defective, referring, among other things, to the alleged bias disclosed by the trial judge and that there had been a failure to comply with the procedural requirement under Article 2. He submitted in particular that the inquest proceedings were flawed due to the limited scope of the enquiry, the lack of legal aid for relatives; the lack of advance disclosure to the family of inquest statements; the use of public interest immunity certificates and the lack of compellability of the police officers who fired the shots. He further complained under Articles 14 and 13.
Kelly & Others - the applicants complained, among other things, that their relatives were killed by an excessive use of force contrary to Article 2 and of a failure properly to control and conduct the operation. They also complained that there had been a failure to comply with the procedural requirement under Article 2. They submitted in particular that the inquest proceedings were flawed, due to the limited scope of the enquiry, of the lack of legal aid for relatives, the lack of advance disclosure to the family of inquest statements, the use of public interest immunity certificates and the lack of compellability of the police officers who fired the shots. They also complained under Article 6 that their relatives were deprived of a fair trial, and under Articles 14 and 13.
Shanaghan - the applicant complained, among other things, that her son Patrick Shanaghan was killed with the collusion of the RUC contrary to Article 2. She also complains that there had been a failure to comply with the procedural requirement under Article 2, submitting, in particular, that the inquest proceedings were flawed due to the limited scope of the enquiry and the excessive delay. She further complained under Articles 14 and 13.

Decision of the Court

Article 2

Alleged responsibility of the United Kingdom for the deaths in question
Concerning the alleged responsibility of the United Kingdom for the deaths in question, the Court first noted that a number of key factual issues arose in the case. These matters were currently under examination in domestic procedures. It did not consider that it should engage in an exercise that would duplicate proceedings in the civil courts, which were better placed and equipped as fact-finding tribunals. The Court did not consider that there were any elements established which would deprive the civil courts of their ability to establish the facts in each case or to determine the lawfulness or otherwise of the deaths or any wrong-doing or negligence by the security forces (as alleged in the case of *Shanaghan*). Nor was the Court persuaded that it was appropriate to rely on the documentary material provided by the parties to reach any conclusions as to responsibility for the deaths. The written accounts provided had not been tested in examination or cross-examination and would provide an incomplete and potentially misleading basis for any such attempt. The situation could not be equated to a death in custody where the burden might be regarded as resting on the State to provide a satisfactory and plausible explanation.
Furthermore, the Court was not prepared to conduct, on the basis largely of statistical information and selective evidence, an analysis of incidents over the past thirty years with a view to establishing whether they disclosed a practice by security forces of using disproportionate force.
However, the Court noted, under Article 2, investigations capable of leading to the identification and punishment of those responsible must be undertaken into allegations of unlawful killings. The Court therefore examined whether there had been compliance with this procedural aspect of Article 2.

Procedural aspect of Article 2
In all four cases, the Court found it was not for it to specify in any detail which procedures the authorities should adopt in providing for the proper examination of the circumstances of a killing by State agents. While reference had been made for example to the Scottish model of enquiry conducted by a judge of criminal jurisdiction, there was no reason to assume that this might be the only method available. Nor could it be said that there should be one unified procedure providing for all requirements. If the aims of fact finding, criminal investigation and prosecution were carried out or shared between several authorities, as in Northern Ireland, the Court considered that the requirements of Article 2 might nonetheless be satisfied if, while seeking to take into account other legitimate interests such as national security or the protection of material relevant to other investigations, they provided for the necessary safeguards in an accessible and effective manner. However, in all four cases, the available procedures had not struck the right balance.

In ***Hugh Jordan*** the Court found that the proceedings for investigating the use of lethal force by the police officer concerned disclosed the following shortcomings:
- a lack of independence of the police officers investigating the incident from the officers implicated in the incident;
- a lack of public scrutiny, and information to the victim's family, of the reasons for the decision of the DPP not to prosecute any police officer;
- the police officer who shot Pearse Jordan could not be required to attend the inquest as a witness;
- the inquest procedure did not allow any verdict or findings which could play an effective role in securing a prosecution in respect of any criminal offence which may have been disclosed;
- the absence of legal aid for the representation of the victim's family and non-disclosure of witness statements prior to their appearance at the inquest prejudiced the ability of the applicant to participate in the inquest and contributed to long adjournments in the proceedings;
- the inquest proceedings did not commence promptly and were not pursued with reasonable expedition.

In **McKerr** the Court found that the proceedings for investigating the use of lethal force by the police officers had been shown to disclose the following shortcomings:
- a lack of independence of the police officers investigating the incident from the officers implicated in the incident;
- a lack of public scrutiny, and information to the victim's family concerning the independent police investigation into the incident, including the lack of reasons for the decision of the DPP not to

prosecute any police officer at that stage for perverting or attempting to pervert the course of justice;

- the inquest procedure did not allow for any verdict or findings which might play an effective role in securing a prosecution in respect of any criminal offence which may have been disclosed;
- non-disclosure of witness statements prior to their appearance at the inquest which prejudiced the ability of the applicant's family to participate in the inquest and contributed to long adjournments in the proceedings;
- the PII certificate had the effect of preventing the inquest examining matters relevant to the outstanding issues in the case;
- the police officers who shot Gervaise McKerr could not be required to attend the inquest as witnesses;
- the independent police investigation did not proceed with reasonable expedition;
- the inquest proceedings did not commence promptly and were not pursued with reasonable expedition.

The Court observed that the lack of independence of the RUC investigation, and the lack of transparency regarding the subsequent enquiry into the alleged police obstruction in that investigation, might be regarded as lying at the heart of the problems in the procedures which followed. The domestic courts commented that the inquest was not the proper forum for dealing with the wider issues in the case. No other public, accessible procedure however was forthcoming to remedy the shortcomings.

In ***Kelly & Others*** the Court found that the proceedings for investigating the use of lethal force by the security forces had been shown to disclose the following shortcomings:

- a lack of independence of the investigating police officers from the security forces involved in the incident;
- a lack of public scrutiny, and information to the victims' families of the reasons for the decision of the DPP not to prosecute any soldier;
- the inquest procedure did not allow for any verdict or findings which could play an effective role in securing a prosecution in respect of any criminal offence which might have been disclosed;
- the soldiers who shot the deceased could not be required to attend the inquest as witnesses;
- the non-disclosure of witness statements prior to the witnesses' appearance at the inquest prejudiced the ability of the applicants to participate in the inquest and contributed to long adjournments in the proceedings;
- the inquest proceedings did not commence promptly and were not pursued with reasonable expedition.

In ***Shanaghan*** the Court found that the proceedings for investigating the use of lethal force by the police officer have been shown in this case to disclose the following shortcomings:

- no prompt or effective investigation into the allegations of collusion in the death of Patrick Shanaghan has been shown to have been carried out;
- a lack of independence of the police officers investigating the incident from the security force personnel alleged to have been implicated in collusion with the loyalist paramilitaries who carried out the shooting;
- a lack of public scrutiny, and information to the victim's family, of the reasons for the decision of the DPP not to prosecute in respect of alleged collusion;
- the scope of examination of the inquest excluded the concerns of collusion by security force personnel in the targeting and killing of Patrick Shanaghan;
- the inquest procedure did not allow for any verdict or findings which could play an effective role in securing a prosecution in respect of any criminal offence which might have been disclosed;
- the non-disclosure of statements prior to the appearance of the witnesses at the inquest prejudiced the ability of the applicant to participate in the inquest;
- the inquest proceedings did not commence promptly.

In all four cases, the Court observed that the shortcomings in transparency and effectiveness identified ran counter to the purpose identified by the domestic courts of allaying suspicions and rumours. Proper procedures for ensuring the accountability of agents of the State were indispensable in maintaining public confidence and meeting the legitimate concerns that might arise from the use of lethal force. Lack of such procedures would only add fuel to fears of sinister motivations, as was illustrated, among other things, by the submissions made concerning the alleged shoot-to-kill policy.

The Court accordingly found that, in each of the four cases, there had been a failure to comply with the procedural obligation imposed by Article 2 and that there had been, in that respect, a violation of Article 2.

Article 6 § 1 – Recalling that, in ***Hugh Jordan,*** the lawfulness of the shooting of Pearse Jordan was pending consideration in the civil proceedings instituted by the applicant and, in ***Kelly & Others,*** the lawfulness of the shooting of the nine men at Loughgall was pending consideration in the civil proceedings instituted by five of the applicants' families, that the Hughes family had settled their civil claims, while three families had not considered it worthwhile to lodge or pursue proceedings, the Court found no basis for reaching any findings as to the alleged improper motivation behind the incidents in question.
In both cases, any issues concerning the effectiveness of criminal investigation procedures fell to be considered under Articles 2 and 13 of the Convention. There had, accordingly, been no violation of Article 6 § 1.

Article 14 – In all four cases, the Court observed that, where a general policy or measure had disproportionately prejudicial effects on a particular group, it was not excluded that this might be considered as discriminatory notwithstanding that it is not specifically aimed or directed at that group. However, even though statistically it appeared that the majority of people shot by the security forces were from the Catholic or nationalist community, the Court did not consider that statistics could in themselves disclose a practice which could be classified as discriminatory within the meaning of Article 14. There was no evidence before the Court which would entitle it to conclude that any of those killings, save the four which resulted in convictions, involved the unlawful or excessive use of force by members of the security forces. The Court therefore found that there had been no violation of Article 14.

Article 13 – The Court noted that, in ***Hugh Jordan*** and ***McKerr,*** the applicants had lodged civil proceedings, which were still pending and, in ***Kelly & Others,*** seven of the applicants had lodged civil proceedings, of which five are still pending, the Hughes family having settled their claims, another family having ceased to pursue their claims and two families not having considered it worthwhile to bring such proceedings. In all three cases, the Court had found no elements which would prevent civil proceedings providing the redress identified above in respect of the alleged excessive use of force. In ***Shanaghan***, the applicant had lodged civil proceedings, which were still pending and the Court had found no elements which would prevent civil proceedings providing the redress identified above in respect of the alleged collusion by the security forces with the loyalist paramilitaries who killed her son.
In all four cases, regarding the applicants' complaints concerning the investigation into the death carried out by the authorities, these had been examined above under the procedural aspect of Article 2. The Court therefore found that no separate issue arose and that there had been no violation of Article 13.

APPENDIX III

Z. and others v. the United Kingdom and T.P. and K.M. v. the United Kingdom judgments of 10 May 2001 – extract from press releases

A. Z. and others judgment

The Court held:

- Unanimously, that there had been **a violation of Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights;
- Unanimously, that **no separate issues arose under Article 8** (right to respect for family life) of the Convention;
- By 12 votes to five, that there had been **no violation of Article 6** (right to a fair trial) of the Convention;
- By 15 votes to two, that there had been **a violation of Article 13** (right to an effective remedy) of the Convention.

Under Article 41 (just satisfaction) of the Convention, the Court awarded in respect of pecuniary damage 8,000 pounds sterling (GBP) to Z., GBP 100,000 to A., GBP 80,000 to B., and GBP 4,000 to C. The Court also awarded GBP 32,000 to each applicant for non-pecuniary damage and a total of GBP 39,000 for costs and expenses.

1. Principal facts

The applicants, four siblings, Z, a girl born in 1982, A, a boy born in 1984, B, a boy born in 1986 and C, a girl born in 1988 are all British nationals.

In October 1987, the applicants' family was referred to the social services by its health visitor because of concerns about the children, including reports that Z was stealing food.

Over the next four-and-a-half years, the social services monitored the family and provided various forms of support to the parents. During this period, problems continued. In October 1989, when investigating a burglary, the police found the children's rooms in a filthy state, the mattresses being soaked with urine. In March 1990, it was reported that Z and A were stealing food from bins in the school. In September 1990, A and B were reported as having bruises on their faces. On a number of occasions, it was reported that the children were locked in their rooms and were smearing excrement on the windows. Finally, on 10 June 1992, the children were placed in emergency foster care on the demand of their mother who said that, if they were not removed from her care, she would batter them. The consultant psychologist who examined the children found that the older three were showing signs of serious psychological disturbance and noted that it was the worst case of neglect and emotional abuse she had seen.

The Official Solicitor, acting for the applicants, commenced proceedings against the local authority claiming damages for negligence on the basis that the authority had failed to have proper regard for the children's welfare and to take effective steps to protect them. Following proceedings which terminated in the House of Lords, the applicants' claims were struck out. In the judgment given on 29 June 1995, which concerned three cases, Lord Browne-Wilkinson held, among other things, that public policy considerations were such that local authorities should not be held liable in negligence in respect of the exercise of their statutory duties safeguarding the welfare of children.

Complaints

The applicants alleged that the local authority had failed to take adequate protective measures in respect of the severe neglect and abuse which they were known to be suffering due to their ill-treatment by their parents and that they had no access to court or to an effective remedy in respect of this. They invoked Articles 3, 6, 8 and 13 of the Convention.

Decision of the Court

Article 3

The Court re-iterated that Article 3 enshrined one of the most fundamental values of a democratic society, prohibiting in absolute terms torture or inhuman or degrading treatment or punishment. States which had ratified the European Convention on Human Rights were bound to ensure that individuals within their jurisdiction were not subjected to inhuman or degrading treatment, including such ill-treatment administered by private individuals. These measures should provide effective protection, in particular, of children and other vulnerable people and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge.

There was no dispute that the neglect and abuse suffered by the four child applicants reached the threshold of inhuman and degrading treatment. The Government did not contest the Commission's finding that the treatment suffered by the four applicants reached the level of severity prohibited by Article 3 and that the State failed in its positive obligation under Article 3 of the Convention to provide the applicants with adequate protection against inhuman and degrading treatment. This treatment was brought to the attention of the local authority, at the earliest in October 1987, which was under a statutory duty to protect the children and had a range of powers available to it, including removing them from their home. The children were however only taken into emergency care, at the insistence of their mother, on 30 April 1992.

Over the intervening period of four-and-a-half years, they had been subjected in their home to what the child consultant psychiatrist who examined them referred to as horrific experiences. The Criminal Injuries Compensation Board had also found that the children had been subject to appalling neglect over an extended period and suffered physical and psychological injury directly attributable to a crime of violence. The Court acknowledged the difficult and sensitive decisions facing social services and the important countervailing principle of respecting and preserving family life. The present case however left no doubt as to the failure of the system to protect the applicants from serious, long-term neglect and abuse. Accordingly, there had been a violation of Article 3.

Article 8

Having regard to its finding of a violation of Article 3, the Court considered that no separate issue arose under Article 8.

Article 6

Concerning the applicability of Article 6, the Court was satisfied that, at the outset of the proceedings, there was a serious and genuine dispute about the existence of the right asserted by the applicants under the domestic law of negligence and that the applicants had, on at least arguable grounds, a claim under domestic law. Article 6 was therefore applicable to the proceedings brought by the applicants alleging negligence by the local authority.

Concerning compliance with Article 6, the Court found that the outcome of the domestic proceedings brought was that the applicants, and any children with complaints such as theirs, could not sue a local authority in negligence for compensation, however foreseeable – and severe - the harm suffered and however unreasonable the conduct of the local authority in failing to take steps to prevent that harm. However, this did not result from any procedural bar or from the operation of any immunity which restricted access to court. The striking out of the applicants' claim resulted from the application by the domestic courts of substantive law principles and it was not for this Court to rule on the appropriate content of domestic law. Nonetheless, the applicants were correct in their assertions that the gap they had identified in domestic law was one that gave rise to an issue under the Convention, but in the Court's view it was an issue under Article 13, not Article 6 § 1. The applicants' complaints were essentially that that they had not been afforded a remedy in the courts for the failure to ensure them the level of protection against abuse to which they were entitled under Article 3. Considering that it was under Article 13 that the applicants' right to a remedy should be examined, the Court found no violation of Article 6.

Article 13

In deciding whether there had been a violation of Article 13, the Court observed that where alleged failure by the authorities to protect people from the acts of others was concerned, there should be available to the victim or the victim's family a mechanism for establishing any liability of State officials or bodies for acts or omissions involving the breach of their rights under the Convention. Furthermore, in the case of a breach of Articles 2 and 3, which ranked as the most fundamental provisions of the Convention, compensation for the non-pecuniary damage flowing from the breach should in principle be available as part of the range of redress.
The applicants had argued that, in their case, an effective remedy could only be provided by adversarial court proceedings against the public body responsible for the breach. The Court noted that the Government had conceded that the range of remedies at the disposal of the applicants was insufficiently effective and that, in the future, under the Human Rights Act 1998, victims of human rights breaches would be able to bring proceedings in courts empowered to award damages.
The Court found that the applicants did not have available to them an appropriate means of obtaining a determination of their allegations that the local authority had failed to protect them from inhuman and degrading treatment or the possibility of obtaining an enforceable award of compensation for the damage suffered thereby. Consequently, they were not afforded an effective remedy in respect of the breach of Article 3 and there had, accordingly, been a violation of Article 13.
Judges Rozakis, Palm, Thomassen, Casadevall and Kovler expressed partly dissenting opinions and Lady Justice Arden and Judge Kovler expressed concurring opinions, all of which are annexed to the judgment.

B. T.P. and K.M. judgment

The Court held unanimously that there had been:
- **a violation of Article 8** (right to respect for family life) of the European Convention on Human Rights;
- **no violation of Article 6** (right to a fair trial) of the Convention;
- **a violation of Article 13** (right to an effective remedy).

Under Article 41 (just satisfaction) of the Convention, the Court awarded 10,000 pounds sterling (GBP) to each applicant for non-pecuniary damage and GBP 25,000 for costs and expenses.

1. Principal facts

This case concerns an application brought by a mother, T.P., and daughter, K.M., both British nationals, born in 1965 and 1983 respectively and resident in Chelmsford.
Between 1984 and 1987, the local authority, the London Borough of Newham, suspected that K.M. was being sexually abused. Following a case conference on 2 July 1987, K.M. was placed on the Child Protection Register under the category of emotional abuse.
On 13 November 1987, K.M., then aged four, was interviewed by a consultant child psychiatrist, Dr V. A social worker, Mr P. was present during the interview, which was videoed. In the course of the interview, K.M. disclosed that she had been abused by someone named "X". T.P.'s boyfriend, "XY", who lived with the applicants, shared the same first name, "X", as the abuser. However, K.M. indicated that "XY" was not the abuser and stated that "X" had been thrown out of the house. T.P. was informed that K.M. had disclosed that she had been sexually abused by "XY". When she became agitated and angry, Dr V. and Mr P. concluded that T.P. would be unable to protect the second applicant from abuse and that she was attempting to persuade K.M. to retract her allegation. They removed K.M. from the care of her mother immediately.
On 13 November 1987, the local authority applied successfully to Newham magistrates court for a place of safety order of 28 days.
On 24 November 1987, T.P., having excluded all men from her home, applied for the second applicant to be made a ward of court. The local authority was awarded care and control of the K.M. and T.P. was granted limited access.
In or about October 1988, T.P.'s representatives applied for access to the video of the disclosure interview. The health authority and Dr V. lodged an objection to disclosure of the video to the first applicant. On an unspecified date at or about that time, T.P.'s solicitors had sight of the transcript. The transcript showed that K.M. had said that "XY" had not abused her and that she had identified her abuser as having been thrown out of the house by T.P. These matters were raised by the first

applicant's solicitors with the local authority. On 21 November 1988, after a hearing in the High Court where the local authority recommended that the second applicant be rehabilitated to the first applicant, it was ordered by consent that K.M. remain a ward of court and that interim care and control be committed to the local authority who had leave to place her with T.P. K.M. remained with T.P. from that time onwards.
On 8 November 1990, the applicants issued proceedings making numerous allegations of negligence and breach of statutory duty against the local authority, the central allegation being that the social worker, Mr P. and the psychiatrist, Dr V. failed to investigate the facts with proper care and thoroughness. The applicants claimed that as a result of their enforced separation each of them had suffered a positive psychiatric disorder. Following proceedings which terminated in the House of Lords, the applicants' claims were struck out. In the judgment given on 29 June 1995, which concerned three cases, Lord Browne-Wilkinson held, among other things, that public policy considerations were such that local authorities should not be held liable in negligence in respect of the exercise of their statutory duties safeguarding the welfare of children.

Complaints

The applicants alleged that K.M. had been unjustifiably taken into care and separated from her mother T.P. and that they had had no access to court or effective remedy in respect of that interference with their rights. They relied on Articles 8, 6 § 1 and 13 of the Convention.

Decision of the Court

Article 8

The Court concluded that the question whether to disclose the video of the interview and its transcript should have been determined promptly to allow T.P. an effective opportunity to deal with the allegations that her daughter K.M. could not be returned safely to her care. Noting that the local authority's failure to submit the issue to the court for determination meant T.P. was not adequately involved in the decision-making process concerning the care of her daughter, K.M., the Court found a failure to respect the applicants' family life and a breach of Article 8.

Article 6

Concerning the applicability of Article 6, the Court was satisfied that at the outset of the proceedings there was a serious and genuine dispute about the existence of the right asserted by the applicants under the domestic law of negligence. In such circumstances, the Court found that the applicants had, on at least arguable grounds, a claim under domestic law and that Article 6 was therefore applicable to the proceedings brought by these applicants alleging negligence by the local authority.
Concerning compliance with Article 6, the Court observed, firstly, that the applicants were not prevented in any practical manner from bringing their claims before the domestic courts. Indeed, the case was litigated with vigour up to the House of Lords, the applicants being provided with legal aid for that purpose. Nor was it the case that any procedural rules or limitation periods were invoked. The domestic courts were concerned with the application brought by the defendants to have the case struck out as disclosing no reasonable cause of action. This involved the pre-trial determination of whether, assuming the facts of the applicants' case as pleaded were true, there was a sustainable claim in law.
Nor was the Court persuaded that the applicants' claims were rejected due to the application of an exclusionary rule. The decision of the House of Lords found, applying ordinary principles of negligence law, that the local authority could not be held vicariously liable for any alleged negligence of the doctor and social worker. Lord Browne-Wilkinson noted that the applicants had not argued any direct duty of care was owed to them by the local authority. It could not therefore be maintained that the applicants' claims were rejected on the basis that it was not fair, just and reasonable to impose a duty of care on the local authority in the exercise of its child care functions. The applicants had submitted that this ground was included in their original statement of claim and in the written pleadings on appeal. Since however this ground was not in fact relied upon in the proceedings conducted before the House of Lords, the Court cannot speculate as to the basis on which the claims might have been rejected if they had been so formulated and argued.
The decision of the House of Lords did end the case, without the factual matters being determined on the evidence. However, if as a matter of law, there was no basis for the claim, the hearing of evidence

would have been an expensive and time-consuming process which would not have provided the applicants with any remedy at its conclusion. There was no reason to consider the striking out procedure which rules on the existence of sustainable causes of action as *per se* offending the principle of access to court.
The applicants might not claim therefore that they were deprived of any right to a determination on the merits of their negligence claims. Their claims were properly and fairly examined in light of the applicable domestic legal principles concerning the tort of negligence. Once the House of Lords had ruled on the arguable legal issues that brought into play the applicability of Article 6 § 1, the applicants could no longer claim any entitlement under Article 6 § 1 to obtain any hearing concerning the facts. There was no denial of access to court and, accordingly, no violation of Article 6.

Article 13

The Court considered that the applicants should have had available to them a means of claiming that the local authority's handling of the procedures was responsible for the damage which they suffered and obtaining compensation for that damage. It did not agree with the Government that pecuniary compensation would not provide redress. If, as was alleged, psychiatric damage occurred, there might have been elements of medical costs as well as significant pain and suffering to be addressed. The possibility of applying to the ombudsman and to the Secretary of State did not provide the applicants with any enforceable right to compensation.
The Court found that the applicants did not have available to them an appropriate means for obtaining a determination of their allegations that the local authority breached their right to respect for family life and the possibility of obtaining an enforceable award of compensation for the damage suffered thereby. Consequently, they were not afforded an effective remedy and there has, accordingly, been a violation of Article 13.
Lady Justice Arden expressed a concurring opinion which is annexed to the judgment.

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

Convention

Article 2	:	Right to life
Article 3	:	Prohibition of torture
Article 4	:	Prohibition of slavery and forced labour
Article 5	:	Right to liberty and security
Article 6	:	Right to a fair trial
Article 7	:	No punishment without law
Article 8	:	Right to respect for private and family life
Article 9	:	Freedom of thought, conscience and religion
Article 10	:	Freedom of expression
Article 11	:	Freedom of assembly and association
Article 12	:	Right to marry
Article 13	:	Right to an effective remedy
Article 14	:	Prohibition of discrimination
Article 34	:	Applications by person, non-governmental organisations or groups of individuals

Protocol No. 1

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

Protocol No. 2

Article 1	:	Prohibition of imprisonment for debt
Article 2	:	Freedom of movement
Article 3	:	Prohibition of expulsion of nationals
Article 4	:	Prohibition of collective expulsion of aliens

Protocol No. 6

Article 1	:	Abolition of the death penalty

Protocol No. 7

Article 1	:	Procedural safeguards relating to expulsion of aliens
Article 2	:	Right to appeal in criminal matters
Article 3	:	Compensation for wrongful conviction
Article 4	:	Right not to be tried or punished twice
Article 5	:	Equality between spouses