CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 12
on the case-law of the Court
November 1999

Statistical information

		November	1999
I. Judgments delivered			
Grand Chamber		2	59
Chamber I		0	2
Chamber II		15	41
Chamber III		9	20
Chamber IV		3	15
Total		**29**	**137**
II. Applications declared admissible			
Section I		2	106
Section II		6	286
Section III		10	183
Section IV		1	85
Total		**19**	**660**
III. Applications declared inadmissible			
Section I	- Chamber	4	54
	- Committee	62	517
Section II	- Chamber	6	112
	- Committee	32	488
Section III	- Chamber	17	146
	- Committee	42	530
Section IV	- Chamber	10	118
	- Committee	152	1128
Total		**325**	**3093**
IV. Applications struck off			
Section I	- Chamber	5	10
	- Committee	3	23
Section II	- Chamber	8	15
	- Committee	1	10
Section III	- Chamber	0	24
	- Committee	0	10
Section IV	- Chamber	0	11
	- Committee	2	13
Total		**19**	**116**
Total number of decisions[1]		**363**	**3869**
V. Applications communicated			
Section I		87	432
Section II		35	369
Section III		28	385
Section IV		10	238
Total number of applications communicated		**160**	**1424**

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

ARTICLE 2

LIFE
Illegal immigrant suffering from AIDS sent back to her own country: *admissible*.

TATETE - Switzerland (N° 41874/98)
Decision 18.11.99 [Section II]

The applicant, who was born in the Congo, entered Switzerland illegally in February 1997 and made an application for asylum, which was refused. Her application for judicial review of that decision was dismissed and she was ordered to leave Swiss territory. Approximately a month before the date by which she was required to leave she went into hospital and learnt that she had contracted Aids and was suffering from pneumonia. Her time-limit for leaving Switzerland was extended by one and a half months. A further extension was granted on her subsequent readmission to hospital. In January 1988 the applicant asked the authorities to reconsider her position. She produced a medical certificate in support of her request which certified that as a result of contamination by the Aids virus she was suffering from serious infections that were likely to be fatal in the mid-term unless she received appropriate treatment, that she required tri-therapy to improve her prognosis and that any abrupt end to the treatment would have dramatic consequences on her condition. That request was dismissed in February 1998, on the ground that the infectious illnesses from which she was suffering could be treated in her country of origin and there was no cure for Aids, whether in Switzerland or the Congo. The Swiss authorities also considered that returning to her family would have beneficial psychological effects and offered to provide her with the necessary medication and therapeutic advice.
Admissible under Articles 2 and 3 (application of Rule 39 of the Rules of Court).

LIFE
Murder of applicant's daughter by prisoner on home leave: *inadmissible*.

BROMILEY - United Kingdom (Nº 33747/96)
Decision 23.11.99 [Section III]

In June 1990 K.W. was convicted of kidnapping and sentenced to 30 months' imprisonment. A psychiatrist's report addressed to the Parole Board just after his sentence stated that he was not suffering from any psychiatric illness but was a recidivist and an anti-social psychopath. At the beginning of 1991, he was allowed a period of home leave on two occasions. Prior to each of them he was examined by a medical practitioner. In June 1991 he was released on home leave again, but failed to return. The local police force were informed within four hours, in accordance with the Home Office guidelines, and his details were recorded on the Police National Computer and circulated to all police forces. In October 1991, however, he killed the applicant's daughter. In 1994 the applicant initiated proceedings against the Home Office in respect of the psychological damage she had suffered. She relied on the alleged negligence of the authorities in releasing K.W. prematurely. In May 1995 the proceedings were struck out on application by the Home Office, but no record of the reasons for this decision was kept. The applicant alleged that her action was struck out on the basis of a settled line of authority in English law that a public authority with a duty to detain offenders owes no duty of care at common law to protect the general public from injury by dangerous or violent offenders prematurely discharged or insecurely detained by them. On the other hand, the Government stated that the claim had been dismissed because neither the applicant nor her daughter had any reasonable prospect of satisfying the first two stages of the duty of care test, which were foreseeability of harm and proximity. According to the Government, the killing

of the applicant's daughter was too remote and unforeseeable a consequence of the alleged negligence of the authorities in permitting the release of K.W. from prison on home leave and, consequently, no duty of care arose which the authorities could be found liable for breaching. Finally, counsel advised that English law recognised no duty of care on the Home Office to the general public at large to protect them from the foreseeable consequences of a negligent failure to detain or re-detain a convicted person on grounds of public policy, other than where the particular victim could have been identified before the event.
Inadmissible under Article 2: This provision imposes a positive obligation on the State to take appropriate steps to safeguard the lives of those within its jurisdiction. The scope of the obligation depends on the circumstances of the case and notably on the operational choices made in terms of priorities and resources and the necessity of interpreting such an obligation in a way which does not impose an impossible or disproportionate burden on the authorities. In the instant case, there was no evidence that the authorities knew, or ought to have known, that K.W. was likely to commit a crime of violence if he was released for a period of home leave. There was no medical diagnosis of mental illness indicating that K.W. posed a risk to life, and he had previously returned from two periods of home leave without any incident. There were no elements to show that, in the event of K.W.'s failure to return from home leave, the applicant's daughter would be at foreseeable risk. Nor was it apparent that the authorities had failed to take any step, reasonably available to them, which would have secured K.W.'s capture before he committed a further crime. In the circumstances, the release of K.W. on home leave, shortly before the end of his sentence, did not disclose by itself a failure to protect the life of the applicant's daughter: manifestly ill-founded.
Inadmissible under Article 6(1): The operation of an immunity from an action imposed by domestic courts in respect of damages caused by negligence of public authorities may disclose a restriction on access to court contrary to this provision. In the circumstances of this case, the applicant's claims in negligence against the authorities were struck out as disclosing no reasonable cause of action. Although there is no written record of the judge's reasons for doing so, the Government's submissions that this was essentially based on the lack of foreseeability or proximity could be regarded as acceptable. It was in line with the general principles set out in domestic case-law and disclosed no operation of a specific immunity from liability on public policy grounds: manifestly ill-founded.

DEGRADING TREATMENT
Allegation by gypsies due to be expelled that numbers were marked on their arms with indelible ink: *communicated*.

CONKA - Belgium (Nº 51564/99)
[Section III]

The applicants, who are of Slovak origin, were victims of a number of assaults by skinheads in Slovakia but were unable to obtain police protection. In November 1998 they arrived in Belgium, where they sought political asylum. On 18 June 1999 the General Commissioner for Refugees and Stateless Persons refused them asylum and ordered them to leave the territory within five days of being put on notice. The applicants made an application (which is still pending) to the *Conseil d'Etat* to have that decision set aside and for a stay of execution. On 1 October 1999 they and a number of Slovak gypsies received notice from the police in Dutch and Slovak requiring their attendance to fill in a form relating to their application for asylum. Once at the police station the applicants were arrested and not permitted to communicate with anyone outside. They allege that identification numbers were marked on their arms in indelible ink. The only information they were given about their arrest was a detention order which they could not understand since they did not have a translation. Several hours later the applicants and the other families were taken to a transit lounge in Brussels airport, where they learned that they were to be deported. They were also informed that no further appeal lay against the deportation order. They were unable to contact anyone outside and the only visit

they were allowed was from a parliamentary delegation, one of whose members contacted their lawyer, but he was refused permission to speak with them. On 5 October 1999 the applicants and 74 other gypsy refugees who had been refused asylum were put on board a plane bound for Slovakia notwithstanding that the Court had exercised its powers under Rule 39 of the Rules of Court.
Communicated under Articles 3, 5(1), (2) and (4), 8, 13, and 34 of the Convention, Article 4 of Protocol No. 4, and Article 14 of the Convention taken together with Article 3 of the Convention and Article 4 of Protocol No. 4.

EXPULSION
Expulsion of gypsies to Slovakia, where they are subjected to racist violence but not protected by the authorities: *communicated*.

CONKA - Belgium (Nº 51564/99)
[Section III]
(See above).

ARTICLE 5

Article 5(1)

LAWFUL ARREST OR DETENTION
Applicants arrested after going to a police station at the request of the police: *communicated*.

CONKA - Belgium (Nº 51564/99)
[Section III]
(See Article 3, above).

Article 5(3)

LENGTH OF DETENTION ON REMAND
Length of detention on remand (4 years 2 months 10 days): *violation*.

DEBBOUB alias HUSSEINI Ali - France (Nº 37786/97)
Judgment 9.11.99 [Section III]

Facts: On 8 November 1994 the applicant was arrested and detained pending trial in connection with a police operation concerning a support network for Islamic terrorist groups. His trial before the criminal court began on 1 September 1998 and ended on 22 January 1999; he was convicted and sentenced to six years' imprisonment. His pre-trial detention therefore lasted four years, two months and ten days. Orders for his continued detention were made on 9 occasions. Each of his applications for release on bail following the orders for his continued detention was systematically dismissed.
Law: The considerations that were relevant to the initial decisions to keep the applicant in custody, namely the risk of his absconding or colluding with other defendants and the danger he represented for public order, became progressively less persuasive and did not suffice to justify such a lengthy period of detention pending trial. Moreover, in the later decisions the courts merely affirmed, but did not establish, that there was a risk that co-defendants would collude. While it was true that the case was complex, the courts do not appear to have acted with due expedition; for example, the applicant was questioned on average only twice yearly during the investigation.
Conclusion: Violation (unanimous).
Article 41: The Court held that a finding of a violation constituted of itself sufficient just satisfaction: It awarded the applicant 30,000 French Francs for costs and expenses.

ARTICLE 6

Article 6(1) [civil]

ACCESS TO COURT
Unavailability of legal aid for civil proceedings in Guernsey: *friendly settlement*.

FAULKNER - United Kingdom (Nº 30308/96)
Judgment 30.11.99 [Section III]

The case concerned the applicant's complaint that he could not institute civil proceedings against the Guernsey authorities for false imprisonment, assault and battery due to the fact that no legal aid was available for such proceedings. The parties reached a friendly settlement on the following basis: The Government undertook that a Policy Letter to establish a civil legal aid system in Guernsey will be introduced by the Advisory and Finance Committee of the States of Guernsey into the States. The Advisory and Finance Committee has confirmed that it intends to submit such a Policy Letter to the States to authorise the drafting of the necessary legislation and thereafter the introduction of a civil legal aid scheme which will enable Guernsey to comply with the provisions of the Convention. To this end the Advisory and Finance Committee has already sought legal advice from the Law Officers of the Crown in Guernsey and has invited the Guernsey Bar Council to make submissions to the Committee as to the form which this scheme should take. The reply of the Bar Council is awaited. Detailed discussions will then take place to establish the principles of a scheme which the Committee can recommend to the States of Guernsey. The Committee intends that the approach to the States of Deliberation will be made in 2000 and that the scheme will come into force in the same year. Furthermore, the Government will pay the applicant compensation of £6,000 as well as his reasonable legal costs (of £14,235.77) incurred in bringing his application.

ACCESS TO COURT
Refusal to deal with an appeal on points of law due to failure to execute a decision of a court of appeal: *communicated*

MORTIER - France (N° 42195/98)
[Section III]

The applicant lost his job after refusing to agree to a change of post. The tribunal that heard his appeal at first instance held that the termination of his contract of employment amounted to a dismissal and ordered his employer to pay him compensation for unfair dismissal and outstanding wages. It added that its judgment was immediately enforceable so that the applicant, who was in financial difficulties, could be paid. The court of appeal reversed that decision, holding that the applicant's refusal to take up the new post offered to him amounted to a resignation. It also ordered the applicant to repay the amount he had received pursuant to the first-instance decision. The applicant lodged an appeal against that decision with the Court of Cassation. Under French law however appeals to the Court of Cassation are, by statute, a special form of appeal with no suspensive effect; failure to comply with the impugned judgment may result in the appeal being struck out of the list. That rule will apply unless enforcement of the decision would be likely to produce manifestly unfair consequences. As the applicant's financial position prevented him from refunding the money he had received, his appeal was struck out of the list.
Communicated under Article 6(1).

ACCESS TO COURT
Applicant's civil claim barred on public policy grounds without any examination of merits of claim: *communicated*.

CLUNIS - United Kingdom (Nº 45049/98)
[Section III]

The applicant has a history of serious psychiatric illness. In May 1992 he attacked a fellow resident at the mental hospital where he had been placed. In September 1992 he was discharged from hospital and after-care arrangements were made with Friern Hospital. The applicant subsequently failed to attend appointments made with S., a doctor at Friern Hospital. In the meantime, official documents had been addressed to the hospital indicating that the Mental Health Act required that after-care be arranged for the applicant. S. was later informed of the applicant's aggressive tendencies and of the fact that he had been off medication for several weeks. In November 1992 the applicant managed to leave his home unnoticed in the course of an assessment visit. No further assessment visit was planned, S. intending to see him informally. Another appointment was made with S., this time at the applicant's initiative, but he again failed to attend. S. took no further steps from that stage. In December 1992 the police reported that the applicant had been seen "waving screwdrivers and knives and talking about devils". S. advised that an assessment be made as soon as possible and opened lengthy discussions with the competent authorities to determine which hospital was responsible for him - it appeared that he remained under the care of Friern Hospital. The same day, the applicant killed a stranger at a tube station without any reason. He was convicted of manslaughter by reason of diminished responsibility and ordered to be detained under the Mental Health Act without limit in time. The way his treatment and care had been handled by the hospital and hence the local health authorities was seriously criticised in a subsequent official report. The applicant brought a negligence action against the responsible authorities. These authorities contested it on the ground that the applicant could not rely on his own criminal act to show that their duty of care had been breached, according to the public policy principle *ex turpi causa non oritur actio*. The High Court rejected the argument. However, the Court of Appeal found, upon the local authorities' appeal, that the applicant's case at common law was barred on public policy grounds. The court further held that Parliament in enacting the after-care provisions in the Mental Health Act had not intended that a local authority should be exposed to liability in the event of its failure to discharge its statutory after-care functions properly. Moreover, the court found that it would not be just and reasonable in the circumstances to superimpose on the local authorities' statutory duty a common law duty of care which would be owed to the applicant with respect to the performance of their statutory duties to provide after-care.
Communicated under Articles 6(1) (access to court), 8 (private life/positive obligations) and 13.

ACCESS TO COURT
Complainant unable to recover debt due to length of administrative liquidation proceedings: *partly admissible (and partly inadmissible)*.

F.L. - Italy (N° 25639/94)
Decision 25.11.99 [Section II]

The applicant was a creditor of a company that had gone into administrative liquidation in 1984. Administrative liquidation was a procedure that replaced insolvency proceedings for undertakings operating in a sphere concerning the general interest and was accordingly subject to supervision by the State. Although he had been informed as far back as 1991 by the commissioner appointed by the board of directors to liquidate the company that he ranked as a preferential creditor, by 10 February 1999 the applicant had still to recover his debt. In his complaint to the Court that he said that his debt had been outstanding for years because of delays in the administrative liquidation being conducted by the commissioner. He maintained, too, that he had not been credited with interest accrued on the debt after the company went into liquidation and that the value of the debt had depreciated by 115% since the inception of the proceedings. Lastly, he complained that he had been unable to bring court proceedings for recovery of the debt while the administrative liquidation proceedings were under way.
Admissible under Article 6(1) and under Article 1 of Protocol No. 1 as regards the complaint that the applicant was unable to seek recovery of his debt over a very lengthy period.
Inadmissible under Article 1 of Protocol No. 1 as regards the complaint concerning the alleged suspension of interest on the applicant's debt. The Court accepted the Government's submission that interest on preferential debts, such as the applicant's, was not suspended: manifestly ill-founded.

PUBLIC HEARING
Lack of public hearing in proceedings concerning land consolidation: *violation*.

LUGHOFER - Austria (Nº 22811/93)
Judgment 30.11.99 [Section III]

The case concerns the lack of a public hearing in proceedings concerning agricultural land consolidation, firstly before the Regional Land Reform Board and then before the Administrative Court.
Law: The Government did not contest the opinion of the Commission that there had been a violation of Article 6 due to the lack of an oral hearing, and the Court saw no reason to disagree with that conclusion which, moreover, coincided with the Court's own findings in the case of Stallinger and Kuso v. Austria.
Conclusion: Violation (unanimous).
Article 41: The Court could not speculate as to the outcome of the proceedings had a public hearing taken place before the Administrative Court, and the claim in respect of pecuniary damage had therefore to be rejected. As to non-pecuniary damage, the finding of a violation of Article 6(1) of the Convention constituted sufficient just satisfaction. The Court allowed the applicants' claim in respect of costs incurred in the proceedings before the Convention organs.

REASONABLE TIME
Length of civil proceedings: *struck out*.

OSTEO DEUTSCHLAND GmbH - Germany (Nº 26988/95)
Judgment 3.11.99 [Section IV]

The case concerned the length of proceedings relating to a request for authorisation under the Pharmaceutical Act.
The applicant company's parent company has been taken over and the new owner does not wish to proceed with the application.

REASONABLE TIME
Length of civil proceedings: *violation*.

G.M.N. - Italy (Nº 37131/97)
VITALE and others - Italy (Nº 37166/97)
L.G. - Italy (Nº 37188/97)
GHILINO - Italy (Nº 38116/97)
Judgments 2.11.99 [Section II]

The cases concern the length of civil proceedings, lasting respectively (a) over 18 years, (b) over 6 years 11 months for the first applicant and 5 years for the other three applicants, and still pending, (c) over 10 years 7 months, and (d) over 8 years 3 months, and still pending.
Conclusion: Violation (unanimous) in each case.
Article 41: The Court awarded the applicants the following amounts in respect of non-pecuniary damage - (a) 18 million lire (ITL), (b) 15 million lire for the first applicant and 10 million lire for the other three applicants, (c) 15 million lire, and (d) 12 million lire. It also made awards in respect of costs in the first, second and fourth cases.

REASONABLE TIME
Length of civil proceedings: *violation*.

GOZALVO - France (Nº 38894/97)
Judgment 9.11.99 [Section III]

The case concerned the length of civil proceedings relating to the infection of the applicant with hepatitis. The proceedings lasted 5 years and more than 9 months.
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 120,000 francs in respect of non-pecuniary damage.

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

GROS - France (Nº 43743/98)
Judgment 9.11.99 [Section III]

The case concerned the length of proceedings relating to the applicant's dismissal from his employment. The parties have reached a friendly settlement based on the payment to the applicant of 30,000 francs, without any acknowledgement by the Government of a violation of the Convention.

REASONABLE TIME
Length of civil proceedings: *violation*.

ARNÒ - Italy (Nº 39089/97)
Judgment 9.11.99 [Section II]

The case concerned the length of civil proceedings brought by the applicant in January 1988 and still pending (over 11 years 9 months).
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 35 million lire (ITL) in respect of non-pecuniary damage and 9 million lire in respect of costs and expenses.

REASONABLE TIME
Length of civil proceedings: *violation*.

APRILE DE PUOTI - Italy (Nº 32375/96)
Judgment 9.11.99 [Section II]

The case concerned the length of civil proceedings relating to the applicant's dismissal from her employment. The proceedings lasted over 9 years 9 months.
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 20 million lire (ITL) in respect of non-pecuniary damage and 10 million lire in respect of costs and expenses.

REASONABLE TIME
Length of civil proceedings: *violation*.

BARGAGLI - Italy (Nº 38109/97)
Judgment 9.11.99 [Section II]

The case concerned the length of civil proceedings brought by the applicant in June 1991 and still pending (over 8 years 4 months).
Conclusion: Violation (unanimous).
With regard to the applicant's complaint under Article 5 of Protocol No. 7 (equality between spouses), the Court considered that this complaint was premature, given that the case was still pending before the national courts.
Conclusion: No violation (unanimous).
Article 41: The Court awarded the applicant 20 million lire (ITL) in respect of non-pecuniary damage and 5 million lire in respect of costs and expenses.

REASONABLE TIME
Length of civil proceedings: *violation*.

M.C. - Italy (Nº 38478/97)
Judgment 9.11.99 [Section II]

The case concerned the length of civil proceedings brought by the applicant in June 1987, which ended in February 1997 (over 9 years 7 months).
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 15 million lire (ITL) in respect of non-pecuniary damage.

REASONABLE TIME
Length of administrative proceedings: *violation*.

ARVOIS - France (Nº 38249/97)
Judgment 23.11.99 [Section III]

The case concerned the length of proceedings relating to land consolidation. The proceedings lasted around eight years, including five years before the *Conseil d'Etat*.
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 30,000 francs (FRF) in respect of non-pecuniary damage and 5,000 francs in respect of costs.

REASONABLE TIME
Length of civil proceedings: *violation*.

MARQUES GOMES GALO - Portugal (Nº 35592/97)
Judgment 23.11.99 [Section IV]

The case concerned the length of civil proceedings instituted by the applicant in March 1991 following a road traffic accident. The proceedings are still pending and have therefore lasted around 8 years and 8 months.
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 1,200,000 escudos (PTE) in respect of non-pecuniary damage.

REASONABLE TIME
Length of civil proceedings: *violation*.

GALINHO CARVALHO MATOS - Portugal (Nº 35593/97)
Judgment 23.11.99 [Section IV]

The case concerned the length of civil proceedings instituted by the applicant in May 1992 following a road traffic accident. The proceedings are still pending and have therefore lasted around seven years and six months.
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant one million escudos (PTE) in respect of non-pecuniary damage.

INDEPENDENT AND IMPARTIAL TRIBUNAL
Government allegedly exerting pressure on court to favour one of the parties to civil proceedings: *communicated*.

SOVTRANSAVTO HOLDING - Ukraine (Nº 48553/99)
[Section IV]

From 1993 to 1997 the applicant company held 49% of the shares in Sovransavto-Lougansk, a public company. In January 1996 a resolution was passed at a meeting of the shareholders of Sovransavto-Lougansk to amend its memorandum of association for it to convert into a private company. The Executive Council, a public body with sole responsibility for deciding whether acts of public companies are valid at law and under their memoranda of association, approved the resolution. In December 1996 and August and October 1997 the managing director of Sovransavto-Lougansk increased the company's share capital, by one third on each occasion. The fact that the Executive Council had approved those decisions meant that the directors were able to manage Sovransavto-Lougansk and its assets on their own and the applicant company's shareholding was reduced to 20.7%. In June 1997 the applicant company brought arbitration proceedings against Sovransavto-Lougansk and the Executive Council on the ground that the amendment to the company's memorandum of association and its approval were unlawful under the relevant legislation. The applicant company's referral to arbitration and appeal on points of law were dismissed by the arbitration tribunal, which had jurisdiction both at first instance and to hear appeals on points of law. The applicant company further appealed on points of law to the Supreme Arbitration Tribunal, which overturned the two decisions and remitted the case for a rehearing at first instance. In January 1998, after receiving a letter from the board of directors of Sovransavto-Lougansk the President of Ukraine appealed to the President of the Supreme Arbitration Tribunal to defend the "national interests" which he said were, in this instance, inextricably linked to the interests of Sovransavto-Lougansk. In February 1998 a new memorandum of association was adopted by a general meeting of the shareholders of Sovransavto-Lougansk; the resolution was approved by the Executive Council. In April 1998, the Stock Exchange, a public body with responsibility for supervising the activity of public companies, found that the resolution of the general meeting of shareholders in January 1996 and the subsequent board resolutions had been unlawful. In May 1998, at the request of a member of parliament, the President of Ukraine again urged the President of the Supreme Arbitration Tribunal to protect the "national interests" in the case. The arbitrator appointed by the arbitration tribunal refused to sit, stating publicly that he had been subjected to pressure by Sovransavto-Lougansk and the Executive Council. In June 1998 the applicant company referred a further claim to the arbitration tribunal, complaining that the resolutions to increase the company's capital and to amend the memorandum of association, and the approval of those decisions, had all been unlawful. The tribunal dismissed the applicant company's complaint concerning the resolution to amend the company's memorandum and the approval of that resolution, giving reasons which the applicant company contended were non-specific. The applicant company's additional claims were also dismissed as were its subsequent appeals, *inter alia* to the Supreme Arbitration Tribunal; the applicant company complained that the decision of the latter tribunal merely repeated the statements made in general terms by the first-instance tribunal. In June 1999 a resolution to wind up the company was passed by a meeting of the shareholders of Sovransavto-Lougansk; the meeting was not attended by the representatives of the applicant company.
Communicated under Article 6(1) (independent and impartial tribunal, fair hearing) and Article 1 of Protocol No. 1.

Article 6(1) [criminal]

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

GATTO - Italy (Nº 34469/97)
IULIANO - Italy (Nº 35756/97)
ROSSI - Italy (Nº 36148/97)
PASSADORO - Italy (Nº 36740/97)
ALI - Italy (Nº 37484/97)
ERRIGO - Italy (Nº 39789/98)
Judgments 2.11.99 [Section II]

The cases concern the length of criminal proceedings. The Government has reached settlements with each of the applicants, on the basis of the following payments:
Gatto - 37 million lire (ITL) (32 million for damages and 5 million for costs);
Iuliano - 38 million lire (15 million to each of the two applicants for damages and 8 million for both applicants for costs).
Rossi - 33 million lire (28 million for damages and 5 million for costs).
Passadoro - 15 million lire (10 million for damages and 5 million for costs).
Ali - 32 million lire for pecuniary and non-pecuniary damage.
Errigo - 22 million lire (17 million for damages and 5 million for costs).

ARTICLE 8

FAMILY LIFE
Relationship between a mother and her daughter severed by judicial decision : *violation.*

E.P. - Italy (N° 31127/96)
Judgment 16.11.99 [Section II]

Facts: The applicant, a nurse, lived with her daughter in Greece from the latter's birth until 1988. She appears to have at all times been extremely concerned for the health of her daughters, who had to be hospitalised several times. In 1988 the applicant abruptly left Greece with her daughter, who was still very young, for Italy, where members of her family were living. The child, who was ill, had to be admitted to hospital on arrival in Italy. The hospital sought an order from the Rome court excluding the mother from the hospital so that an assessment of her daughter's condition could be made, as the mother's constant presence and tendency to interfere in the treatment made any attempt at an assessment impossible. On 26 October 1988 the Rome court made a provisional care order in respect of the child. That decision came after information was received from the Greek authorities which, concerned by the successive hospitalisations of the child, had already taken measures to remove her from her mother's care and had been considering adoption proceedings. That explained the applicant's sudden departure from Greece. The applicant then agreed to undergo psychiatric treatment. On the basis of his examination of the applicant and what he was told by her sister-in-law, the examining doctor diagnosed psychosis. The care order was extended by the Milan court on 16 February 1989. On 16 March 1989 that court suspended the applicant's parental rights and prohibited any contact between her and her daughter, on the basis of a psychiatric report stating that the child was suffering from emotional and relational disorders caused by her mother's pathological behaviour. In June 1989 the court declared the child available for adoption. The applicant's appeals against that decision failed despite the fact that certain

factual inaccuracies were corrected. For example, it transpired that the Greek authorities had not taken any measures regarding the mother or her child and that there were doubts as to the reliability of the evidence of the applicant's sister-in-law, on which the diagnosis of the applicant's psychiatric condition had been based. There was no change in the position despite the applicant's repeated requests to be allowed to see her child (if necessary in the presence of a third party and in a neutral environment) and the production of psychiatric evidence as to her mental condition. On 7 June 1995 the Court of Cassation dismissed the applicant's appeal on points of law. In 1996 an irrevocable order was made for the child's adoption by foster parents.
Law: Article 6(1): The period to be taken into consideration was seven years. Courts must act with particular expedition in proceedings regarding parental responsibility. The inordinate amount of time taken was yet another example of the unreasonable delays which the Court has already had found characterised Italian civil proceedings (see the Bozzatti v. Italy judgment of 28 July 1999).
Conclusion: Violation (unanimous).
Article 8: The Court noted, firstly, that there were a number of unresolved issues in the case. Although the authorities' intervention was justified by the mother's pathological behaviour towards her child, the interference was made particularly serious by the absolute and irreversible nature of the forced separation which compromised the prospects of a renewed relationship between mother and child. The authorities had not analysed the situation with sufficient rigour. No proper report had been available on the applicant's state of health and factual inaccuracies had been discovered in the case that had been presented to the courts deciding the case.
Conclusion: Violation (6 votes to 1).
Article 41: In view of the gravity and degree of suffering the applicant had endured, the Court awarded her 100,000,000 Italian lire as compensation for the non-pecuniary damage she had suffered. Other claims: with regard to the applicant's request for a meeting with her daughter, the Court reiterated that under Article 46(1) it is for States to decide what general and/or specific measures should be adopted to bring their internal judicial orders in line with the Convention and remedy the consequences of the violation.

FAMILY LIFE
Expulsion of foreigner from the country where he had lived for most of his life: *no violation*.

BAGHLI - France (Nº 34374/97)
Judgment 30.11.99 [Section III]

Facts: The applicant, an Algerian national, came to France in 1967 at the age of two. He thereafter remained in France, except while performing his military service in Algeria between January 1984 and December 1985; his close family also lived in France. He did all his schooling in France and obtained an occupational diploma. Between 1982 and 1992 he had a number of jobs and went on several professional training courses. In 1987 he began a stable relationship with Miss L., a French national. The applicant was arrested and charged after being identified as a drug supplier during an investigation into a drug-trafficking operation. He was convicted and sentenced by a criminal court to fifteen months' imprisonment, twelve of which were suspended, and was banned from French territory for a period of ten years. On appeal, the court of appeal noted that the offences were serious and increased his sentence to three years, two of them suspended, while upholding the exclusion order. In September 1993 the Court of Cassation dismissed the applicant's appeal on points of law. In December 1992 the applicant had started a relationship with Miss I. following the death a few months earlier of Miss L. In January 1994 he sought an order rescinding the territorial exclusion order. He relied on Article 8 of the Convention. In June 1994 his application was dismissed. He then lodged an appeal to the Court of Cassation through his lawyer, *inter alia*, on the basis of Article 8. That appeal was dismissed by the Court of

Cassation on 19 December 1995. The judgment was not served on the applicant; his representative claimed to have received a copy of the judgment only in September 1996. Meanwhile, in May 1994 the applicant was deported to Algeria after serving his prison sentence.

Law: Government's preliminary objection – the Government did not deny that the Court of Cassation's judgment of 19 December 1995 had not been served on the applicant, but argued that it was the applicant's own lack of diligence that had prevented him from finding out about it before June 1996. However, the applicant was in Algeria at the time in very trying conditions that in all likelihood made it very difficult for him to obtain information on the outcome of his case in France. Furthermore, the judgment had not been served on his representative either, even though it was he who had lodged the appeal to the Court of Cassation and the registry of that court had his name and address. For these reasons, and in the absence of irrefutable evidence to the contrary from the Government, the preliminary objection was dismissed.

Article 8: The applicant arrived in France at the age of two and, apart from his military service in Algeria, lived there until the territorial exclusion order was executed in May 1994. He did all his schooling in France and worked there for several years. All his parents, sisters and brothers lived in France. There had therefore been an interference in his private and family life. However, such interference was expressly provided for by law (Article L. 630-1 of the Public Health Code) and pursued the legitimate aims of "prevention of crime" and the "protection of public health and the prevention of disorder". In addition, the applicant, who was single and had no children, had not shown that he was in close contact with his family in France and his relationship with Miss I. had not started until after the exclusion order had been made at a time when he must have known that his situation was precarious. Unlike the other members of his family, he had kept his Algerian nationality and had shown no desire to become a French national when he had been entitled to. He had never said that he did not speak Arabic and furthermore had done his military service in Algeria and been there on holiday several times. Thus, although most of the applicant's family and social ties were in France, he had retained links with his country of birth that went beyond mere nationality. His drug-trafficking offence was a serious breach of public order and endangered the health of others. The authorities were entitled to take a very firm line with drug traffickers. In the instant case, the ten-year exclusion order was therefore not disproportionate to the legitimate aims pursued.

Conclusion: No violation (5 votes to 2).

ARTICLE 9

FREEDOM OF RELIGION
Refusal to grant official recognition to a Church: *communicated*

MITROPOLIA BASARABIEI SI EXARHATUL PLAIURILOR (THE METROPOLIS OF BESSARABIA AND THE EXARCHATE OF THE COUNTRY) and others - Moldova (N° 45701/99)
[Section I]

The Metropolis of Bessarabia is an Orthodox Church forming part of the patriarchate of Bucharest, which was in a state of turmoil as a result of events in the region. The successive annexations by the Soviet Union and Russia had led to the disappearance of the Metropolis, its place being taken by other rival churches from the Moscow patriarchate. Following the Moldovan declaration of independence in 1991, the applicant sought official recognition from the new State in October 1992. It received no reply to its request, but in December 1992 the Government recognised a separate church – the Metropolis of Moldova from the Moscow patriarchate – and another church of the same denomination a few months later. In 1997 a court ordered the Government to afford the applicant recognition, but that order was overruled by the Supreme Court on the ground that the application had been lodged out of time and that recognition would constitute an interference in the affairs of the Metropolis of Moldova. Notwithstanding differences of rite between the two churches, the Supreme Court held that members of the Metropolis of Bessarabia had access to places of worship through the churches of the Metropolis of Moldova. The applicant alleges *inter alia*, that the refusal of official recognition meant that its members were exposed to acts of violence and intimidation without any protection from the authorities. It also complains that the refusal means that it has no legal personality and therefore no *locus standi* before the courts.
Communicated under Articles 6, 11 and 13 and under Article 9 taken together with Article 14.

ARTICLE 10

FREEDOM OF EXPRESSION
Defamation - statements by journalists declared null and void by court: *violation*.

NILSEN and JOHNSEN - Norway (Nº 23118/93)
Judgment 25.11.99 [Grand Chamber]
(See Appendix I).

FORESEEABILITY
Binding over to be of good behaviour - conduct *contra bonos mores*: *violation*.

HASHMAN and HARRUP - United Kingdom (Nº 25594/94)
Judgment 25.11.99 [Grand Chamber]
(See Appendix II).

ARTICLE 13

EFFECTIVE REMEDY
Effectiveness of investigation into disappearance of serviceman abroad: *inadmissible*.

SYRKIN - Russia (Nº 44125/98)
Decision 25.11.99 [Section IV]

The applicant's son was serving in a Soviet military unit in Germany. In 1991 he disappeared just after having told his parents that he was coming back home on leave. As he failed to return to the military base at the end of his leave, the military authorities started an investigation. The applicant was informed that the German authorities had been requested to assist them in finding his son. In 1993, the applicant went to his son's military base, where he was able to consult his case-file and discuss the matter with the authorities in charge of the investigation. He maintained that his son was probably kept in a German hospital but was later told that the German authorities had searched both civil and military hospitals without success. Search requests were sent to the German, Polish, Belarus, and Ukrainian authorities in 1993, and to Interpol offices in twelve European countries in 1998. The investigation, which is still going on, has been suspended by the authorities on several occasions since 1991. *Inadmissible* under Article 13 in conjunction with Article 5: Where relatives of a person have an arguable claim that the latter has disappeared at the hands of the authorities, the notion of an effective remedy requires a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the relatives to the investigative procedure. In the instant case, the military unit in which the applicant's son was serving when he disappeared was stationed in Germany. Faced with the difficulties of conducting a search in a foreign country, the authorities sought international assistance. Moreover, the authorities gave adequate consideration to the applicant's version of his son's possible whereabouts and allowed him to consult the material gathered in the course of the investigation. Despite the fact that the investigation has not led to any positive results and has been suspended several times, the authorities, overall, could not be considered to have failed in their duty to take the appropriate steps to help its progress: manifestly ill-founded.

ARTICLE 14

DISCRIMINATION (SEX)
Tax allowance available only to widows: *friendly settlement*.

CROSSLAND - United Kingdom (Nº 36120/97)
Judgment 9.11.99 [Section III]

The applicant gave up his employment to care for his children following the death of his wife. He was informed by the tax authorities that the bereavement tax allowance was available only to women on the death of a husband and that no equivalent allowance was available to widowers.
The bereavement tax allowance will be abolished as from April 2000, and in settlement of the case the Government will pay the applicant the £575 which he would have received if the allowance had been available for widowers, as well as £3,962.48 in respect of legal costs.

ARTICLE 30

RELINQUISHMENT OF JURISDICTION IN FAVOUR OF THE GRAND CHAMBER
Applicability of Article 6 to proceedings relating to regularisation of the position of a foreigner *: relinquishment of jurisdiction*.

MAAOUIA - France (N° 39652/98)
[Section III]

The applicant, a Tunisian national, arrived in France in 1980 at the age of 22. Since 1983 he has been living with a French citizen whom he married in 1992. In 1998 he was sentenced to 6 years' imprisonment for assault. In 1991 a deportation order was issued against him, but was later annulled. Since he refused to leave the country, he was sentenced to 1 year's imprisonment and banned from living in French territory for 10 years. The applicant secured the lifting of this measure. He then requested the validation of his immigration status and a residence permit. His request was turned down and his case is still pending before the appellate court. In July 1998 the applicant was given a one-year residence permit. He complains of the length of the proceedings concerning the validation of his immigration status.
The Section relinquished jurisdiction in favour of the Grand Chamber.

ARTICLE 34

GOVERNEMENTAL ORGANISATION
Application lodged by a "communal section": *inadmissible*.

SECTION DE COMMUNE D'ANTILLY - France (N° 45129/98)
Decision 23.11.99 [Section III]

The applicant is a local authority district. Such entities are defined as being part of a local authority with their own property and rights and separate legal personality. The applicant is represented before the Court by its property administration committee whose role, in the circumstances laid down by statute, is to manage its assets. In 1994 the applicant resolved through its property administration committee to purchase a parcel of land. That resolution was ruled null and void by an administrative court, which held that the property administration committee did not have decision-making powers in this sphere. Before the *Conseil d'État* the applicant complained, *inter alia*, that the proceedings before the administrative court had been unfair as, owing to a lack of financial resources, it had been unable to seek representation by counsel. The *Conseil d'État* dismissed its appeal.
Inadmissible under Article 6(1) and Article 1 of Protocol No. 1. A local authority district had the characteristic features of a public-law legal entity, in particular, in that it administered *collective* assets and rights in the *general* interest of the local population. It was consequently a "governmental organisation" and therefore did not come within the classes of potential applicants listed in Article 34 of the Convention. To the extent that it acted in its own name, the property administration committee was defending collective interests and was therefore distinguishable from the "groups of people" having a common interest referred to in Article 34: inadmissible *rationae personae*.

ARTICLE 35

Article 35(1)

FINAL DOMESTIC DECISION
Appeal exercised exclusively by the public prosecutor : *inadmissible*.

MOYO ALVAREZ - Spain (N° 44677/98)
Decision 23.11.99 [Section I]

After being injured in a road traffic accident, the applicant brought a civil action in damages. The court of first instance dismissed his claims in a decision of 20 June 1994. The court of appeal gave its decision on the case on 19 December 1995. In a judgment of 20 May 1996, which was served on the applicant on 23 May 1996, the Constitutional Court dismissed his *amparo* appeal. On 9 December 1996 the Constitutional Court found that the time allowed to the public prosecutor's office to lodge a *suplica* appeal against the judgment of 20 May 1996 had expired and that that decision had therefore become unappealable. The applicant was informed on 13 December 1996.
Inadmissible under Article 6(1): the nature of *suplica* appeals and the conditions for their validity, in particular, the fact that only the public prosecutor's office had the right to lodge such appeals, meant that they did not constitute a remedy within the meaning of Article 35(1) of the Convention. The relevant final decision of the domestic courts was therefore the judgment of the Constitutional Court of 20 May 1996, which had been served on 23 May 1996. The application was not lodged until 26 November 1998, that is more than six months after the final decision of the domestic courts. It was therefore out of time.

Article 35(3)

RATIONE LOCI
Extradition to China of a Chinese national arrested in Macao: *inadmissible*.

YONGHONG - Portugal (N° 50887/99)
Decision 25.11.99 [Section IV]

Macao was a Chinese territory that was under Portuguese administration until 20 December 1999, when it was to revert to China. The Macao courts have had exclusive jurisdiction in the territory since June 1999. The applicant, a Chinese national who was arrested in Macao, faced extradition to China. He was accused of fraud and submitted that that offence exposed him to capital punishment in his country. The Macao Supreme Court decided to authorise extradition after receiving an assurance from the Chinese authorities that he would not be sentenced to life imprisonment or to capital punishment. The applicant's appeal to the full Macao Supreme Court was dismissed.
Inadmissible under Articles 3 and 6 and under Article 1 of Protocol No. 6. The concept of "jurisdiction" in Article 1 of the Convention had to be construed in the light of Article 56. Portugal had not made a declaration under Article 56 extending the Convention to Macao. Owing to the exclusive jurisdiction of the Macao courts, no Portuguese court had jurisdiction in the case. The Court therefore had to hold that it had no jurisdiction (see, *mutatis mutandis*, the decision of the Commission of 12 March 1990, DR 65, p. 330). No jurisdiction *rationae loci*.

ARTICLE 56

TERRITORIAL EXTENSION
Extradition to China of a Chinese national arrested in Macao: *inadmissible*.

YONGHONG - Portugal (N° 50887/99)
Decision 25.11.99 [Section IV]
(See Article 35(3), above).

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Disbarment of lawyer for having been a judge in the GDR : *inadmissible*.

DÖRING - Germany (N° 37595/97)
Decision 18.11.99 [Section IV]

The applicant held judicial office in the Democratic Republic of Germany (GDR) for about twenty years. In that capacity, he secured or played a role in the convictions of people who had been prosecuted for saying that they wished to go over to the West or acting in a way that the regime considered reprehensible. In 1990, a few months before the treaty for the reunification of Germany came into force, he was given permission to practise as a lawyer by the GDR Bar Council. In 1995 his permission to enrol was set aside by an administrative decision pursuant to a 1992 statute that required people who had acted contrary to the principles of humanity and the rule of law to be disbarred. The treaty for German reunification provided that administrative acts of the GDR could be set aside if they were found to be incompatible with the rule of law. The applicant's appeals against that decision were dismissed.
Inadmissible under Article 1 of Protocol No. 1. The applicant's disbarment amounted to an interference with his right to quiet enjoyment of his possessions as it deprived him of the client-base he had built up. It was irrelevant that the Convention did not apply to the GDR as the measure in issue was based on decisions of the courts of the German Federal Republic – a State to which the Convention applied – after reunification. The interference was lawful as in verifying the validity of permission given to enrol at the Bar under the 1992 statute the authorities had applied the reunification treaty concerning administrative measures taken by the GDR. The interference pursued an aim that was in the general interest in that its purpose was to establish whether persons who had obtained permission to enrol as lawyers in the GDR satisfied the moral standards that the public was entitled to expect of members of a profession who became "officers of the court and guarantors of the rule of law". Though a heavy one, the burden imposed on the applicant had to be measured against the yardstick of that interest and with due regard to the exceptional nature of the historical context: manifestly ill-founded.

SECURE THE PAYMENT OF TAXES
Accessibility of regulations relating to business accounts: *no violation*.

ŠPAČEK, s.r.o. - the Czech Republic (Nº 26449/95)
Judgment 9.11.99 [Section III]

Facts: In 1993 the applicant company was notified that it had to pay additional income tax, including a penalty, for 1991 because its predecessor company had not increased its income tax base by including certain assets, as required by Regulations on the procedure for passing from single to double-entry book-keeping. These regulations had been published by the Ministry of Finance in a Financial Bulletin in May 1991. The applicant's appeals were dismissed by the Finance Department and the Municipal Court and a constitutional appeal was dismissed as ill-founded, the Constitutional Court holding that there was no requirement for the regulations to be published in the Official Gazette.
Law: Government's preliminary objection: The Government was estopped from raising the objection that the applicant could not claim to be a victim, since the measure at issue had been directed against its predecessor. Moreover, the fact that the applicant company was subject to bankruptcy proceedings could not affect its status as victim.
Article 1 of Protocol No. 1: The main question was the publicity afforded to the principles governing calculation of the income tax base. The Court accepted that the relevant Rules and Regulations were issued under a general authorisation for the Ministry of Finance to regulate accounting and fell fully within the competence of the Ministry. It recalled that the Convention did not contain any specific requirements as to the degree of publicity to be given to a particular legal provision. It noted that the Financial Bulletin was created for the purpose of informing the public about measures adopted by the Ministry of Finance and was given the same publicity as the Official Gazette and that there was no requirement that such measures be published in the Official Gazette itself. Furthermore, the applicant's predecessor had applied the accounting principles included in Rules published in a previous Financial Bulletin and had thus accepted the Financial Bulletin as an official public source of binding regulations, which it had followed in keeping its accounts. It had been aware of the way in which the Ministry of Finance published its accounting principles and could easily have sought information about any possible transitional provisions, if necessary with the advice of specialists. Taking into consideration that the applicant as a legal entity, contrary to an individual taxpayer, could and should have consulted the competent specialists, the publication of the Regulations in the Financial Bulletin was sufficient. The Regulations were adequately accessible and foreseeable and the interference had a sufficient legal basis in Czech law to comply with the requirements of the second paragraph of Article 1 of Protocol No. 1.
Conclusion: No violation (unanimous).

ARTICLE 4 OF PROTOCOL Nº 4

PROHIBITION OF COLLECTIVE EXPULSION OF ALIENS
Expulsion of gypsies allegedly without any examination of their individual situations: c*ommunicated.*

CONKA - Belgium (Nº 51564/99)
[Section III]
(See Article 3, above).

PROCEDURAL MATTERS

ARTICLE 39 OF THE RULES OF COURT

INTERIM MEASURES
Death penalty: *application of rule 39*.

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

The applicant, the leader of the *PKK* (Workers' Party of Kurdistan), was arrested in Kenya by Turkish security forces and taken to Turkey for trial before the National Security Court. On 16 February 1999 his representatives lodged an application with the Court alleging violations of Articles 2, 3, 5 and 6(1) of the Convention. The Court first applied Rule 39 of the Rules of Court in order to ensure that the proceedings conducted before the National Security Court complied with the requirements of Article 6. On 29 June 1999 the applicant was sentenced to death by the National Security Court. He lodged an appeal on points of law against that decision. On 25 November 1999 the Court of Cassation upheld the sentence and the applicant's counsel requested the application of Rule 39 with a view to the Turkish authorities being invited not to carry out the death sentence pending a decision by the Court on the merits of the application.
The Court decided to apply Rule 39. It asked the respondent Government to take the steps necessary to ensure that the death penalty was not carried out so that it could continue its examination of the application.

INTERIM MEASURES
Expulsion to the United States of a person running the risk of a death penalty: *refusal of Rule 39*.

NIVETTE - France (Nº 44190/98)
[Section I]

The applicant, an American national, is suspected of murdering his companion. An international warrant was issued by an American criminal court and he was arrested in France and detained with a view to being extradited. The American authorities lodged a request for his extradition. The French courts issued an opinion in favour of extradition provided that the American authorities gave an assurance that they would not call for or carry out the death penalty in his case. They referred to a statement by the American prosecution attorney in which he said that the special circumstances enabling the death penalty to be called for did not apply in the applicant's case and that he would not therefore seek its application. The applicant's appeal to the Court of Cassation was dismissed. On 30 October 1998 the applicant lodged an application with the Court, which the Court decided to communicate. On 21 October 1999, in the light of specific and renewed assurances by the American authorities, the French authorities signed the extradition order. On 23 November 1999 the applicant communicated a copy of that document to the Court and requested the application of Rule 39 of the Rules of Court.

APPENDIX I

Case of Nilsen and Johnsen v. Norway - Extract from press release

Facts: The first applicant, Arnold Nilsen, and the second applicant, Jan Gerhard Johnsen, are Norwegian citizens born in 1928 and 1943 respectively and living in Bergen. The first applicant is a police inspector, who at the relevant time was President of the Norwegian Police Association (*Norsk Politiforbund*). The second applicant is a police constable and was at the relevant time Chairman of the Bergen Police Association (*Bergen Politilag*), a branch of the former association.

In 1981 Gunnar Nordhus and Edvard Vogt at the University of Bergen published a summary of their findings, following an investigation into the phenomenon of violence in Bergen, in a book which found that the Bergen police force was responsible for approximately 360 incidents a year of excessive and illegal use of force. The book gave rise to a heated public debate. The Ministry of Justice appointed a Committee of Inquiry consisting of Anders Bratholm, professor of criminal and procedural law, and Hans Stenberg-Nilsen, a Supreme Court advocate. In a report published in 1982 they concluded that the nature and extent of police violence in Bergen was far more serious than seemed to be generally assumed. The conclusions and premises in the report were called into question by the Norwegian Police Association, among others. In 1981 the newspaper *Morgenavisen* stated that Mr Nordhus had lied in connection with the collection of material for his research. He instituted defamation proceedings against the newspaper but in 1983 the Bergen City Court (*byrett*) dismissed the action on the grounds that the accusation had been justified. Mr Bratholm continued his work on police brutality, eventually as an independent researcher. In the spring of 1986 he published a book entitled *Police Brutality (Politivold)*. Similar publications by him and others followed later that year and in subsequent years. During 1986 and 1987 the Prosecutor-General carried out an investigation, the results of which were made public in June 1987, with the overall conclusion that the various allegations of police brutality were unfounded. At the close of the investigation fifteen of the interviewees were charged with having made false accusations against the police. Ten of them were later convicted in jury trials before *Gulating* High Court (*lagmannsrett*), from November 1988 to March 1992, the so-called "boomerang cases".

In the context of the above, in particular in the wake of the publication of *Police Brutality*, the applicants made a number of statements publicised in the press in response to the various accusations of police brutality. In May 1989 Mr Bratholm instituted defamation proceedings against the applicants in respect of the above-mentioned statements. The Oslo City Court, in a judgment of 7 October 1992, held that some of the statements had been defamatory under Article 247 of the Penal Code and declared them null and void (*død og maktesløs, mortifisert*) under Article 253 § 1. It ordered the first applicant to pay 25,000 Norwegian kroner (NOK) in non-pecuniary damage to Mr Bratholm (the latter's claim for non-pecuniary damage against the second applicant had been submitted out of time) and ordered that the applicants pay Mr Bratholm certain sums for legal costs. On appeal, the Supreme Court, by judgment of 5 May 1993, upheld the City Court's judgment, and ordered the applicants to pay additional costs to Mr Bratholm. It found that two of Mr Nilsen's statements published by *Annonseavisen* and *Bergens Tidende* on 2 March and 7 June 1988 and three of Mr Johnsen's statements published by *Dagbladet* on 15 May 1986 were defamatory, "unlawful" (*rettstridig*) and not proven to be true. The Supreme Court considered that the statements amounted to accusations against Mr Bratholm of falsehood (item 1.1), of deliberate lies (statement 1.2), unworthy and malicious motives (statements 1.1 and 1.3), dishonest motives (statement 2.2) and having fabricated allegations of police brutality (statement 2.3). The manner in which Mr Bratholm had expressed his views in *Police Brutality*, and in other publications, could not justify calling into question his integrity in the way done by the applicants. On 16 January 1998 the Supreme Court ordered the reopening of seven of the "boomerang cases" and on 16 April 1998 the defendants were acquitted.

The applicants complained that the Norwegian courts' judgments constituted an unjustified interference with their right to freedom of expression guaranteed under Article 10 of the European Convention on Human Rights.

Law: Article 10 - The Court saw no grounds to question the Norwegian courts' findings that the statements were capable of adversely affecting Mr Bratholm's reputation. The reasons relied on by the national courts clearly were relevant to the legitimate aim of protecting his reputation. As regards the further question whether the reasons were sufficient, the Court observed that the impugned statements clearly bore on a matter of serious public concern. However, despite the particular role played by the applicants as representatives of professional associations and the privileged protection afforded under the Convention to the kind of speech in issue, the applicants had to act within the bounds set, among other things, in the interest of the "protection of the reputation or rights of others". As regards one allegation, namely statement 1.2 accusing Mr Bratholm of deliberate lies, this could be regarded as an allegation of fact susceptible of proof, for which there was no factual basis and which could not be warranted by Mr Bratholm's way of expressing himself. Declaring this statement null and void was justifiable in terms of Article 10. On the other hand, as to statements 1.1, 1.3, 2.2 and 2.3, in so far as these were imputing improper motives or intentions to Mr Bratholm, it was apparent from the wording and the context that they were intended to convey the applicants' own opinions and were thus rather akin to value-judgments. In as far as the said statements implied that Mr Bratholm had provided false information about police violence and fabricated allegations of such misconduct, there existed at the material time certain objective factors supporting the applicants' questioning of Mr Bratholm's investigations: the libel action brought by Mr Nordhus in respect of allegations of lies in certain newspaper articles had been unsuccessful; the Prosecutor-General's criminal investigations of Bergen Police had reached the overall conclusion that the various allegations of police brutality were unfounded; in the ensuing "boomerang cases" a number of informers had been convicted of false accusations against the police. This was not altered by the fact that the Supreme Court subsequently re-opened seven of the "boomerang cases" and acquitted the defendants. Moreover, regard should be had to the role played by the injured party in the present case, notably to the harsh criticism voiced by Mr Bratholm in *Police Brutality*. The applicants were therefore not entirely unjustified in claiming that they were entitled to "hit back in the same way". Bearing in mind that applicants were, in their capacity as elected representatives of professional associations, responding to criticism of the working methods and ethics within their profession, the Court attached greater weight to the plaintiff's own active involvement in a lively public discussion than the national courts had done when applying national law. The statements at issue were directly concerned with the plaintiff's contribution to that discussion. Moreover, a degree of exaggeration should be tolerated in the context of such a heated and continuing public debate of affairs of general concern, where on both sides professional reputations were at stake. Against this background, the Court was not satisfied that statements 1.1, 1.3, 2.2 and 2.3 exceeded the limits of permissible criticism for the purposes of Article 10 of the Convention. The impugned interference with the applicants' exercise of their freedom of expression was not supported by sufficient reasons in terms of Article 10 and was disproportionate to the legitimate aim of protecting the reputation of Mr Bratholm. There had thus been a violation of Article 10.

Conclusion: Violation (12 votes to 5).

Article 41 - The applicants each requested NOK 25,000 in compensation for non-pecuniary damage. The Court considered that the finding of a violation itself constituted adequate just satisfaction in this respect. The applicants also sought the reimbursement of NOK 440,242.74 for economic loss suffered as a result of the domestic courts' judgments. The Court awarded them NOK 375,000 under this head. The applicants claimed, in addition, reimbursement of NOK 750,912 in respect of costs and expenses incurred in the national proceedings and the Strasbourg proceedings, of which the Court awarded NOK 465,000. The applicants also claimed NOK 325,000 in interest and were awarded NOK 50,000 under this head.

Judges Rozakis, Kūris, Türmen, Strážnická and Greve expressed dissenting opinions and these are annexed to the judgment.

APPENDIX II

Case of Hashman and Harrup v. the United Kingdom - Extract from press release

Facts: The applicants, Joseph Hashman and Wanda Harrup, two British nationals, live in Shaftesbury, in the United Kingdom. In March 1993, the applicants who were "hunt saboteurs", disturbed the Portman Hunt. On 7 September 1993 they were bound over to keep the peace and to be of good behaviour in the sum of £100. They appealed to the Crown Court in Dorchester where, on 22 April 1994 the first applicant was found to have blown a hunting horn. The second applicant was found to have shouted at hounds. The court considered that this behaviour had been a deliberate attempt to interfere with the hunt, and that the applicants' actions had been unlawful, and had exposed hounds to danger. It considered, however, that as there had been no violence or threat of it, there had been no breach of the peace. The behaviour was found to have been *contra bonos mores* (behaviour seen as "wrong rather than right in the judgment of the majority of contemporary fellow citizens"). The applicants were bound over "to be of good behaviour" for a period of one year.

The applicants allege violation of Articles 10 and 11 of the Convention. Their main complaint is that the concept of behaviour *contra bonos mores* is so broadly defined that it does not comply with the requirement, in Article 10 § 2 of the Convention, that any interference with freedom of expression must be "prescribed by law". They also claim that, even if the interference was "prescribed by law", the binding over in this case was a disproportionate interference with their freedom of expression.

Law: Article 10 - The principal matter for concern in the case was the question whether the interference with the applicants' freedom of expression was "prescribed by law", that is, whether it met the Convention criteria of foreseeability. The Court noted that the expression "to be of good behaviour", that is, not to behave *contra bonos mores* (defined in English law as behaviour which is "wrong rather than right in the judgment of the majority of contemporary fellow citizens") is particularly imprecise, and did not give the applicants sufficiently clear guidance as to how they should behave in future.

Conclusion: Violation (16 votes to 1).

The Court also found unanimously that it was not necessary to consider the remainder of the complaints.

Article 41 - The Court awarded the applicants £6,000 for costs and expenses.

Judge Baka expressed a dissenting 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