CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 24
on the case-law of the Court
November 2000

Statistical information[1]

		November	2000
I. Judgments delivered			
Grand Chamber		1	25
Section I		31	94
Section II		38	247
Section III		37	181
Section IV		31	105
Total		**138**	**652**
II. Applications declared admissible			
Grand Chamber		4	8
Section I		50(51)	230(381)
Section II		94	263
Section III		13(15)	188(215)
Section IV		65	195
Total		**226(229)**	**878(1062)**
III. Applications declared inadmissible			
Section I	- Chamber	9	93(107)
	- Committee	101	1053
Section II	- Chamber	8	83(89)
	- Committee	116	1236
Section III	- Chamber	14	112(124)
	- Committee	99	1404(1463)
Section IV	- Chamber	9	90(94)
	- Committee	277	1967
Total		**633**	**6038(6133)**
IV. Applications struck off			
Section I	- Chamber	1	9
	- Committee	2	18
Section II	- Chamber	7	41
	- Committee	2	12
Section III	- Chamber	1	15(37)
	- Committee	1	28
Section IV	- Chamber	1	16
	- Committee	0	27
Total		**15**	**166(188)**
Total number of decisions[2]		**874(877)**	**7082(7383)**
V. Applications communicated			
Section I		34	300(362)
Section II		62	333(343)
Section III		9(11)	309(317)
Section IV		24	260(261)
Total number of applications communicated		**129(131)**	**1202(1283)**

[1] 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 November 2000					
	Merits	Friendly settlements	Struck out	Others	Total
Grand Chamber	1	0	0	0	1
Section I	28(29)	3(12)	0	0	31(41)
Section II	36	2(6)	0	0	38(42)
Section III	36(37)	1	0	0	37(38)
Section IV	28(29)	3	0	0	31(32)
Total	**129(132)**	**9(22)**	**0**	**0**	**138(154)**

Judgments delivered January - November 2000					
	Merits	Friendly settlements	Struck out	Others	Total
Grand Chamber	22(23)	1	0	2(3)[1]	25(27)
Section I	77(82)	13(22)	2	2[2]	94(108)
Section II	92(96)	155(159)	0	0	247(255)
Section III	153(162)	22(27)	4	2(4)[1]	181(197)
Section IV	82(93)	18(19)	4	1(10)[1]	105(126)
Total	**426(456)**[3]	**209(228)**	**10**	**7(19)**	**652(713)**

[1] Just satisfaction.
[2] One revision request and one lack of jurisdiction.
[3] Of the 404 judgments on merits delivered by Sections, 69 were final judgments.

ARTICLE 1

RESPONSIBILITY OF STATES
Responsibility of member States of NATO for bombing of Yugoslavia: *communicated*.

BANKOVIĆ and others - Belgium, Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Turkey and United Kingdom (N° 52207/99)
[Section I]

The applicants are relatives of members of the staff of Radio-Television Serbia who died in the bombing by NATO forces of the television's headquarters in Belgrade. The bombing was part of NATO's campaign of air strikes directed against the Federal Republic of Yugoslavia's authorities during the Kosovo conflict. The bombing of the RTS headquarters took place at a time when foreign journalists usually made use of the television's facilities, but at the material time none was present in the building. The applicants allege that there is compelling evidence that they had been warned of the strike whereas no warning was given to RTS or to its employees. According to NATO official statements and statements of heads of NATO member States, the air strike strategy was unanimously backed by member States.
Communicated under Articles 1, 2, 10 and 13.

ARTICLE 2

LIFE
Responsibility of gendarmes for the death of a person detained on remand : *violation*.

DEMIRAY - Turkey (N° 27308/95)
*Judgment 21.11.2000 [Section III]

Facts: The applicant's husband, Ahmet Demiray, was arrested in 1994. A few days later, following a complaint by Mr Demiray's father alleging that his son had been abducted by village guards, the public prosecutor advised him that his son was being held at the gendarmerie. However, subsequently, the applicant was informed that her husband's body had been found – some three weeks after his disappearance – near a village in a neighbouring district. The authorities said that an autopsy had been performed by a general practitioner (no pathologists being available) and the body buried, since none of the deceased's relatives had been in the vicinity to attend to the funeral. The authorities also said that after his arrest Mr Demiray had admitted to being a member of the PKK and had offered to take the security forces to one of its munitions dumps. When they had reached the site and as he approached the dump, he had been killed by the explosion of a booby-trapped grenade planted by the PKK. None of the three gendarmes accompanying him were injured by the explosion. According to a sketch map drawn by the gendarmes, Mr Demiray was a metre away from the munitions dump when the device exploded, whereas the three gendarmes accompanying him were respectively thirty and fifty metres behind. The public prosecutor's office dealing with the case found that the cause of death had been the detonation of a booby-trapped grenade and declared that it had no jurisdiction to start an investigation into the complaint against the village guards. It forwarded the complaint to the local administrative committee for it to examine in accordance with the law concerning proceedings against public servants. Those administrative proceedings were still pending. A second set of proceedings, the aim of which was to identify Mr Demiray's presumed killers, was also pending.

The law: Article 2 – *The circumstances of the death*. The circumstances surrounding the applicant's husband's death were disputed. While the applicant did not dispute the cause of death, she alleged that her husband had been used as a human shield. While it was impossible to establish from the evidence on the case file the exact circumstances of death with any degree of certainty, the Court had to determine whether the relevant authorities had done everything possible to prevent it. Firstly, the authorities had without doubt been in a position to evaluate the risks entailed by visiting the alleged munitions dump. Further, the information supplied by the Government indicated that the applicant's husband had been a metre away from the dump at the time of the explosion, whereas the three gendarmes accompanying him had been thirty or more metres away. As the Government had been unable to explain the reasons for so proceeding or to indicate what measures had been taken to reduce the risk run by the applicant's husband, the respondent had breached its obligation to protect the life of a person held in custody.
Conclusion: violation of Article 2 on account of the death of the applicant's husband (four votes to three).
The investigation conducted by the authorities. The representatives of the public prosecutor's office that had started the investigation did not appear to have visited the site of the accident or to have questioned any of the gendarmes present at the scene. The autopsy had been performed by a general practitioner and contained little forensic evidence. Contrary to what the authorities had maintained, the autopsy should have been carried out by a pathologist given the circumstances of the death. The public prosecutor's office had confined itself to deciding that it had no jurisdiction *ratione materiae*. In its decision it had established the cause of death solely on the basis of the reports of the gendarmeries and "all the information in the case file". The public prosecutor's office's conclusion could in any event be regarded as hasty given the scant amount of information at its disposal. As to the investigation by the administrative bodies – and leaving aside the grave reservations which the Court had about the independence of such bodies – the Government had provided no information on the progress of the investigation, other than to say that it was still pending, despite the fact that the case file had been transferred four years' previously. Nor had the Government produced any evidence regarding the investigation that was supposed to be under way – and was still pending – to find the presumed killers of the applicant's husband. In conclusion, the authorities had not complied with their obligation to carry out an investigation into the circumstances of Mr Demiray's death. The lack of security in south-east Turkey could not, by itself, justify the failure to seek evidence or release the authorities from their obligation to carry out an effective investigation.
Conclusion: violation of Article 2 on account of the lack of an effective investigation (unanimously).
Article 41: The Court awarded the applicant 40,000 US dollars for pecuniary and non-pecuniary damage and a certain sum for costs and expenses.

LIFE
Suicide of a person in police custody and effectiveness of investigation: *no violation*.

TANRIBILIR - Turkey (N° 21422/93)
*Judgment 16.11.2000 [Section II]

Facts: The applicant's son, who was suspected of being a member of the PKK, was arrested by gendarmes. He was held overnight at the gendarmerie pending his transfer to the security forces. Before being put into his cell he was searched and his belt and shoelaces were removed. Although the gendarmes did rounds during the night the applicant's son was found hanged at dawn. The public prosecutor immediately started an investigation. The body was autopsied, photographs were taken, witnesses questioned and the cell inspected. The investigators established that the applicant's son had committed suicide using a cord made from his shirt sleeves. The applicant lodged a complaint against the gendarmes who had had

responsibility for her son while he was in custody and investigations were started by the public prosecutor and the investigating judge. Following his inquiries the public prosecutor concluded that the gendarmes' failure to foresee the suicide constituted professional misconduct and forwarded the case file to the relevant administrative authority – the district administrative council – for it to commence an investigation into negligent homicide. The public prosecutor further considered that the youth, an active member of the PKK, had committed suicide to avoid revealing information about the organisation and that there was no evidence that he had been killed by the gendarmes. He therefore made a discharge order closing the investigation into intentional homicide. The administrative committee of the district administrative council also made a discharge order in the proceedings concerning the three gendarmes. The applicant alleged that her son had been killed by the gendarmes who had interrogated him about his activities in the PKK.

The law: Article 2 – The applicant and her husband had not been present at the scene and had had no contact with any witnesses, in particular other prisoners, able to give direct evidence. The other prisoners had confirmed before the national authorities that the gendarmes had made rounds at regular intervals and said they had not heard anything unusual during the night. The autopsy performed immediately after the body was found had not revealed any trace of the use of force and confirmed that the cause of death was hanging. The statements made by the gendarmes during the investigation and repeated before the delegates of the Commission were consistent and appeared credible on the whole. It had not been established that the gendarmes had intentionally killed the applicant's son.

As regards whether the gendarmes were negligent in their supervision of the prisoner, the deprivation of physical liberty was capable of provoking drastic psychological changes, some prisoners becoming suicidal, and it was to guard against that danger that measures such as confiscating dangerous objects were taken. In the instant case, the prisoner's belt and shoe laces had been removed. The gendarmes had made rounds every thirty minutes. In addition, there had been nothing in the prisoner's behaviour on arrest to suggest that he intended to commit suicide. Lastly, it had been difficult to foresee his making such a use of his shirt and he had prepared his suicide in silence. The gendarmes could not therefore reasonably have foreseen the suicide and, consequently, could not be faulted for failing to take special measures such as posting a guard on permanent duty in the cell.

As regards the national authorities' obligation to carry out an effective investigation, there was enough evidence before the Court to show that the detailed in-depth investigation carried out by the public prosecutor and the investigating judge satisfied the procedural requirements of Article 2. The fact that the applicant had not played a full role in the investigation was of no relevance since she was not in a position to furnish any useful evidence for the purposes of the investigation. Although the administrative investigation, conducted by bodies whose independence was questionable, had undermined the effectiveness of the internal inquiry, the investigation carried out by the judicial authorities into the gendarmes' responsibility for the death satisfied the requirements of Article 2.

Conclusion: no violation (unanimously).

LIFE
NATO bombing of Yugoslavia: *communicated*.

BANKOVIĆ and others - Belgium, Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Turkey and United Kingdom (N° 52207/99)
[Section I]
(See Article 1, above).

LIFE
Disappearance of the applicant's son after being taken into custody and lack of effective investigation: *violation.*

TAŞ - Turkey (N° 24396/94)
Judgment 14.11.2000 [Section I]

Facts: The applicant's son, M., was shot in the knee and taken into custody by gendarmes in October 1993. He allegedly admitted to being a member of the PKK. After being seen by a doctor, he was handed over to the provincial gendarmerie to be transferred to Şirnak, where he was seen by another doctor at the military hospital. However, there are no other records relating to the detention of M. or his interrogation by three officers, only one of whom remembered M. when giving evidence to a delegation of the European Commission of Human Rights. The Commission found the officers' evidence to be unconvincing and in particular noted that the sole interview which one officer recalled did not account for the fact that the detention was extended twice for 15 days by the public prosecutor. A gendarme report of November 1993 states that M. escaped while assisting the gendarmes to locate PKK shelters, but the Commission considered it highly unlikely that M. would have been able to walk or run normally by then and dismissed the report as an unreliable document. The Government subsequently stated that it was not possible to identify the officers who had signed the report. The evidence of two former PKK members who confirmed that M. had escaped was also found by the Commission not to be reliable or credible. The Commission concluded that there was no explanation for what happened to M. after being treated at the military hospital.
The applicant lodged a number of petitions seeking information about his son but the public prosecutor took no steps to investigate. Certain steps were taken after communication of the application to the Government but ultimately the matter was transferred to the provincial administrative council, which terminated the proceedings after an investigation by a gendarme officer. The Government submitted certain relevant documents to the Commission after the taking of evidence had been closed and the Commission found in this respect that the Government had fallen short of its obligations under former Article 28(1)(a) of the Convention in failing to make them available earlier.
Law: The Court did not find that the Government's criticisms of the Commission's fact-finding raised any matter of substance warranting the exercise of its own powers of verifying the facts and consequently accepted the facts as established by the Commission. Noting the lack of explanation for the late submission of relevant documents, the Court confirmed the Commission's conclusion that the Government had fallen short of their obligations to furnish all necessary facilities.
Article 2 (death) – No entries were made in any custody records after the date on which M. was taken into custody and no reliable evidence has been forthcoming as to where he was held. Very strong inferences may be drawn from this absence of documentary evidence and from the failure of the Government to provide a satisfactory and plausible explanation as to what happened to him. Moreover, the claim that M. escaped entirely lacks credibility and has not been substantiated by any reliable evidence. M. must be presumed dead following his detention by the security forces, thus engaging the responsibility of the State. Since the

authorities have not accounted for what happened and do not rely on any ground of justification for the use of lethal force, liability is attributable to the Government.
Conclusion: violation (6 votes to 1).
Article 2 (investigation) – The public prosecutor took no investigative steps in response to the applicant's petitions and the lack of reaction to a report that the security forces have "lost" someone detained on suspicion of serious offences is incompatible with the obligation to ensure that detainees enjoy the safeguards accorded by law and the judicial process. While some steps were taken later, these were not pursued with any conviction. The Court has already held that the use of provincial administrative councils to investigate allegations of unlawful killings does not comply with the requirement that an investigation be carried out by an independent body. In sum, the investigation was not prompt, adequate or effective.
Conclusion: violation (unanimously).
Article 3 (applicant's son) – M. received prompt and effective medical treatment and the lack of records as to his subsequent care is an insufficient basis for concluding that he was the victim of treatment contrary to Article 3. Nor is it appropriate to make any findings as to the effect incommunicado detention may have had on M.
Conclusion: no violation (unanimously).
Article 3 (applicant) – Having regard to the indifference and callousness of the authorities to the applicant's concerns and the acute anguish and uncertainty which he has suffered and continues to suffer, he may claim to be a victim of the authorities' conduct, to an extent which discloses a breach of Article 3.
Conclusion: violation (unanimously).
Article 5 – The reasoning and findings in relation to Article 2 leave no doubt that M.'s detention was in breach of Article 5. The authorities have failed to provide a plausible explanation for his whereabouts and fate after the date of his detention and the investigation was neither prompt nor effective. In this respect, the absence of entries in official custody records is particularly serious. Furthermore, the period of detention was twice extended for 15 days, while only exceptionally can a period of more than four days without being brought before a judge be justified. This incommunicado detention is incompatible with paragraphs 3 and 4 of Article 5, while the lack of available compensation is contrary to paragraph 5. There has therefore been a particularly serious breach of the right to liberty and security of person.
Conclusion: violation (6 votes to 1).
Article 13 – The applicant had an arguable claim in relation to the disappearance of his son and was entitled to an effective remedy. For the reasons already given, no effective criminal investigation can be considered to have been conducted in accordance with Article 13, the requirements of which are broader than those under Article 2.
Conclusion: violation (6 votes to 1).
Article 18 – In the light of the above conclusion, it is unnecessary to examine this complaint.
Conclusion: not necessary to examine (unanimously).
The Court did not find it necessary to determine whether the failings identified in the case formed part of a practice adopted by the authorities.
Article 41 – The Court awarded £20,000 (GBP) in respect of the violations concerning M., to be paid to the applicant and held by him for M.'s heirs. It awarded the applicant himself £10,000 in respect of non-pecuniary damage and also made an award in respect of costs and expenses.

LIFE
Euthanasia: *inadmissible*.

SANLES SANLES - Spain (N° 48335/99)
Decision 9.11.2000 [Section IV]
(See Article 34, below).

ARTICLE 3

TORTURE
Confessions allegedly obtained under duress: *communicated*.

KÖNIG - Slovakia (N° 39753/98)
[Section II]

The applicant was arrested following the death of a taxi driver. He alleges that the police forced him to confess under duress that he had shot the taxi driver after a row with him. He was convicted and sentenced to imprisonment by the Regional Court, which did not consider his request for release from detention. In the course of the hearing before the court, the presiding judge restricted his questioning of the policemen responsible for the arrest and initial interrogation. The applicant's appeal was dismissed by the Supreme Court.
Communicated under Articles 3, 5(4), 6(3)(d) and 35(1) (exhaustion of domestic remedies).

INHUMAN TREATMENT
Mental suffering due to disappearance of son: *violation*.

TAŞ - Turkey (N° 24396/94)
Judgment 14.11.2000 [Section I]
(See Article 2, above).

INHUMAN TREATMENT
Destruction of home and property by security forces: *violation*.

BİLGİN - Turkey (N° 23819/94)
Judgment 16.11.2000 [Section II]

Facts: The applicant submitted that his tobacco harvest and many of his possessions were destroyed by the security forces during an operation at his village and that his house was subsequently burnt by the security forces, leaving him and his family homeless. An inquiry was opened after the communication of the application to the Government, but the administrative council to which the prosecutor relinquished the case decided that no criminal proceedings should be brought.
The European Commission of Human Rights took evidence and found the applicant to be sincere and his evidence to be convincing and supported by the evidence of other villagers. On the other hand, it considered certain aspects of the evidence given by a gendarme officer and public prosecutors to be unconvincing. It found it established that the damage to the applicant's property had been caused by gendarmes and considered that there were no grounds to doubt that the gendarmes were also responsible for the deliberate burning of his house.

Law: The Court found no grounds in the Government's submissions on the basis of which it should be held that the Commission's assessment of the evidence was not in accordance with established principles and accepted the facts as established by the Commission.
Article 3 – Having regard to the circumstances in which the applicant's home and possessions were destroyed and his personal circumstances, he must have been caused suffering of sufficient severity for the acts to be categorised as inhuman treatment.
Conclusion: violation (unanimously).
Article 8 and Article 1 of Protocol No. 1 – There can be no doubt that the acts of the security forces constituted grave and unjustified interferences with the applicant's rights under these provisions.
Conclusion: violation (unanimously).
Article 13 – There were such deficiencies in the investigation carried out by the authorities that the proceedings cannot be regarded as a thorough and effective investigation, thereby excluding access to any other available remedies.
Conclusion: violation (unanimously).
The Court did not find it necessary to determine whether the failings identified were part of a practice adopted by the authorities.
Articles 14 and 18 – The Court found no violation of these provisions.
Conclusion: no violation (unanimously).
Former Article 25 (Article 34) – The Court found it established that the applicant had been taken to a gendarme station where he was questioned about his application to the Commission. It considered that such questioning by an official of the authorities directly responsible for the events complained of was incompatible with the effective operation of the system of individual petition and that the Government had consequently failed to comply with the obligation not to hinder the effective exercise of the right of petition.
Conclusion: failure to comply with obligations (unanimously).
Article 41 – The Court awarded the applicant £4,000 (GBP) in respect of the destroyed buildings, £4,000 in respect of the other property, £2,500 in respect of loss of income, and £1,000 in respect of the costs of alternative housing. It awarded him £10,000 in respect of non-pecuniary damage and also made an award in respect of costs.

INHUMAN TREATMENT
Ill-treatment on arrest: *violation*

REHBOCK - Slovenia (N° 29462/95)
Judgment 28.11.2000 [Section I]

Facts: In 1995 the applicant, a German national, was arrested, along with two others, in an operation involving thirteen police officers. He alleges that he was dragged to his car by two of the policemen, who held him down on the bonnet to handcuff him, while four others hit him with their fists and cudgels, causing serious facial injuries. A report of March 1996 submitted to the Court after the hearing in the case found that the applicant had been wrestled to the ground after resisting arrest and that he had hit his face on the mudguard of the car, breaking his jaw. The report concluded that the use of force had been justified. The applicant, who was remanded in custody, declined to undergo an operation, contrary to medical advice. He was examined on numerous occasions, although he complained that the medical attention was inadequate and that he was later refused pain-killers for other complaints. On 3 October 1995 he requested that he be released. His detention was prolonged on 6 October by the Regional Court and his complaint was dismissed on 19 October by the Higher Court which, however, stated that the Regional Court should examine the request of 3 October. The Regional Court rejected that request on 26 October and on 27 November again extended the detention. It rejected a further request for release, lodged on 29 November, on 22 December. In the meantime, the Higher Court had dismissed a complaint in respect of the extension granted on 27 November. The applicant was convicted in January 1996. During his detention,

his correspondence, including correspondence with the European Commission of Human Rights, was monitored.

Law: Government's preliminary objection – The objection was not raised before the Commission's decision on admissibility and the Government is therefore estopped.

Article 3 (ill-treament) – As the alleged ill-treatment occurred during the applicant's arrest, the case is distinguishable from Ribitsch v. Austria (Series A no. 336), which concerned injuries sustained in detention, but also from Klaas v. Germany (Series A no. 269), in which the national courts had established the facts after hearing witnesses at first hand. In the present case, the police planned the operation in advance and had time to evaluate the risks and take all necessary measures. The police outnumbered the suspects and the applicant did not threaten them. Bearing in mind the serious nature of the injuries he sustained and the fact that there has been no determination of the facts by a national court, the burden is on the Government to demonstrate that the use of force was not excessive. The report which the Government submitted was ordered several months after the incident and the investigation was conducted by the police themselves; it does not appear that the applicant or the other suspects were heard and no explanation has been provided for the delay in making the report available to the Court. Notwithstanding the conclusions of the report, the Government have failed to furnish convincing or credible arguments which would provide a basis to explain or justify the degree of force used, which was consequently excessive and unjustified. The injuries undoubtedly caused serious suffering amounting to inhuman treatment.

Conclusion: violation (6 votes to 1).

Article 3 (medical care) – The applicant was regularly examined by doctors and he himself refused to undergo the surgery which had been recommended, so that no issue arises in this respect. Moreover, the failure to provide him with pain-killers on several occasions did not attain the degree of severity required by Article 3.

Conclusion: no violation (unanimously).

Article 5(4) – The applicant's requests for release of 3 October and 29 November were both rejected by the Regional Court after 23 days and they were thus not examined speedily. This is not changed by the fact that the complaints against the Regional Court's decisions to extend the detention were pending before the Higher Court; indeed, the latter specifically found that the Regional Court had to examine the first of the applicant's two requests, and these proceedings were thus independent of those concerning the prolongation of the detention at the authorities' initiative.

Conclusion: violation (unanimously).

Article 5(5) – Slovenian law limits the right to compensation to cases in which the deprivation of liberty was unlawful or resulted from an error. Since that was not the situation in the present case, the applicant's right to compensation was not ensured with a sufficient degree of certainty.

Conclusion: violation (unanimously).

Article 8 – There was an interference with the right to respect for correspondence, which was in accordance with the law and pursued the legitimate aim of prevention of disorder or crime. However, as regards its necessity, there are no compelling reasons for the control of the relevant correspondence, for which it was important to respect its confidential character.

Conclusion: violation (unanimously).

Article 41 – The Court saw no direct causal link between the violations and the pecuniary losses claimed by the applicant. It awarded him 25,000 German marks (DEM) in respect of non-pecuniary damage, taking into account the fact that he had been unwilling to undergo the appropriate treatment. It also made an award in respect of costs and expenses.

INHUMAN TREATMENT
Alleged lack of adequate medical care for detainee: *no violation*.

REHBOCK - Slovenia (N° 29462/95)
Judgment 28.11.2000 [Section I]
(See above).

INHUMAN TREATMENT
Extradition to China with risks of imprisonment: *communicated*.

JIN - Hungary (N° 58073/00)
Decision 16.11.2000 [Section II]

The applicant, a Chinese national, is detained pending extradition to China following a request of the Interpol Beijing Office and the Chinese Ministry of Justice. The applicant is suspected of involvement in robbery, stabbing and shooting of a person in China, for which two others were sentenced to death and executed. In view of the elements contained in the investigation and extradition documents, the Regional Court which ordered his detention considered that his offence constituted "bodily assault causing disabling injuries" which under both Chinese and Hungarian law is punishable by imprisonment. The Hungarian Ministry of Justice obtained the formal assurance of the Chinese authorities that the applicant would not be sentenced to death, and in the event he would be the sentence would not be carried out. The applicant claims that in China he would be summarily judged and sentenced to imprisonment. In view of the conditions of detention in Chinese prisons, he asserts that the conditions of his detention would be inhuman.
Communicated under 3 and 6. (The Court also decided to apply Rule 39.)

ARTICLE 5

Article 5(1)

SECURITY OF PERSON
Unacknowledged detention: *violation*.

TAŞ - Turkey (N° 24396/94)
Judgment 14.11.2000 [Section I]
(See Article 2, above).

LAWFUL DETENTION
Detention on remand continued after quashing of detention order due to absence of sufficient reasons: *admissible*.

MINJAT - Switzerland (N° 38223/97)
Decision 23.11.2000 [Section II]

The applicant, who was suspected of misappropriating money belonging to his employer, was charged with embezzlement by the Geneva investigating judge on 26 June 1997 and an order was made that same day for her detention pending trial for "a maximum of eight days". On 27

June 1997 the investigating judge requested the Geneva Indictment Division to prolong the detention pending trial on the grounds that the inquiries had not been completed and that the circumstances under which the arrest warrant had been issued continued to obtain. By an order of 1 July 1997 the Indictment Division, "adopting the grounds relied on by the investigating judge", authorised the applicant's continued detention until 1 October 1997. That order was set aside on 23 July 1997 by the Federal Court on an appeal by the applicant on the ground that it contained insufficient reasons. The Federal Court nonetheless dismissed the applicant's application for release, holding that a finding of a like infringement of the guarantees contained in the Constitution or the Convention did not automatically entail release, it being for the court which had made the impugned order to make a fresh ruling complying with those guarantees at an early date in order to restore legality. In a reasoned order of 29 July 1997, the Indictment Division gave permission for the pre-trial detention to continue until 1 October 1997. The applicant maintains that by setting aside the Indictment Division's order of 1 July 1997 the Federal Court had found that her detention was unlawful and ought consequently to have ordered her immediate release.
Admissible under Article 5(1) and (4).

LAWFUL DETENTION
Detention on remand continued after quashing of detention order due to failure to follow adversarial procedure: *communicated*.

MICHAILOV - Switzerland (N° 38014/97 and 40193/98)
[Section II]

The applicant, who was suspected of being the head of a Russian organisation involved in Mafia-type activities, was arrested in Geneva on 15 October 1996 and charged, *inter alia*, with being a member of a criminal organisation by the Geneva investigating judge. On 25 October 1996 the Geneva Indictment Division prolonged the applicant's pre-trial detention for three months at the request of the investigating judge. On 24 January 1997 the Indictment Division ordered his continued detention until 24 April 1997. That order was set aside on 3 April 1997 by the Federal Court on an appeal by the applicant on the ground that the Indictment Division had relied in its decision on documents that had not been disclosed to either the defendant or his lawyers. The Federal Court nonetheless dismissed the applicant's application for release, holding that a finding of a like infringement of the guarantees contained in the Constitution or the Convention did not automatically entail release, it being for the court which had made the impugned order to make a fresh ruling complying with those guarantees at an early date in order to restore legality. Accordingly, the Indictment Division hearing the application anew, gave permission on 11 April 1997 for the pre-trial detention to continue until 11 July 1997. Subsequently, and despite the applicant's applications for release, the order for the applicant's pre-trial detention was renewed at regular intervals until 11 December 1998, when the Geneva Criminal Court handed down its judgment. The applicant was acquitted on the main counts and no sentence was imposed. In a final decision of the Federal Court of 11 October 2000, the applicant was awarded 810,000 Swiss francs in compensation for the time he had spent in pre-trial detention. The applicant maintains that by setting aside the Indictment Division's order of 24 January 1997 the Federal Court had found that his detention was unlawful and ought consequently to have ordered his immediate release.
Inadmissible under Article 3, Article 5(2), (3) and (5) and Articles 6, 8 and 13.
Communicated under Article 5(1) and (4).

REVIEW OF LAWFULNESS OF DETENTION
Absence of examination by a court of request for release from detention: *communicated*.

KÖNIG - Slovakia (N° 39753/98)
[Section II]
(See Article 3, above).

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

REHBOCK - Slovenia (N° 29462/95)
Judgment 28.11.2000 [Section I]
(See Article 3, above).

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

G.B. - Switzerland (N° 29462/95)
M.B. - Switzerland (N° 28256/95)
*Judgments 30.11.2000 [Section II]

Facts: The applicants were detained on remand in September 1994. On Friday, 21 October they each lodged a request for release with the Federal Attorney, who received the requests the following Monday and dismissed them the next day. The decisions were served on the applicants on 27 and 26 October respectively. On 31 October the applicants appealed to the Indictment Chamber of the Federal Court, which requested the Federal Attorney to submit observations by 7 November and the applicants to reply to these by 11 November. The court received the applicants' observations on 14 November and dismissed their requests for release on 21 and 23 November respectively. Each of these decisions was served the day after being taken.
Law: Article 5(4) – The submission of the applicants' requests for release to the Federal Attorney opened the administrative proceedings and was a prerequisite for the Federal Court's exercise of judicial supervision. The period to be examined therefore began on 21 October 1994 and it ended respectively on 22 and 24 November, when the decisions were served, thus totalling 32 and 34 days. The matters raised in the requests were straightforward and the parties have not argued that the case was complex. Since the Federal Attorney had been able to give decision one day after receiving the applicants' requests, and the applicants were conversant with their own cases, the 10-day period allowed by the Federal Court for filing observations appears unnecessarily long. Moreover, once the applicants had filed their observations the court required a further 10 and 12 days – 6 and 8 working days – to deliver its decision. Bearing in mind that by 11 November the proceedings had already been pending before the Federal Court for 10 days, and that 21 days had elapsed since the initial request, these periods were excessive. Consequently, the proceedings were not conducted speedily.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the first applicant 2,000 Swiss francs (CHF) and the second applicant 3,000 Swiss francs in respect of non-pecuniary damage. It also made awards in respect of costs and expenses.

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Division of an estate carried out by notaries but at the request and under the control of a court: *Article 6 applicable*.

SIEGEL - France (N° 36350/97)
*Judgment 28.11.2000 [Section III]

Facts: The applicant and his brother, Louis Siegel, were responsible for the distribution of the estate of Mrs Schmitt, who had died in July 1990. As they were unable to reach agreement, the applicant filed an application on 8 January 1993 with the President of the *tribunal d'instance* of Illkirch-Graffenstaden for partition by the court. After obtaining the parties' observations, the President of the *tribunal d'instance* made an order for partition by the court and instructed two notaries, Mr D. and Mr K., to carry out the partition, with Mr D being responsible for preparing the draft documentation. The first meeting with the parties was held in Mr D.'s office in November 1993 and the minutes of that meeting were sent to the parties the following month. In August 1994 Mr D. sent the parties a draft proposal for the winding up of the estate and requested their observations. In November 1994 the applicant's counsel submitted his observations. In April and July 1995 the applicant enquired of Mr D. how the case was progressing, but received no reply. In November 1995 he sent a letter to the president of the court, and copied it to the notaries, but to no avail. A year later, in November 1996, he sent a reminder to the president of the court asking him to require the two notaries to take action. The judge drafted a note to the court clerk assigned to the case. After the applicant had sent a letter in the same terms to the court clerk at the end of November 1996, again to no avail, the judge of the *tribunal d'instance* forwarded it to the notaries and invited them to take action. In February 1997 the applicant lodged a complaint with the Society of Notaries asking it to intervene so that the estate could be wound up by 31 March 1997, failing which he would bring an action for damages against the notaries. In March 1997 Mr D. informed the president of the court, *inter alia*, that he had produced the draft proposal in August 1994 and had since been waiting for a counter proposal by Mr K. Following a meeting between the parties in April 1997, the draft deed of partition was officially drawn up by the two notaries. It was stipulated in the deed that the parties undertook to withdraw the proceedings for partition by the court that had been instituted on 8 July 1993. By an order of 4 December 1997 the judge of the *tribunal d'instance* adjourned the proceedings *sine die*.
Law: It was appropriate to dismiss the Government's preliminary objection that domestic remedies had not been exhausted since any payment of compensation to the applicant on account of a breach of duty or negligence by the notaries would not remedy the damage resulting from the delays in a procedure instituted at the request and under the supervision of a court.
Article 6(1) – At first sight, it might be thought questionable whether Article 6 was applicable, since the partition procedure, which was neither wholly judicial nor conducted wholly out of court, had taken place solely before the two notaries appointed by the parties and ended with a settlement in which the parties had agreed on the distribution of the estate and undertaken to discontinue the court proceedings without intervention by the *tribunal d'instance*. However, accepting that Article 6 was inapplicable would result in the court concerned being unable to supervise a judicial procedure that it, as the court responsible for approving the partition of the estate, had ordered. An application for partition by the court had been made to the *tribunal d'instance* and, while the distribution of an estate was carried out by notaries and all agreements between the parties had to be approved by the probate judge, it

was the court for the area in which the succession procedure commenced which had jurisdiction to make the administration order, appoint the notaries and the probate judge and above all to approve the deed of partition drawn up by the notaries. The *tribunal d'instance* had therefore been required to decide a dispute over civil rights over which it had jurisdiction by virtue of the application for partition by the court made, in the instant case, on 8 January 1993. The fact that, as in the instant case, the parties had had the option of agreeing on partition terms did not divest the *tribunal d'instance* of the jurisdiction which it retained until such time as they availed themselves of that right. The Government had further objected that two procedures, noncontentious and contentious, were available for dealing with the distribution of estates in Alsace and Moselle and it was up to any heir who considered himself adversely affected to bring an action. However, it had to be noted that once the parties had decided to follow the distribution procedure laid down by the law applicable in Alsace and Moselle, they could only revert to the contentious procedure by using the referral and recorded-difficulties procedure referred to in Article 232 of the Law of 1 June 1924. In the case before the court, the notaries had not drawn up such a record or referred the parties to the tribunal de grande instance. Thus, since the procedure before the notaries was so closely linked to the supervision of the *tribunal d'instance*, it could not be dissociated from that supervision for the purposes of determining the applicant's civil rights and obligations. The Court therefore had to conclude that Article 6(1) was applicable.
The proceedings had started on 8 January 1993 and ended on 4 December 1997, a period of four years and a little over eleven months. The Court noted a number of points that were relevant to that period, in particular the fact that the applicant had received no reply to his reminders attested to the notaries' inaction and the failings of the *tribunal d'instance*. Regard being had, *inter alia*, to that inaction and those failings, the applicant had been deprived of his right to have his case heard within a reasonable time.
Conclusion: violation (unanimously).
Article 41 – The applicant had not made any request for just satisfaction despite being invited to do so, and the Court had no reason to award him just satisfaction of its own motion.

ACCESS TO COURT
Application of the formalities for notification of an application to annul a building permit under Article L. 600-3 of the Town Planning Code: *inadmissible*.

COMITE DES QUARTIERS MOUFFETARD ET DES BORDS DE SEINE and others - France (N° 56188/00)
Decision 21.11.2000 [Section III]

The applicant is a French association whose objects include the preservation of the architectural heritage of parts of Paris. On 7 August 1995 the Minister of Culture obtained planning permission from the Prefect of Paris relating to a building in the historic centre. The applicant applied to the Prefect, the Minister of Culture and the other ministers concerned for the grant to be withdrawn, but they refused. It lodged appeals with Paris Administrative Court against the refusals (express or implied) and sought an order quashing the decision made on 7 August 1995 to grant planning permission. Holding, *inter alia*, that the applicant had not established that a copy of the application made to the grantor of the impugned permission (the Prefect of Paris) had been communicated to the grantee (the Minister of Culture), that being a condition of the admissibility of such applications under Article 600-3 of the Town Planning Code, the Administrative Court refused to quash the decision granting planning permission. In December 1997 the Administrative Court of Appeal dismissed the applicant's appeal and confirmed that by virtue of Article 600-3 of the Town Planning Code the appeal to the Administrative Court had been inadmissible, since the fact that an application had been made to it as the higher administrative authority did not mean that the Minister of Culture could be deemed to have been informed of the application made, *inter alia*, to the Prefect of Paris. The applicant appealed to the *Conseil d'État* and in February 1998 applied to the legal-aid office

at that court for legal aid. The application was refused on the ground that the applicant was a juristic person and could call on its members to pay additional subscriptions. The president of the legal-aid office upheld that decision and informed the applicant that it could appeal against his decision to the President of the Judicial Division of the *Conseil d'État*. It did not do so, but lodged a complaint with the Prime Minister in his capacity as President of the *Conseil d'État*. In February 1999 the *Conseil d'État* declared the appeal inadmissible as it had not been lodged through a lawyer. The applicant complained that it had been deprived of its right of access to a court by the vague and unnecessarily formal obligations imposed on it by Article 600-3 of the Town Planning Code regarding notification of its applications for the withdrawal of the grant of planning permission, and by the requirement that it be legally represented in its appeal to the *Conseil d'État*, despite the fact that it had been refused legal aid.

Inadmissible under Article 6(1) (access to a court): the aim of Article 600-3 of the Town Planning Code was to secure legal certainty by ensuring that grantees of planning permission were informed without delay of any appeals lodged by third parties against the grant. Furthermore, the rule established by that Article, unlike the positive law in issue in the case of De Geouffre de la Pradel v. France (Series A no. 253-B), was clear, accessible and foreseeable. The fact that the grantee in the case before the Court was a minister and not an ordinary member of the public made no difference and the Administrative Court of Appeal's criticism of the manner in which Article 600-3 had been applied did not appear relevant. Further, as regards the complaint relating to access to the *Conseil d'État*, the applicant had not challenged the refusal of legal aid before the President of the Judicial Division and, therefore, had not exhausted domestic remedies. However, even supposing that domestic remedies had been exhausted, the ground given for refusing legal aid, namely that the applicant was a juristic person and could have sought a subscription from its members, did not appear arbitrary or unreasonable: manifestly ill-founded.

ACCESS TO COURT

Refusal to deal with an appeal on points of law due to failure to execute the judgment appealed against *: violation*.

ANNONI DI GUSSOLA and others - France (N° 31819/96 and N° 33293/96)
*Judgment 14.11.2000 [Section III]

Facts: The applicants took out loans to buy consumer goods but failed to repay some of the instalments when due. The lenders brought proceedings against them and, on appeal, the first applicant was ordered to pay approximately 100,000 French francs (FRF) while the second applicants were ordered to pay approximately FRF 40,000. The applicants did not comply with the order of the court of appeal and appealed to the Court of Cassation. The second applicants were granted legal aid. On an application by the lenders, the First President of the Court of Cassation decided to strike their appeals out of the Court of Cassation's list for failure to comply with the court of appeal's decision. Under French legislation (Article 1009-1 of the Civil Code), an appeal on points of law in civil proceedings is a special remedy without any suspensive effect and failure to comply with the decision appealed against may result in the appeal being struck out of the list. The rule was applicable provided the decision did not entail manifestly unreasonable consequences. The judge found that the foreseeable consequences of complying with the court of appeal's order were not unreasonable. At the time the court of appeal made its order, the first applicant was in receipt of income support (*revenu minimum d'insertion*), his monthly income coming to FRF 3,569. The income of Mr and Mrs Desbordes-Omer was, according to the decision to grant them legal aid, FRF 862 monthly. When the appeal to the Court of Cassation was struck out of the list the amount, including default interest, owed by Mr and Mrs Desbordes-Omer was FRF 80,000 and by the first applicant, FRF 150,000.

Law: Article 6 – The obligation imposed by Article 1009-1 of the Civil Code to comply with decisions pursued a legitimate aim, since it was intended to protect creditors, it reinforced the authority of the trial court and eased the Court of Cassation's caseload. Since the Commission had already ruled that the machinery of Article 1009-1 was consistent with the Convention (M. M. v. France, DR 80, p. 56), it was not necessary to review that issue. However, the fact that it had been the respondent who was entitled to apply for the appeal to be struck out of the list for failure to comply with the court of appeal's order might raise concerns that the judicial system was undergoing a degree of privatisation. The Court had to determine whether the effect of the order striking out the appeal had not limited the applicants' right of access to the Court of Cassation to a disproportionate extent. The appeals had been struck out on the ground that the applicants had not evinced any intention of complying with the decision of the courts below and execution of the order was not likely to entail manifestly unreasonable consequences for them personally. However, their financial difficulties meant that the applicants had been unable to begin to comply with the order. The Government could not validly argue that the applicants had failed to exhaust domestic remedies or were not victims. The whole point of the applicants' complaint was that they had been denied access to the Court of Cassation because of their inability to comply with the decisions of the court of appeal, an inability that had resulted from the manifest disproportion between the sums owed and the applicants' means. The precariousness of the applicants' situation was thus decisive in assessing the reasonableness of the restrictions on their right of access to the Court of Cassation. It was apparent that when considering whether striking the appeals out of the list might produce manifestly unreasonable consequences, the First President of the Court of Cassation had failed to have regard to that situation, despite its being borne out by the fact that one applicant had been granted income support and the other legal aid. The orders striking out the appeals, which were in identical form and contained no reasons, did not enable the Court to determine whether the applicants' situation had been examined effectively and with regard to the practicalities. The applicants' lack of means could have created a rebuttable presumption – similar to that recognised by the Court of Cassation in a recent decision – that manifestly unreasonable consequences would result. In addition, the decision to strike the appeals out of the list should at the very least have been reasoned. It was unnecessary to examine whether or not the applicants' appeals would have been likely to succeed, though the fact that legal aid had been granted might suggest that there had been reasonable prospects. The decisions to strike the appeals out of the list were disproportionate and had hindered the applicants' access to the Court of Cassation.
Conclusion: violation (unanimously).
Article 41: The Court considered that irrespective of what the outcome of the applicants' appeals might have been, they had sustained non-pecuniary damage through the denial of access to the Court of Cassation. It therefore awarded the first applicant FRF 100,000 and Mr and Mrs Desbordes-Omer FRF 100,000 together with a sum for costs and expenses.

ACCESS TO COURT
Appeal declared inadmissible due to failure of the officials in charge of recording the appeals to comply with a procedural formality: *violation*.

S.A. SOTIRIS and NIKOS KOUTRAS - Greece (N° 39442/98)
*Judgment 16.11.2000 [Section II]

Facts: Having been refused a subsidy, the applicant company applied to the Legal Council of State for an order quashing that decision. Since the law permitted such applications to be lodged with the public authorities as well as at the Legal Council of State, the applicant company's lawyer lodged it at the police station. The police officers who registered the application omitted to note the registration number on the record, which they entered, in accordance with the law, on the document in which the application was set out. However, the number and the date of filing appeared on the seal which they stamped on the filing entry and

on the cover of the document. The Legal Council of State declared the application inadmissible because of the formal defect on the record of filing, holding that when an application was lodged with a public authority other than the Legal Council of State, compliance with that procedural requirement was a condition precedent to the validity of the application.
Law: Article 6(1) – The applicant company had had access to the Legal Council of State only to have its application declared inadmissible because the registration number was missing. The Court had to determine whether that right of access had sufficed to afford the applicant company a "right to a court". The applicant company had been penalised owing to a clerical error in the application for which it could not be held responsible. Since the law allowed applications to the Legal Council of State to be lodged with other public authorities, those authorities had a duty to comply with the rules for filing. In the case before the Court, the Legal Council of State had had jurisdiction as a court of both first and last instance. In those circumstances, such a strict construction of the procedural requirements was unacceptable. The applicant company had therefore been disproportionately hindered in its right of access to a court.
Conclusion: violation (unanimously).
Article 41: The Court awarded compensation for non-pecuniary damage of 3,000,000 drachmas and an amount for costs and expenses.

ACCESS TO COURT
Inadmissibility of an appeal to the *Conseil d'Etat* on the ground that it was not lodged by a lawyer, despite a legal aid request having been refused: *inadmissible*.

COMITE DES QUARTIERS MOUFFETARD ET DES BORDS DE SEINE and others - France (N° 56188/00)
Decision 21.11.2000 [Section III]
(See above).

ADVERSARIAL PROCEEDINGS
Non-communication of submissions of public prosecutor: *violation*.

GOÇ - Turkey (N° 36590/97)
*Judgment 9.11.2000 [Section IV]

Facts: The applicant was taken into custody on suspicion of having stolen and falsified court documents. However, the prosecutor decided not to bring charges. The applicant then applied for compensation in respect of a period which he had spent in custody. The Assize Court, without hearing the applicant, decided that he was entitled to compensation and awarded him 10 million Turkish liras. Both the applicant and the Treasury appealed. The Principal Public Prosecutor at the Court of Cassation submitted his opinion that both appeals should be rejected. This opinion was not communicated to the applicant. The Court of Cassation upheld the Assize Court's judgment.
Law: Article 6(1) – Having regard to the nature of the Principal Public Prosecutor's submissions and to the fact that the applicant was not given an opportunity to make written observations in reply, there has been an infringement of his right to adversarial proceedings. While the neutral approach of the Principal Public Prosecutor in advising that both appeals should be rejected may have ensured equality of arms between the parties at the appeal stage, it still remained the case that the applicant disputed the amount he had been awarded and he was therefore entitled to have full knowledge of any submissions which undermined his prospects of success before the Court of Cassation. Indeed, the communication of the submissions was even more compelling in view of the fact that the applicant was not entitled to an oral hearing. However, it is unnecessary to examine this complaint separately.

Conclusion: violation (unanimously).
Article 41 – The Court considered that the finding of a violation in itself constituted sufficient just satisfaction. It made an award in respect of costs and expenses.

FAIR HEARING
Legislative intervention in pending court proceedings : *violation*.

ANAGNOSTOPOULOS and others - Greece (N° 39374/98)
*Judgment 7.11.2000 [Section III]

Facts: The seven applicants were retired, two of them from the Greek army and the other five from the Greek police. Between September and November 1991 they had lodged requests for an increase in their pension pursuant to Law no. 1881/1990, which, in accordance with a ministerial decision, provided for a completed-tour-of-duty allowance of 10% of basic salary. Between September 1991 and January 1992 their requests were turned down by the Forty-Fourth Division of the State Accounting Department. The applicants' appeals to the Second Division of the Court of Audit were likewise dismissed. Between October 1994 and August 1995 the applicants lodged appeals on points of law with the Court of Audit, sitting as a full court. On 22 June 1995 Law no. 2320/1995 was adopted. Under that statute the allowance concerned was excluded from the calculation of the pension entitlement of servicemen who had retired before 1 January 1990, all claims relating to it were declared statute-barred and all court proceedings relating to it, including pending proceedings, were discontinued. The law was confirmed by Law no. 2512/1997 of 27 June 1997. Despite having previously come to the converse conclusion in three decisions beginning with a judgment in July 1995 in which it had awarded an increase in a similar case, the Court of Audit, sitting as a full court, dismissed the applicants' appeals as being ill-founded in judgments between March and May 1997. It found on the merits that since the allowance did not represent a general increase in salary, former servicemen who had retired before Law no. 1881/1991 had come into force could not avail themselves of it. In the alternative, it noted that even supposing that the allowance could be regarded as a general increase in salary and that the proceedings had not been discontinued by Law no. 2320/1995, the applicants' claims were manifestly ill-founded by reason of the retrospective application of the statutory provisions referred to above. Five of the seven applicants complained of interference by the legislature in the functioning of the judiciary in breach of their right to a fair trial. The seven applicants also complained of the length of the proceedings in question.
Law: Article 6(1) (fair hearing) – Even though it had not operated to discontinue the proceedings in issue, Law no. 2320/1995 had had a bearing on the judicial outcome of the dispute. While it was true that the Court of Audit had dismissed the applicants' appeals after examining the merits, it had nonetheless referred to the provisions of that statute in support of its decisions. Thus, the fact that the Court of Audit had relied, even in the alternative, on the statute complained of in dismissing the appeals amounted to an interference by the legislature in the functioning of the judiciary aimed at influencing the outcome of the dispute.
Conclusion: violation (six votes to one).
Article 6(1) (reasonable time) – Each of the seven sets of proceedings had lasted more than five years. The cases did not give rise to any special difficulties and the delay had not been attributable to the applicants. Consequently, the delays in the proceedings had been mainly due to the conduct of the authorities hearing the case.
Conclusion: violation (unanimously).
Article 13 – Regard being had to the finding of a violation of the right to a fair trial, it did not appear to be necessary to rule on that complaint.
Article 41 – With regard to the alleged pecuniary damage, it appeared that even without the legislature's intervention, the outcome of the proceedings before the Court of Audit would have been uncertain. Accordingly, in the absence of a causal link between the alleged pecuniary damage and the violation which the Court had found, no compensation was payable

for that head of damage. However, it was appropriate to award the applicants a certain sum as compensation for the non-pecuniary damage sustained and for costs and expenses.

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

ANAGNOSTOPOULOS and others - Greece (N° 39374/98)
*Judgment 7.11.2000 [Section III]
(See above).

REASONABLE TIME
Length of proceedings relating to division of an estate: *violation*.

SIEGEL - France (N° 36350/97)
*Judgment 28.11.2000 [Section III]
(See above).

REASONABLE TIME
Length of compensation proceedings following consolidation of land: *violation*.

PIRON - France (N° 36436/97)
*Judgment 14.11.2000 [Section III]
(See Article 1 of Protocol No. 1, below).

IMPARTIAL TRIBUNAL
Applicant judged by statutory body which previously made adverse findings about him: *violation*.

KINGSLEY - United Kingdom (Nº 35605/97)
*Judgment 7.11.2000 [Section III]

The applicant was the managing director of a company which owned several London casinos. The Gaming Board, a statutory body regulating the gaming industry, after holding a hearing in private, found him not to be a fit and proper person to hold the certificate of approval required to hold a management position in the gaming industry and his certificate was accordingly revoked. He was informed of this decision by letter. As a result, he found himself unable to obtain any employment in the gaming industry. He sought leave to apply for judicial review on the ground, *inter alia*, that the panel of the Gaming Board which had judged him was biased, since the Gaming Board had already expressed the view that he was not a fit and proper person at a hearing before the licensing magistrates. Moreover, an internal decision of the Gaming Board revealed that, prior to the examination of his case, the Board, including the members of the panel, had concluded that the applicant was not a fit and proper person. The High Court accepted that there was an appearance of bias but on the facts did not find a real danger of injustice. Furthermore, the decision of the Gaming Board would have to stand because of the "doctrine of necessity": as the case could not be delegated to any independent tribunal, the decision would have to be taken by the Board itself. Consequently, the application was rejected. The Court of Appeal agreed with this analysis and refused leave to appeal.
Law: Article 6(1) – Since the withdrawal of the applicant's certificate in effect prevents him from holding any management position in the gaming industry, the proceedings before the panel determined his civil rights and obligations. The fact that the Gaming Board had

concluded in an earlier decision that the applicant was not a fit and proper person in itself indicates that the subsequent panel hearing did not present the necessary appearance of impartiality. As to whether there was adequate review of the panel's decision, the subject matter was a classic exercise of administrative discretion and the applicant's contention that he should have had a full court hearing on the facts and the law cannot be accepted: although the panel members were not experts, they were advised by officials who were experts and the administrative regulation of the gaming industry is an appropriate procedure. Moreover, the panel's decision was reached after quasi-judicial proceedings in which the applicant was represented by senior counsel. Nevertheless, where there is a complaint of impartiality on the part of the decision-making body, the concept of full jurisdiction implies that the reviewing court not only considers the complaint but has power to quash the impugned decision and remit the case for a new decision by an impartial body. In this case, however, the domestic courts could not remit the case for a decision by the Board or by another independent tribunal, so that in the particular circumstances they did not have full jurisdiction.
Conclusion: violation (unanimously).
Article 41 – The Court cannot speculate on the outcome of the proceedings had they been in conformity with Article 6, and in any event no causal link between the violation and the applicant's claim for pecuniary loss has been established. Moreover, the finding of a violation constitutes in itself sufficient just satisfaction for non-pecuniary damage. The Court made an award in respect of costs.

Article 6(1) [criminal]

CRIMINAL CHARGE
Imposition of fine for abuse of process: *Article 6 applicable*.

T. - Austria (N° 28783/95)
Judgment 14.11.2000 [Section III]

Facts: A bank brought an action against the applicant in 1988. The proceedings were stayed in 1996. In 1994 the applicant applied for legal aid, submitting a declaration of means according to which he had no income, property, savings or other assets. He was asked to provide further information, which he did. His request for legal aid was refused by the court, which imposed a fine of 30,000 schillings for abuse of process. It noted that the documents submitted by the applicant showed that he was paying rent, so that he must have some income. No hearing was held. The applicant's appeal was also dismissed without a hearing. As the applicant did not pay the fine, it was converted into 10 days' imprisonment.
Law: Article 6(1) (length of proceedings) – An overall duration of 8½ years for one level of jurisdiction cannot be regarded as reasonable.
Conclusion: violation (unanimously).
Article 6(1) and (3)(a) and (b) – The offence of abuse of process is not classified as criminal in Austrian law and its nature, relating to the inherent power of a court to ensure the proper conduct of its proceedings, is disciplinary rather than criminal. However, both the maximum penalty (400,000 schillings) and the actual penalty are considerably higher than in comparable cases relating to penalties for misconduct in court proceedings and the fine was punitive in character. Moreover, although the term of imprisonment in default is much shorter than that at stake in the case of Ravnsborg v. Sweden (Series A no. 283-B), an oral hearing in separate proceedings was required in that case before the fine could be converted into imprisonment, whereas no such guarantee was present in this case. Consequently, what was at stake for the applicant was sufficiently important to warrant classifying the offence as criminal.

The fine was imposed on the applicant without a hearing and he only learned of the accusations when the decision was served on him. Furthermore, the appeal could not remedy these shortcomings, since the appeal court rejected the appeal without a hearing.
Conclusion: violation (unanimously).
Article 41 – The applicant limited his claim to expenses incurred in the proceedings before the Convention organs, which the Court awarded in full.

CRIMINAL CHARGE
Obligation for persons found to have driven under the influence of alcohol to undergo a course at their own expense: *Article 6 inapplicable*.

BLOKKER - Netherlands (N° 45282/99)
Decision 7.11.2000 [Section I]

The applicant was found driving under the influence of alcohol by the police. Following criminal proceedings, he was convicted of drunken driving and sentenced to a fine and a disqualification from driving for six months. Parallel to the criminal proceedings and pursuant to administrative regulations, the Minister of Transport decided that the applicant should go through a course designed for persons found to have driven under the influence of alcohol, the costs to be borne by the applicant. Failure to co-operate would result in his driving licence being declared invalid. The applicant's appeal was dismissed.
Inadmissible under Article 6(1): The measure does not come within the criminal law but rather administrative law provisions. Its educational aim is to raise the awareness of a specific category of drivers of the dangers of drunken driving and its imposition is autonomous from the criminal conviction for drunken driving. The measure amounts to a verification of the suitability and ability of a person to drive a vehicle and is aimed at the security of both the person concerned and other road-users; as such it should be compared to the issuing of a driving licence, which results from an administrative procedure to assess the ability of future drivers. This is not altered by the fact that the costs are to be borne by the person concerned. These costs as well as the attendance at the course can be compared to the time and costs of lessons needed for obtaining a driving licence and thus cannot make it a criminal charge. The fact that a driving licence may be declared invalid should the person not attend the course or not pay for it can be compared to a failure to pay for or take a driving test. Declaring a driving licence invalid on such grounds should be distinguished from disqualification from driving, which is ordered by a criminal court in the context of criminal proceedings and where the court qualifies the offence giving rise to disqualification before imposing it as a secondary penalty for a limited period of time. Article 6 is therefore not applicable under its criminal head: incompatible *ratione materiae*.

PUBLIC HEARING
Hearing held in prison: *violation*.

RIEPAN - Austria (N° 35115/97)
*Judgment 15.6.2000 [Section III]

Facts: The applicant is serving a prison sentence for murder and burglary. After he had made serious threats to members of the prison staff, criminal proceedings were brought against him. The Regional Court held the hearing in the "closed area" of the prison, although according to the minutes the hearing was public. The Government maintain that the practice was to make a hearings list available to the media and at the court's registry. The applicant was convicted of dangerous menace and sentenced to 10 months' imprisonment. He filed an appeal on both facts and law and against his sentence. He argued, *inter alia*, that the hearing had not been public since it had taken place in the "closed area" of the prison to which visitors have access only with a special permit and that it had been held in a room too small for any spectators to attend it. The Court of Appeal, after a public hearing on the court premises, rejected his appeal, finding that any interested person would have been allowed to attend the trial hearing.
Law: Article 6(1) – The public character of proceedings assumes particular importance where the accused is a prisoner and the charges relate to threats against prison officers, who are the witnesses against him. In this case, publicity was not formally excluded and neither the mere fact that the trial took place in the prison nor the fact that potential spectators would have had to undergo identity or security checks deprived the hearing if its public nature. However, it also necessary that the public be able to obtain information about the date and place of the hearing and that access be easily accessible. Holding a trial in a place to which the general public does not have access presents a serious obstacle to publicity, obliging the State to take measures to ensure that the public and the media are duly informed and given effective access. Apart from the routine announcement of the hearing, no particular measures were taken in this case. Furthermore, the conditions in which the hearing was held were hardly designed to encourage public attendance. In sum, the hearing did not comply with the requirement of publicity. As to whether the lack of publicity was justified, while there were apparently some security concerns the court did not consider these strong enough to necessitate a formal decision to exclude the public, nor did the Court of Appeal take such a view. Consequently, there was no justification for the lack of a public hearing. Finally, as to whether the hearing before the Court of Appeal remedied the lack of publicity at first instance, given the possible detrimental effects that this lack of publicity could have on the fairness of the proceedings, it could not be remedied by anything other than a complete rehearing. However, the review carried out by the Court of Appeal did not have the requisite scope: while it could have reviewed questions of law and fact and reassessed sentence, it did not take any evidence. Consequently, the lack of a public hearing was not remedied at the appeal stage.
Conclusion: violation (unanimously).
Article 41 – The Court made no award in respect of pecuniary damage, since it could not speculate on the outcome of the proceedings had the violation not occurred. Moreover, it considered that the finding of a violation constituted sufficient just satisfaction in respect of non-pecuniary damage. It made an award in respect of costs and expenses.

REASONABLE TIME
Starting point – date of interrogation by police: *violation.*

MARTINS and GARCIA ALVES - Portugal (N° 37528/97)
*Judgment 16.11.2000 [Section IV]

Facts: In 1984 the Lisbon Public Prosecutor's Office began an investigation into a fraud committed against a public company, *Electricidade de Portugal* (Electricity of Portugal – *EDP*). On 18 January 1985 the two applicants, both Portuguese nationals, were questioned about the offences by officers of the Lisbon judicial police and the second applicant, an *EDP* employee, admitted the offences. Following an order of the Lisbon investigating judge in July 1987 the first applicant was heard in October 1987 and the second in April 1988. The criminal proceedings continued and ended with the verdict of the Lisbon Criminal Court on 17 February 1997 finding both applicants guilty of an offence of aggravated fraud. They were sentenced to one year and six months' imprisonment and ordered to pay a sum to *EDP*. Their prison sentences were fully commuted under amnesty laws. The applicants complained of the length of the criminal proceedings.
Law: Article 6(1) (reasonable time) – The period to be taken into consideration had begun when the applicants were questioned about the offences by the judicial police on 8 January 1985. It was at that point that the applicants had become aware of the existence of the investigation concerning them. Indeed, the second applicant had admitted the offence. The questioning of the applicants was a measure which had had "serious repercussions" on their situation. Since the proceedings had ended on 17 February 1997, they had lasted more than twelve years, including a period of inaction of four years and seven months attributable to the authorities which, by itself, sufficed to show a failure to comply with the "reasonable time" requirement.
Conclusion: violation (unanimously).
Article 41 – It was appropriate to award the applicants a certain sum as compensation for their non-pecuniary damage.

INDEPENDENT TRIBUNAL
Independence of deputy judge of Bailiff's Court: *friendly settlement*.

PETERSEN - Denmark (N° 24989/94)
Judgment 16.11.2000 [Section II]

The case concerns the alleged lack of independence of a deputy judge of the Bailiff's Court. The parties have reached a settlement providing for payment to the applicant's heirs of a global sum of 17,000 kroner (DKK).

IMPARTIAL TRIBUNAL
Conviction by court including two judges having already participated in a judgment concerning third parties in which reference was made to the accused's role in the criminal acts in question: *violation*.

ROJAS MORALES - Italy (N° 39676/98)
*Judgment 16.11.2000 [Section II]

Facts: An arrest warrant was issued against the applicant in connection with a criminal investigation into a conspiracy to traffick in drugs between Latin America and Italy. As the applicant had left Italy for Argentina, a request for his extradition was lodged with the Argentinian authorities. The applicant and a number of other defendants were committed to stand trial before Milan Criminal Court, but, as the applicant had yet to be extradited, the

proceedings against him were severed from those against his co-accused. On 6 July 1993 a bench of Milan Criminal Court presided over by Mrs M. and including Mrs B. sentenced one of the applicant's co-accused, Mr A., to a term of imprisonment and a fine. Certain passages from the decision concerned the applicant and described, among other things, his role in a drug-trafficking ring as a predominant one, saying that he was both a promoter and an organiser, as had been established through the preliminary investigations. Meanwhile the applicant had been extradited to Italy in October 1992 and detained pending trial. The verdict of the trial court delivered in February 1993 was quashed by the court of appeal owing to a formal defect and the case was remitted for a retrial before Milan Criminal Court. In May 1995 the applicant challenged Mrs M., the President and Mrs B., a judge, of Milan Criminal Court on the ground that they had already delivered a verdict on his guilt in the judgment of 6 July 1993 in the case against Mr A. and had expressed an unwarranted opinion on the offences forming the subject-matter of the accusation. By an order of 5 June 1995 the court of appeal declared the challenge inadmissible. The applicant's appeal to the Court of Cassation against that order was also dismissed on the ground that, by its nature, it was implicit in a conspiracy count that a verdict against one of the co-accused might contain references to the roles played by the other accused, whereas only unwarranted assessments could be impugned under the relevant statutory provisions. In the meantime the applicant had repeated his request to the Milan Criminal Court that Mrs M. and Mrs B. should not take part in any decision concerning him. That request was refused in a judgment of 4 July 1995 by a bench of that court presided over by Mrs M. and including Mrs B. The applicant was sentenced to twenty-one years' imprisonment and a fine. The court of appeal to which the applicant appealed reduced the sentence but dismissed the ground of appeal complaining of bias by the court. That decision was upheld by the Court of Cassation.

Law: Article 6(1) (impartial tribunal) – With regard to the subjective test for determining whether the Court had been impartial, there was no evidence to cast doubt on the personal impartiality of the judges concerned. As to the objective test, the fear of a lack of impartiality had arisen from the fact that the judgment of Milan Criminal Court of 6 July 1993 against Mr A. contained a number of references to the applicant and his role in the criminal organisation of which he was suspected of being a member. In particular, the applicant had been referred to in a number of passages as an organiser or promoter of drug-trafficking between Italy and Latin America. Two of the judges who had delivered that judgment, Mrs M. and Mrs B., had subsequently been called on to decide the merits of the accusations against the applicant, which accusation concerned, at least in part, the same facts as those on which Mr A's conviction had been based. Those circumstances sufficed to render the applicant's fears regarding the impartiality of Milan Criminal Court objectively justified.

Conclusion: violation (unanimously).

Article 41 – Although the Court could not speculate on what the outcome of the proceedings would have been had there been no violation, it appeared that the applicant had suffered a loss of a real chance. He had in addition sustained actual non-pecuniary damage for which it was appropriate for him to be awarded a certain sum in compensation. It was also appropriate to award him a sum for costs and expenses.

Article 6(2)

PRESUMPTION OF INNOCENCE
Conviction based on legal presumptions laid down by the Drug Trafficking Act 1984: *admissible*.

PHILLIPS - United Kingdom (N° 41087/98)
Decision 30.11.2000 [Section III]

The applicant was convicted of drug trafficking and sentenced to nine years' imprisonment. An inquiry into the applicant's means was carried out. In his judgment, the judge noted that it was for the prosecution to establish on a balance of probabilities that he had benefited from drug trafficking. In the absence of direct evidence against the applicant in that respect, the judge was invited by the prosecution, in application of section 4(3) of the Drug Trafficking Act 1994, to assume, first, that property held by the applicant since his conviction and property transferred to him since 1989 was received as such benefit and, second, that any expenditure of his since 1989 was met out of payments received by him in connection with drug trafficking carried out by him. The judge observed that he should do so unless the applicant showed on a balance of probabilities that the assumption was incorrect. The judge assessed that he had received GBP 91,400 through drug transactions over the preceding 6 years. Whilst the applicant claimed he had received a large part of this sum by way of the sale of a house which he had recently purchased, the judge found that the sale of the house was a sham, the house remaining his property, and that the money was exclusively the result of drugs payments. The judge consequently imposed a confiscation order amounting to the estimated GBP 91,400. The applicant was twice refused leave to appeal against conviction and sentence.
Admissible under Article 6(2) and 1 of Protocol No. 1.

Article 6(3)

DEFENCE RIGHTS
Imposition of fine for abuse of process without hearing: *violation*.

T. - Austria (N° 28783/95)
Judgment 14.11.2000 [Section III]
(See Article 6(1), above).

DEFENCE THROUGH LEGAL ASSISTANCE
Qualifications of a court-appointed lawyer : *inadmissible*

FRANQUESA FREIXAS - Spain (N° 53590/99)
[Section IV]

The applicant was a lawyer. He was granted legal aid in connection with criminal proceedings against him and a lawyer was assigned by the court to assist him. At the hearing, the lawyer raised an objection on the ground that the applicant opposed her appointment as she specialised in employment law, not criminal law. The judge dismissed that objection. He held, firstly, that criminal law, as such, did not constitute a specialisation and referred to the lawyer's professional experience. He further noted that the applicant had not manifested any intention of defending himself or of appointing a lawyer of his choice. The judge found the

applicant guilty of the offence charged. The applicant appealed against that judgment to the *audiencia provincial*. A new lawyer – this time one matching his requirements – was appointed by that court to assist him. On 9 July 1998 the *audiencia provincial* upheld the judgment of the court below. Its decision was served on the lawyer on 2 September 1998. On 23 October 1998 the applicant lodged an *amparo* appeal against that decision with the Constitutional Court. The Constitutional Court dismissed that appeal as being out of time, holding that the twenty-day time-limit for lodging an *amparo* appeal had expired as the applicant's lawyer had been aware of the *audiencia provincial*'s judgment since 2 September 1998.

Inadmissible under Article 6(3)(c): Article 6(3)(c) did not guarantee a defendant the right to choose a lawyer assigned to him by the court, nor even the right to be consulted about the assignment. The fact that the lawyer assigned to assist the applicant was not specialised in criminal law could not, of itself, constitute a violation of the Convention. The applicant had not furnished any plausible evidence capable of supporting his accusation that his lawyer was incompetent. In addition, the applicant, himself a lawyer, had chosen not to represent himself or to instruct a lawyer of his own choice: manifestly ill-founded.

Inadmissible under Article 6(1): The Constitutional Court held that the starting point was the date when the judgment of the *audiencia provincial* had been served on the applicant's lawyer and not the date it was served on the applicant personally. That construction did not, in itself, appear to be contrary to the Convention. Admittedly, there could be a denial of the right of access to a court if an appeal was declared inadmissible as a result of a failure by a lawyer assigned by the court to comply with a formal requirement. However, in the instant case, even if the Constitutional Court had taken the date of service on the applicant personally as the starting point, the appeal had, in any event, been lodged substantially out of time.

Article 6(3)(d)

EXAMINATION OF WITNESSES

Restrictions on questioning of witnesses against the accused: *communicated*.

KÖNIG - Slovakia (N° 39753/98)
[Section II]
(See Article 3, above).

ARTICLE 7

NULLUM CRIMEN SINE LEGE
Conviction of GDR officials for participating in the killing of East Germans attempting to escape to West Germany *: admissible*.

STRELETZ - Germany (N° 34044/96)
KRENZ - Germany (N° 44801/98)
KESSLER - Germany (N° 35532/97)
K.-H.W. - Germany (N° 37201/97)
Decision 8.11.2000 [Grand Chamber]

The first three applicants were formerly highly-placed dignitaries of the German Democratic Republic (GDR) – respectively, the deputy Minister for Defence, the Prime Minister and the Minister for Defence. All three of them sat on the National Defence Council. The fourth applicant used to be a GDR border guard assigned to guarding the frontier between East and West Germany. The National Defence Council had ordered border guards to protect the demarcation line between the two States at any cost, including the life of anyone who tried to cross it. Under GDR law the use of a firearm to prevent the commission of an act likely to constitute a serious criminal offence was permitted and the State authorities saw this as providing a basis in law for opening fire on fugitives trying to reach the Federal Republic of Germany (FRG). After reunification, the four applicants were convicted for their part in the deaths of a number of persons killed while seeking to cross to the West between 1971 and 1989. The treaty of reunification of the two Germanys provided that offences committed in the GDR would be dealt with under GDR criminal law as it had stood at the material time, save where the equivalent provisions of FRG law were less severe. The applicants were originally convicted under GDR criminal-law provisions making it an offence intentionally to kill someone or to incite another to do so. However, the courts later applied FRG criminal-law provisions to the applicants because those provisions were more clement. Before the Federal Constitutional Court Mr Streletz, Mr Kessler and Mr W. submitted that they had been convicted in contravention of the principle that the criminal law should not be retrospective, since the conduct underlying the charges against them had not, at the material time, constituted an offence but had been justified under the legislation then in force. The Federal Constitutional Court held that, in the circumstances of the case, the principle that no one should be tried or punished for conduct which did not constitute an offence at the time it occurred had to give way before the requirements of "objective justice". It found that the applicants had been duly tried on the basis of the law of the GDR as it had stood at the time the offences had been committed and that FRG law had been applied only *a posteriori*, in accordance with the terms of the treaty on unification. As regards the justification furnished by GDR legislation, the court weighed the formal legality of that justification against its lawfulness in the light of higher legal norms and concluded that the "order to fire" which the East German authorities had interpreted the legislation as sanctioning had, in any event, been contrary to that State's engagements in the field of human rights. Mr Krenz's appeal is still pending before the Federal Court of Justice.

ARTICLE 8

POSITIVE OBLIGATION
Alleged ineffectiveness of investigation into rape and domestic practice requiring proof of physical resistance in cases of rape: *communicated*.

M.C. - Bulgaria (N° 39272/98)
[Section IV]

The applicant alleged that she was raped twice during the same night, at the age of fourteen, by two young men. In August 1995, shortly after the alleged rapes, the applicant's mother filed a complaint. Following a preliminary inquiry and an additional police inquiry, criminal proceedings were initiated by the District Prosecutor who transferred the case to an investigator. No charges were brought during the proceedings, which remained at a standstill between November 1995 and November 1996. In December 1996, the investigator drew up his report, according to which no evidence established that violence had been exerted on the applicant by the men whom she accused, and thus advised the District Prosecutor to terminate the proceedings. In January 1997, the District Prosecutor ordered additional investigation. The investigator appointed psychiatric and psychological experts in order to examine the applicant's behaviour. They found that her behaviour was not in contradiction with the allegation that she had been raped. The investigator, however, considered that it did not affect the conclusion reached in his previous report and proposed once again that the proceedings be terminated. In March 1997, the District Prosecutor did so, on the basis, *inter alia*, that the use of violence had not been proven beyond reasonable doubt. The applicant's subsequent appeals were rejected on the same lines.
Communicated under Article 8.

FAMILY LIFE
Family reunion when the children have remained for several years in their native country : *admissible/inadmissible*.

SEN - Netherlands (N° 31465/96)
[Section I]

The applicants, who are Turkish nationals, are settled in the Netherlands. The first applicant moved there in 1977 in connection with his employment. In 1980 he married the second applicant. In 1983 the couple had a child. In 1986 the second applicant obtained a residence permit and joined her husband in the Netherlands, leaving their daughter in the care of an aunt. A second child was born in 1990 in the Netherlands. In 1992 the first applicant sought a temporary residence permit for his daughter, but it was refused by the Minister of Foreign Affairs on the ground that as she had been left behind by her mother, she no longer formed part of her parents' family unit and the applicants had made no contribution whatsoever to her upbringing.
Admissible under Article 8.

P.R. - Netherlands (N° 39391/98)
[Section I]

In 1989 the applicant left the Cape Verde Islands and her children and travelled to the Netherlands, where she married a Dutch national. She obtained a residence permit by virtue of her marriage. The children remained in the Cape Verde Islands and were brought up by their grandmother. In 1995 the applicant obtained Dutch nationality and made an application for

her children to join her under the arrangements for family reunion. That application was refused.
Inadmissible under Article 8: The applicant had been separated from her children from 1989 to 1995 owing to her voluntary decision to travel to the Netherlands and subsequently to remain there with her Dutch husband. Moreover, it was not until more than six years after her arrival in the Netherlands that she had made an application for her children to join her under the arrangements for family reunion, despite the fact that her position had been stable since 1989. The decision of the Dutch authorities did not prevent her from preserving the standard of family life which she herself had chosen when she decided to emigrate. Furthermore, it was open to the applicant to enjoy her family life in the Cape Verde Islands, albeit she preferred to live in the Netherlands. Article 8 did not guarantee a right to choose the most suitable place to develop one's family life: manifestly ill-founded.

DUFIE-KWAKYENTI - Netherlands (N° 31519/96)
[Section I]

The applicants, who were Ghanaian nationals, had arrived in the Netherlands in 1987. They had sought refugee status or a residence permit on humanitarian grounds as they had been persecuted for political reasons. They left their three sons, who had been born in 1972, 1974 and 1977, with an aunt in Ghana. Their applications were turned down by the authorities, and so they appealed. In 1992, while those appeals were still pending, they were granted a residence permit on humanitarian grounds. They then requested residence permits for their three sons, but their request was refused. In 1993 they obtained Dutch nationality, but their appeals against the refusal of their request for their sons to join them under the arrangements for family reunion were dismissed. In the meantime, their two eldest sons had attained their majority.
Inadmissible: Relations between adults did not necessarily benefit from the protection of Article 8 when there were no links of dependence other than normal, emotional ones. In the case before the Court, the main ties of the applicants' two eldest sons were with their land of origin, where they had lived since birth. The same applied to the youngest son. In addition, it did not appear that the applicants had taken any moral or financial responsibility for their children before 1992. Lastly, the applicants had not been prevented from preserving the standard of family life that had been theirs since 1987. Although it appeared that they preferred to strengthen their family ties with their sons in the Netherlands, Article 8 did not guarantee the right to choose the most suitable place to develop one's family life: manifestly ill-founded.

FAMILY LIFE
Applicant prevented from joining his wife in the country where she enjoys permanent resident status : *inadmissible*.

SHEBASHOV - Latvia (N° 50065/99)
Decision 9.11.2000 [Section II]

From 1993 onwards, the applicant, a Russian national, had regularly entered Latvia to see a woman living there, who was a national of the former USSR. She had "permanent resident without citizenship" status in Latvia. In 1996 the applicant was arrested by the Latvian police as he attempted to enter the country without the requisite visa or residence permit. In December 1996 a deportation order was made against him and an order imposed excluding him from entering or staying in Latvia for five years. The applicant then left Latvia and travelled to Russia, where he married his companion in February 1997. The authorities quashed the exclusion order against the applicant that same month. When lawfully present in Latvia, the applicant applied for a temporary residence permit. The authorities refused to grant him the permit and reinstated the order excluding him from that country. He again left

Latvia. In September 1998 a court of first instance in Riga quashed the authorities' refusal, *inter alia* on the ground that, owing to her status, the applicant's wife was entitled to have her foreign husband to stay with her. That judgment was, however, overturned on appeal on the ground that a deportation order had been made less than five years before the application for a residence permit and had not been quashed. As such, it constituted a bar to the grant of a residence permit. An appeal to the Court of Cassation was dismissed.
Inadmissible under Articles 6, 8 and 13 and Article 1 of Protocol No. 7: With regard to the complaint of a violation of Article 8, it was to be noted that the applicant was a national of the Russian Federation, where he had been born and had lived and that, having entered Latvia as an adult, he had stayed there only on temporary visas. Furthermore, he had no children in Latvia who might have constituted a strong family tie. Moreover, he could not have been unaware of the precarious nature of his immigration status at the time he got married as a deportation order had already been made against him. In addition, it did not appear that Latvia was the only place where the applicant and his wife could lead a normal family life: since the applicant's wife' mother tongue was Russian and she had not encountered any difficulty in travelling to Russia for the wedding ceremony, the applicant could be regarded as being able to pursue his family life in Russia: manifestly ill-founded.

HOME
Destruction of home and property by security forces: *violation*.

BİLGİN - Turkey (N° 23819/94)
Judgment 16.11.2000 [Section II]
(See Article 3, above).

HOME
Searches of a journalist's home and place of work and of a lawyer's office, and seizure of a letter: *communicated*.

ROEMEN and SCHMIT - Luxembourg (N° 51772/99)
[Section II]

The first applicant is a journalist and the second applicant was his lawyer in the case that is before the Court. In July 1998 the journalist published an article in a daily newspaper suggesting that a Luxembourg minister had committed a VAT fraud and that, as a result, a tax fine had been imposed on him. The applicants have produced documents in support of those allegations, including a decision of the director of the land-registration authority imposing the fine in question on the minister. Two sets of proceedings were issued following the publication of the first applicant's article. The first was an action in damages by the minister and is currently pending before the appellate court after the dismissal of the minister's claims at first instance. In the second set of proceedings, which were instituted on a criminal complaint lodged by the minister, an investigating judge was assigned the task of carrying out an investigation into a charge against the first applicant of receiving information in breach of professional confidence and a charge against a person or persons unknown of a breach of professional confidence. In his submissions, the public prosecutor indicated that it was necessary to identify the civil servants from the department concerned who had had access to the documents in issue. No evidence was discovered through two initial searches ordered by the investigating judge – one at the first applicant's home and the other at his place of work – while the first applicant's applications to have the investigating judge's orders set aside were dismissed. During a search of the second applicant's offices, the investigators seized a confidential letter from the director of the land-registry authority intended for internal use which bore a date subsequent to that on which the article had been published. The applicants explained that the letter had been sent to the editors of the first applicant's newspaper

anonymously and the first applicant had immediately forwarded it to his lawyer. As the latter search was invalid, the document that had been seized was returned, but a new order was made by the investigating judge on the same day, and its validity was upheld, enabling the document to be seized again. The criminal proceedings are still pending.
Communicated under Articles 8 and 10.

CORRESPONDENCE
Control of detainee's correspondence: *violation*.

REHBOCK - Slovenia (N° 29462/95)
Judgment 28.11.2000 [Section I]
(See above).

ARTICLE 10

FREEDOM OF EXPRESSION
NATO bombing of the Radio-Television Serbia: *communicated*.

BANKOVIĆ and others - Belgium, Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Turkey and United Kingdom (N° 52207/99)
[Section I]
(See Article 1, above).

FREEDOM OF EXPRESSION
Criminal investigation aimed at identifying a journalist's sources: *communicated*.

ROEMEN and SCHMIT - Luxembourg (N° 51772/99)
[Section II]
(See Article 8, above).

FREEDOM OF EXPRESSION
Conviction of defence lawyer for defamation of prosecutor during court proceedings: *admissible*.

NIKULA - Finland (N° 31611/96)
Decision 30.11.2000 [Section IV]

The applicant, a lawyer by profession, acted as defence counsel in two sets of criminal proceedings against her client concerning the winding-up of companies. The applicant's client was charged with aiding and abetting in fraud and abusing a position of trust. A co-accused, against whom no charges had been brought, was summoned by the public prosecutor to testify. The applicant objected and prepared a memorandum in which she denounced the tactics of the public prosecutor as constituting "manipulation and unlawful presentation of evidence". Her objection was rejected by the City Court, which dealt with the case at first instance, and her client was eventually convicted. Her appeal was to no avail. The prosecutor subsequently initiated criminal proceedings against the applicant for defamation in the Court of Appeal. The applicant was convicted of defamation "without better knowledge", i.e. merely expressing one's opinion about someone's behaviour and not imputing an offence

whilst knowing that it has not been committed. A fine was imposed and she was ordered to pay damages to the prosecutor and costs to the State. Both the applicant and the prosecutor appealed to the Supreme Court, which upheld the Court of Appeal's reasons but waived the fine, considering that the offence was minor; the obligation to pay damages and costs was, however, confirmed.
Admissible under Article 10.

FREEDOM TO RECEIVE INFORMATION
Disciplinary sanction imposed on judge for having read a pro-Kurd newspaper and watched a channel supposedly controlled by an illegal organisation: *admissible*.

ALBAYRAK - Turkey (Nº 38406/97)
Decision 16.11.2000 [Section II]

A disciplinary investigation was initiated against the applicant, a judge of Kurdish origin. He was accused, *inter alia*, of displaying sympathy for the PKK, of being a regular reader of a pro-Kurdish newspaper and finally of having watched at home a satellite channel allegedly controlled by the PKK. The applicant maintained that he had always been a faithful servant of the Turkish Republic and that both the newspaper and the channel were legal at the relevant time. In July 1996, the Supreme Council of Judges and Public Prosecutors found him guilty. He was consequently transferred to another jurisdiction and given a reprimand. His appeals against the decision were to no avail. In August 1997, the Supreme Council considered that he could not be promoted for the next two years by reason of his transfer for disciplinary reasons. In February 1998, his request to be transferred to another jurisdiction and hold a higher rank was rejected by the Supreme Council.
Admissible under Article 10 and 14.
Inadmissible under Article 8: The applicant did not adduce any evidence to show that the authorities resorted to surreptitious monitoring of his home or collected and stored information on his television viewing habits as part of a secret surveillance strategy. There was nothing to suggest that the allegation that he had been watching a pro-Kurd satellite channel was anything other than one of many reports on the applicant's behaviour justifying the investigation: incompatible *ratione materiae*.

ARTICLE 13

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

TAŞ - Turkey (N° 24396/94)
Judgment 14.11.2000 [Section I]
(See Article 2, above).

ARTICLE 14

DISCRIMINATION (Article 9)
Impossibility for members of the Baptist Church to earmark part of their income taxes for the support of their church, as members of the Roman Catholic Church may do: *communicated*.

ALUJER FERNANDEZ and CABALLERO GARCIA - Spain (N° 53072/99)
[Section IV]

The applicants are members of the Baptist Evangelical Church in Valencia. In their income-tax return for 1988 the applicants were entitled to allocate part of their income to financial support for the Catholic Church or other charitable purposes, but not to financial support for their own Church. The applicants lodged an application for judicial review of the Income Tax Act 1988 with the Valencia Higher Court of Justice. They relied on the principle of equality before the law and the right to freedom of conscience and religion embodied in the Constitution and sought an order invalidating the system of income-tax returns on the ground that it denied them a right enjoyed by Spaniards of the Catholic faith. In April 1990 Valencia Higher Court of Justice dismissed that application. In October 1997 their appeal was dismissed by the Supreme Court. Lastly, in May 1999 the Constitutional Court dismissed their *amparo* appeal on the ground, *inter alia*, that there had been no discrimination on religious grounds as the difference in treatment of the Churches established by the legislature was justified by the difference between the situation of the Catholic Church – the only Church to have entered into a concordat with, *inter alia*, the State – and that of other faiths. Since, unlike followers of the Catholic Church, they are unable to allocate part of their income to the support of their Church, the applicants complain that the difference in treatment amounts to discrimination contrary to Articles 9 and 14.
Communicated under Article 14 taken together with Article 9.

DISCRIMINATION (Article 10)
Disciplinary sanction imposed on judge for having read pro-Kurd newspaper and watched a channel supposedly controlled by the PKK: *admissible*.

ALBAYRAK - Turkey (Nº 38406/97)
Decision 16.11.2000 [Section II]
(See Article 10, above).

DISCRIMINATION (Article 1 of Protocol No. 1)
Different treatment of landlords and tenants: *no violation*.

EDOARDO PALUMBO - Italy (N° 15919/89)
*Judgment 30.11.2000 [Section II]

The case concerns the staggering of the granting of police assistance to enforce eviction order and the absence of any possibility of a court review of prefectoral decisions staggering the granting of such assistance (cf. Immobiliare Saffi v. Italy judgment of 28 July 1999). The Court concluded unanimously that there had been violations of Article 1 of Protocol No. 1 and Article 6(1). With regard to the applicant's complaint under Article 14 in conjunction with Article 1 of Protocol No. 1, the Court considered that in view of the fundamental differences between a landlord and a tenant, these two situations could not be compared as being analogous, so that no question of discrimination arose. It concluded unanimously that there had been no violation in that respect.

VICTIM
Application introduced on behalf of the applicant's brother-in-law, who committed suicide with the help of a third party while his action to have the right to a dignified death recognised was pending: *inadmissible*.

SANLES SANLES - Spain (N° 48335/99)
Decision 9.11.2000 [Section IV]

The applicant is the sister-in-law of the late Mr Sampedro, who had been tetraplegic since an accident in 1968. From 1993 onwards Mr Sampedro sought the right to die a painless death without rendering those assisting him liable to prosecution. In July 1995 he brought an action before the Noia judge of first instance seeking permission for his doctor to prescribe him the necessary medicines without any danger of that being regarded as assisting suicide or any other criminal offence. That application was dismissed in October 1995 on the ground that the Criminal Code did not allow such judicial permission to be given. The Corunna *Audiencia Provincial* upheld that judgment relying, *inter alia*, on a constitutional provision. Mr Sampedro then lodged an *amparo* appeal with the Constitutional Court on the basis of the right to human dignity, to the free development of his personality, to life, to physical and mental integrity and to a fair trial. In January 1998 Mr Sampedro died with the assistance of one or more unidentified persons. Criminal proceedings were instituted. In April 1998 the applicant informed the Constitutional Court that she intended to continue the proceedings in her capacity as Mr Sampedro's heir, who had been lawfully appointed by him to continue the proceedings instituted during his lifetime. By a decision delivered in November 1998, the Constitutional Court dismissed the appeal and refused to grant the applicant the right to continue the proceedings holding that, unlike a limited number of actions specifically referred to, the action brought by Mr Sampedro was one for which no machinery for its pursuance by the estate was provided by law and one which had to be regarded as being inseparably linked to the person who instituted it. Relying on Articles 2, 3, 5, 6, 8, 9 and 14 of the Convention, the applicant sought recognition of the right to a dignified life and a dignified death, and to freedom from interference with the wish of Mr Sampedro, for whom total immobility had represented intolerable suffering, to bring his undignified life to an end. She complained also of interference by the State in the exercise of Mr Sampedro's freedom of conscience and right to freedom and of the inequality under the criminal law between suicide and assisting disabled persons to commit suicide. She complained lastly of the unfairness and length of the proceedings before the Constitutional Court.
(The Commission has declared an application lodged by Mr Sampedro himself inadmissible: Sampedro Camean v. Spain, no. 25949/94, Dec. 15.5.95).
Inadmissible under Articles 2, 3, 5, 6, 8, 9 and 14: A distinction had to be drawn between the issue of whether the applicant could seek compensation for herself and the issue of whether she could validly lodge the application, it being noted that the applicant had stated in her application that she was acting on behalf of Mr Sampedro, who had been prevented by death from acting on his own behalf. Although the Constitutional Court considered that certain rights of action aimed at obtaining the recognition and protection of rights of the personality could be passed on to the estate, that applied to rights of action only where the law expressly so provided. The Constitutional Court had noted that there was no statutory provision to that end for the asserted right which was to die in dignity without creating criminal jeopardy for third parties who had assisted the person to die and that there had been no repercussions for anyone other than Mr Sampedro. The applicant could admittedly claim to have been closely affected by the circumstances surrounding Mr Sampedro's death. However, it had to be noted that the proceedings brought by Mr Sampedro were aimed at obtaining permission for his doctor to prescribe the necessary medicines without that being regarded as assisting suicide or

any other offence. The Court referred to the decision of the Constitutional Court stating that the sole object of *amparo* appeals was to protect individuals against effective and actual breaches of their fundamental rights. The Court could not render the Spanish authorities responsible for failing to comply with an alleged obligation to procure the adoption of a law aimed at decriminalising euthanasia. It had also to be noted that Mr Sampedro had voluntarily brought his life to an end at his chosen time. Thus, it was appropriate to conclude that the applicant had not been directly affected by the alleged violations of the Convention and could not therefore claim to have been a victim of them: incompatible *ratione personae*.

ARTICLE 35

EXHAUSTION OF DOMESTIC REMEDIES
Action against notaries inappropriate in providing reparation in respect of delays in proceedings instituted and supervised by a court: *preliminary objection dismissed*.

SIEGEL - France (N° 36350/97)
*Judgment 28.11.2000 [Section III]
(See Article 6(1), above).

EFFECTIVE DOMESTIC REMEDIES
Obligation to exhaust new constitutional remedy not established: *admissible*.

HORVAT - Croatia (N° 5185/99)
Decision 16.11.2000 [Section IV]

In 1995, the applicant instituted proceedings before the Municipal Court against two companies which had failed to repay the loans she had granted them. Both sets of proceedings are still pending. Under Article 59(4) of the 1999 Constitutional Court Act, "the Constitutional Court may, exceptionally, examine a constitutional complaint prior to exhaustion of other available remedies, if it is satisfied that a contested act, or failure to act within a reasonable time, grossly violates a party's constitutional rights and freedoms and that if it does not institute proceedings a party will be at risk of a serious and irreparable consequences". The applicant did not have recourse to this remedy.
Admissible under Article 6(1): As to whether Article 59(4) of the new Constitutional Court Act applies to the present case, the applicant had already introduced her when the legislation was enacted and it has not been established that the Constitutional Court could examine delays which had occurred before the entry into force of the 1999 Act. Therefore, the exception of non-exhaustion of domestic remedies raised by the Government cannot be accepted.

SIX MONTH PERIOD
An appeal to the Court of Cassation (France) lodged only by a *partie civile* and not falling within the cases listed in Article 575 of the Code of Criminal Procedure is not an domestic remedy which has to be exhausted : *inadmissible (out of time)*.

REZGUI - France (N° 49859/99)
Decision 7.11.2000 [Section III]

The applicant was stopped by the police and asked for his papers before being taken to the police station. He alleged that he was assaulted there. After being released he went to hospital where he was admitted after examination. He refused to be examined by the forensic medical examiner sent by the public prosecutor's office and left the hospital to go to a private clinic. In November 1996 the applicant lodged a criminal complaint with an investigating judge and requested to be joined to the proceedings as a civil party. He alleged an intentional assault by a public officer in the exercise of his duties and criminal trespass by the doctor. The investigating judge made a discharge order in December 1997, which was upheld by the indictment division on 17 March 1998. The applicant appealed to the Court of Cassation. On 16 December 1998 the Court of Cassation declared the appeal inadmissible on the ground that the applicant had not established the existence of "a ground on which a civil party could appeal under Article 575 of the Code of Criminal Procedure against a judgment of the indictment division in the absence of an appeal by the public prosecutor's office".
Inadmissible under Articles 3 and 8: The applicant had lodged an appeal with the Court of Cassation against a judgment of the indictment division in the absence of an appeal by the public prosecutor's office. It was appropriate to note that Article 575 of the Code of Criminal Procedure contained an exhaustive list of the circumstances in which a civil party could lodge an appeal to the Court of Cassation in the absence of an appeal by the public prosecutor's office. Accordingly, an appeal which, as in the case before the Court, did not come within the list set out in Article 575 of the Code of Criminal Procedure did not constitute a remedy requiring exhaustion within the meaning of the Convention. Consequently, the final domestic decision for the purposes of calculating the six-months' time-limit was the indictment division's judgment of 17 March 1998: application dismissed as out of time.
[Case-law of the Commission confirmed.]

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. 21):

ENTLEITNER - Austria (N° 29544/95)
Judgment 1.8.2000 [Section III]

G.L. - Italy (Nº 22671/93)
Judgment 3.8.99 [Section II]

FATOUROU - Greece (N° 41459/98)
Judgment 3.8.2000 [Section II]

P.B. - France (N° 38781/97)
Judgment 1.8.2000 [Section III]

LAMBOURDIERE - France (N° 37387/97)
Judgment 2.8.2000 [Section III]

LOUKA - Cyprus (N° 42946/98)
Judgment 2.8.2000 [Section III]

SAVVIDOU - Greece (N° 38704/97)
Judgment 1.8.2000 [Section III]

DESCHAMPS - France (N° 37925/97)
Judgment 2.8.2000 [Section III]

IKANGA - France (N° 32675/96)
Judgment 2.8.2000 [Section III]

CHERAKRAK - France (N° 34075/96)
Judgment 2.8.2000 [Section III]

BERTIN-MOUROT - France (N° 36343/97)
Judgment 2.8.2000 [Section III]

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Nature of property taken from the former royal family of Greece: *Article 1 of Protocol No. 1 applicable*.

FORMER KING OF GREECE and others - Greece (N° 25701/94)
Judgment 23.11.2000 [Grand Chamber]
(See below).

PEACEFUL ENJOYMENT OF POSSESSIONS
Destruction of home and property by security forces: *violation*.

BİLGİN - Turkey (N° 23819/94)
Judgment 16.11.2000 [Section II]
(See Article 3, above).

PEACEFUL ENJOYMENT OF POSSESSIONS
Confiscation order on basis of legal presumptions as to the origin of sums received by applicant: *admissible*.

PHILLIPS - United Kingdom (N° 41087/98)
Decision 30.11.2000 [Section III]
(See Article 6(2), above).

PEACEFUL ENJOYMENT OF POSSESSIONS
Impossibility of recovering property occupied by tenants imposed by the authorities: *communicated*.

HUTTEN-CZAPSKA - Poland (N° 35014/97)
[Section IV]

The applicant owns a house which formerly belonged to his parents. Following the Second World War, the Red Army took over the house and occupied it. In May 1945, the authorities in charge of the "State management of housing matters" attributed the first floor of the house to A.Z. The applicant's house was eventually taken under State control. The ground floor and first floor were both leased, respectively to W.P. and A.Z. The applicant's parents failed in their attempts to regain possession of the house. In 1988, the heirs of A.Z. obtained the right to continue leasing the first floor. In 1990, the District Court acknowledged the fact that the applicant had inherited the house and her title was entered in the relevant land register. The applicant initiated several sets of proceedings, both civil and administrative, to recover possession of her house. In 1995, she unsuccessfully asked for the relocation of the tenants living in her house to flats owned by the municipality. The Regional Court held that according to the Leases of Dwellings and Housing Allowances Act 1994 the municipality was under no obligation to relocate the tenants in municipally owned dwellings. In addition, the 1994 Act instituted a control of the calculation of rents in order to protect tenants on account of the transition from a state-regulated to a free market housing system; its implementation is due to end in 2004. The applicant's appeals were to no avail and she was refused any form of compensation for the occupation of her house. Her claim for the eviction of the tenants was dismissed by the District Court. She brought a number of other civil proceedings. In parallel,

she unsuccessfully initiated administrative proceedings to challenge the administrative decisions assigning the ground floor and first floor to the aforementioned tenants as well as the administrative decision by which the house had been placed under State control. In 2000, the Constitutional Court declared unconstitutional certain provisions of the 1994 Act concerning the control of the authorities over rents and the general disproportionate financial burden placed on owners (rents covering only 60% of the costs of maintainance).
Communicated under Article 1 of Protocol N° 1, 34 (victim) and 35(1) (exhaustion of domestic remedies).

DEPRIVATION OF PROPERTY
Expropriation without compensation of property belonging to the former royal family of Greece: *violation*.

FORMER KING OF GREECE and others - Greece (N° 25701/94)
Judgment 23.11.2000 [Grand Chamber]

Facts: The applicants were the former King of Greece, Constantinos II, his sister, Princess Irene, and aunt, Princess Ekaterini. They produced title deeds to three estates. Firstly, the former King claimed that he was the owner of the Tatoi Estate, which had apparently been formed during King George I's reign through successive purchases of land from private individuals, notably in 1872 and 1891, coupled with the grant by the Greek State of a licence over Bafi Forest in 1877 in return for financial consideration. The estate subsequently devolved to members of the royal family until 1924, when the Greek State, now a Republic, expropriated Tatoi and recovered title to the Bafi property without paying compensation. In 1936, after his restoration to the throne, King George II recovered full ownership and possession of Tatoi by statute, with the exception of a parcel that had in the meantime been allocated to refugees. The title to the estate of George II's successor, King Paul, was confirmed by a legislative decree of 1949. In 1964 the property passed to King Paul's son and heir, Constantinos II, by virtue of a holograph will. The former King, Princess Irene and Princess Ekaterini also claimed ownership of parts of the Polydendri estate, which appeared to have been purchased from a private individual in 1906 by Constantinos I, before devolving by succession. There were also a number of private dealings in the land. As regards the Mon Repos Estate on the Island of Corfu, the title originated from a gift in 1864 of an estate by the Provincial Council of Corfu to King George I, who subsequently enlarged it through purchases from private individuals. After his death Mon Repos was inherited by Prince Andreas, who was dispossessed by an expropriation order made in 1923 before recovering full ownership by virtue of a 1937 statute. After a series of transfers the first applicant acquired full ownership of Mon Repos in 1981. During the military dictatorship from 1967 to July 1974 all the royal family's movable and immovable property was confiscated and title to it passed to the State by virtue of Legislative-Decree no. 225/1973. The royal family did not claim the stipulated compensation. After the return to democratic rule a transitional system was set up by Legislative Decree no. 72/1974, which provided that the royal family's property was to be administered by a committee pending final determination of its status. By a referendum in December 1974 the population voted in favour of a parliamentary republic and in 1975 the present Constitution came into force. Following an initial agreement relating to the property of the royal family which was never executed, the former King and the conservative "New Democracy" Party reached a new agreement in 1992 whereby the King transferred part of Tatoi to the Greek State and donated parcels from that estate to two foundations, the royal family's tax liabilities were written off, the Greek State discontinued all legal proceedings connected to those liabilities and the royal family agreed to pay inheritance tax, income tax and capital taxes. The agreement was set out in a notarial deed that was given force of law by Law no. 2086/1992. The report on the draft bill stated that Legislative Decree no. 225/1973 had been repealed by Legislative Decree no. 72/1974 and that the property had reverted to its former ownership status. In 1993 a government under the leadership of Mr

Papandreou returned to power and introduced bill no. 2215/1994 which was passed by Parliament on 16 April 1994 and became law in May 1994. It was entitled "Settlement of matters pertaining to the expropriated property of the deposed royal family of Greece", and repealed Law no. 2086/1992, stating that any dealings carried out pursuant to it, including the donations to the two foundations, were void. The Greek State became the owner of the three applicants' movable and immovable property and Legislative Decree no. 225/1973 was deemed to have remained in force. The applicants brought several sets of proceedings in the Greek courts concerning their property rights and challenged the constitutionality of Law no. 2215/1994. In a judgment of 25 June 1997 the Special Supreme Court gave a ruling on the royal property. It held that its devolution to the State had become irrevocable as a result of the referendum and that Article 1 of Law no. 2086/1992, which provided by implication that the former royal property would continue to belong to the monarch, was likewise unconstitutional. It concluded that the Law of 1994 was therefore constitutional. The applicants complained that Law no. 2215/1994 infringed their right to enjoyment of their possessions.

Law: Article 1 of Protocol No. 1 – As to whether there was a "possession", the Court was unable to agree that the members of the royal family had no private property in Greece. At least part of the royal property had been purchased by the applicants' ancestors and subsequently been the subject of several transfers within the royal family or to third parties in accordance with Greek civil law. Moreover, before Law no. 2215/1994 had come into force, the Greek State had on several occasions treated the members of the royal family – and among them the first applicant – as the private owners of the estates in question, for example in 1924 and 1926 with regard to the Tatoi Estate, in 1937 with regard to Mon Repos, between 1974 and 1996 when the applicants had paid tax in respect of their properties, and in relation to the 1992 agreement. All those acts could only have been performed on the basis that the applicants and their ancestors were the owners of the property in question, otherwise they would have served no useful purpose. Finally, special rules which applied to the royal property, such as rules on tax exemption, did not *per se* mean that those properties could not be essentially private in character. It was not unknown for Heads of States to enjoy tax immunity as far as their private property was concerned and the Government had failed to provide any documentation showing that the royal property was State property. There was thus a contradiction in the Government's attitude to the relevant properties. They had repeatedly treated them as private property and had not produced a set of rules governing their status. Therefore, even if the royal property had been governed by a special set of rules, the Court could not conclude that it had a *sui generis* and quasi-public character such that it had never belonged to the former royal family. The relevant properties had been owned by the applicants as private persons rather than in their capacity as members of the royal family and constituted "possessions" for the purposes of Article 1 of Protocol No. 1, which was therefore applicable.

The Court had accordingly to identify the applicants' possessions. In 1936 a law had revested full ownership of Tatoi in King George II, with the exception of a parcel that had in the meantime been allocated to refugees. Therefore, with the exception of that parcel, the Tatoi Estate constituted part of the property which had had to be expropriated in 1994. The Court could not agree with the Government that, as a result of the 1992 gifts and sale, the applicants had ownership rights over less than 10% of Tatoi, since Law no. 2215/1994, the legal effects of which had to be taken into account if inconsistency and infringement of the *lex posterior derogat anteriori* principle were to be avoided, had repealed that agreement and declared acts carried out pursuant to it void. Before the entry into force of Law no. 2215/1994 the Tatoi estate, with the exception of a parcel expropriated in 1924 and allocated to refugees, had belonged to the first applicant. The Court noted that the Government had not argued that the Polydendri estate had a special status and there was no evidence to suggest that the title deeds produced by the applicants were inaccurate. It therefore considered that before the entry into force of Law no. 2215/1994 the Polydendri estate had belonged to the three applicants. The original title to the Mon Repos estate had taken the form of a donation, which was a valid manner of acquiring property rights. Mon Repos had subsequently been enlarged by

purchases from private individuals and following a chain of transfers, full ownership of it had devolved to the first applicant who therefore had to be regarded as its owner before the entry into force of Law no. 2215/1994.
There had therefore been an interference in 1994 with the applicants' right to the peaceful enjoyment of their possessions and that interference amounted to a "deprivation" of possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1.
Unlike the Government, which had relied on both Legislative Decree no. 225/1973 and Law no. 2215/1994, the Court considered that Law no. 2215/1994 constituted the sole legal basis for the interference complained of. The law upon which the interference was based had to be in accordance with the internal law including the relevant provisions of the Constitution, and having regard to the Special Supreme Court's judgment, the Court could not find that Law no. 2215/1994 was unconstitutional. The deprivation was therefore "provided for by law".
As to the aim pursued by that deprivation of possessions, namely "the public interest", in addition to the fact that the national authorities were better placed to determine what was in the public interest, the wide margin of appreciation available to the legislature in implementing social and economic policies had necessarily, if not *a fortiori*, also to be available for changes in a country's constitutional system as fundamental as the transition from a monarchy to a republic. There was no doubt that the Greek State had had to resolve an issue which it considered to be prejudicial for its status as a republic. While the fact that the constitutional transition from monarchy to republic had taken place almost twenty years before the enactment of the contested law might occasion doubt as to the reasons for the measures, it could not suffice to deprive the overall objective of Law no. 2215/1994 of its legitimacy as being "in the public interest".
As regards the proportionality of the interference, it had to be noted that there was no provision in Law no. 2215/1994 for the payment of compensation. Having regard to the fact that it had already been established that the interference in question was lawful and not arbitrary, the lack of compensation did not make the taking of the applicants' property *eo ipso* wrongful and it therefore had to be determined whether, in the context of a lawful expropriation, the applicants had had to bear a disproportionate and excessive burden. The Court considered that the Government had failed to give a convincing explanation as to why the applicants had not been awarded any compensation and, while it accepted that the Greek State could have considered in good faith that exceptional circumstances justified the absence of compensation, that assessment had not been objectively substantiated. At least part of the expropriated property had been purchased by the applicants' predecessors in title with their own funds and there had been provision for compensation on the previous expropriation of the property in 1973. The fact that that provision had been made could have given rise to a legitimate expectation in 1994 that compensation would be awarded. Legislative Decree no. 225/1973, on which the Government relied on that issue, could not be regarded as fulfilling that expectation since Law no. 2215/1994 was the sole legal basis for the interference. Neither the privileges which had been afforded to the royal family in the past nor the tax exemptions and the writing off of all the tax liabilities bore any direct relevance to the issue of the proportionality of the interference. Consequently, the fact that the applicants had received no compensation had upset the fair balance between the protection of property and the requirements of the public interest to the applicants' detriment.
Conclusion: violation (fifteen votes to two).
Article 14 taken together with Article 1 of Protocol No. 1 – In view of the aforementioned finding of a violation, the Court did not consider it necessary to examine the allegation of a breach of those Articles taken together.
Article 41 – The question of the application of Article 41 was not ready for decision and was therefore reserved.

DEPRIVATION OF PROPERTY
Length of compensation proceedings following land consolidation: *violation*.

PIRON - France (N° 36436/97)
*Judgment 14.11.2000 [Section III]

Facts: The applicant was the owner of parcels of agricultural land, which had been consolidated in 1965. That same year the applicant lodged an appeal with the *départemental* Land Reorganisation and Consolidation Board. Since the *départemental* board's decision only satisfied her grievances in part, the applicant sought judicial review by the administrative court. The administrative court granted her application and quashed the impugned decision. In 1971 the *départemental* board accepted some of the applicant's claims and a final consolidation plan was drawn up. The applicant sought judicial review of the *départemental* board's decision by the administrative courts, which in 1975 quashed it. In 1982 the *départemental* board awarded the applicant compensation. The applicant applied to the administrative court for a review of the decision fixing quantum. The administrative court quashed that decision and transferred the case to the National Land Development Board. In 1996 the applicant therefore applied to that board for assessment of the compensation. On an appeal lodged in 1991 the *Conseil d'État* set that decision aside in 1995. The case was remitted to the national board which gave its ruling in 1998 and assessed the compensation at the level determined in 1990. In 1998, on an appeal by the applicant, the *Conseil d'État* set aside that decision too on the ground, *inter alia*, that the national board had failed to reassess the compensation awarded to the applicant. The applicant made a fresh application to the board and at the same time contested the amount of compensation before the expropriations judge. The proceedings were still pending.
Law: Article 1 of Protocol No. 1 – Since the property had been transferred, there had been a deprivation of property. Land consolidation served the interest of the owners concerned and of the community as a whole by increasing the profitability of the holdings and rationalising cultivation. In the case before the Court, the consolidation had complied with the statutory requirements, as construed by the relevant case-law. As to the proportionality of the interference, the decisions of the administrative courts and the reports by the valuers had consistently been favourable to the applicant. In view of the time that had elapsed and the fact that it was impossible to restore the land to its original condition, the authorities could have paid compensation. However, compensation for damage could only constitute adequate reparation if it also took into account damage resulting from the duration of the deprivation. In addition, compensation had to be paid within a reasonable time. The length of land-consolidation proceedings was a factor to be taken into account when determining whether the transfer of property in issue was consistent with the guarantee of the right to property. In the case before the Court, the proceedings were still pending after more than twenty-six years. Moreover, the sum that could be awarded at the end of the proceedings did not compensate for the lack of reparation and could not be decisive regard being had to the length of the proceedings brought by the applicant taken as a whole.
Conclusion: violation (unanimously).
Article 6(1): Although the Court had not acquired jurisdiction *ratione temporis* until 1974, it was necessary when calculating the length of proceedings to note that by then they already been under way for more from eight years. Since the proceedings had not yet ended, their length was therefore twenty-six years and more than five months. There had been some complexity to the case. The applicant had not shown any lack of diligence. The evidence indicated that long periods of inaction had been attributable to the authorities and that in practice the proceedings had taken so long largely as a result of the conduct of the authorities and the courts.
Conclusion: violation (unanimously).
Article 41: The Court awarded the applicant 100,000 French francs for pecuniary damage and a sum for costs and expenses.

List of other judgments delivered in November

Articles 3 and 5(3)

GÜNDÜZ and others - Turkey (N° 31249/96)
Judgment 14.11.2000 [Section I]

The case concerns the length of police custody and alleged ill-treatment – friendly settlement.

Article 5(3)

VACCARO - Italy (N° 41852/98)
*Judgment 16.11.2000 [Section II]

The case concerns the length of detention on remand (4 years and 8 months) – violation.

Article 6(1)

LACOMBE - France (N° 44211/98)
*Judgment 7.11.2000 [Section I]

GAUDINO - Italy (N° 45873/99)
PITTONI - Italy (N° 45874/99)
IL MESSAGGERO S.A.S. - Italy (N° 45876/99)
PICCIRILLO - Italy (N° 45878/99)
TURCHINI - Italy (N° 45879/99)
AR.GE.A. S.N.C. in liquidation - Italy (N° 45881/99)
COSSU - Italy (N° 45884/99)
IANNELLI - Italy (N° 45885/99)
GRATTERI - Italy (N° 45886/99)
ROMA - Italy (N° 45887/99)
GIARRATANA - Italy (N° 45888/99)
FEFFIN - Italy (N° 45892/99)
M.A.I.E. S.N.C. - Italy (N° 45893/99)
PERNICI - Italy (N° 45894/99)
SANTINI - Italy (N° 45895/99)
GUIDI - Italy (N° 45896/99)
FORTE - Italy (N° 45897/99)
DI TEODORO and others - Italy (N° 45898/99)
*Judgments 7.11.2000 [Section III]

ZIRONI - Italy (N° 37079/97)
SPURIO - Italy (no. 2) (N° 39705/98)
F. S.p.a. - Italy (N° 39164/98)
I.F. - Italy (N° 40968/98)
BELTRAMO - Italy (N° 40977/98)
COBIANCHI - Italy (no. 1) (N° 43434/98)
COBIANCHI - Italy (no. 2) (N° 45852/99)
LO CICERO - Italy (N° 45853/99)
Fr.C. - Italy (N° 45855/99)
COMELLA - Italy (N° 45857/99)
GIUSEPPINA CARUSO - Italy (N° 45859/99)
GIUSEPPE, NICOLÀ and LUCIANO CARUSO - Italy (N° 45860/99)
CAVALLARO - Italy (N° 45861/99)
TOR DI VALLE COSTRUZIONI S.p.a. - Italy (no. 1) (N° 45862/99)
TOR DI VALLE COSTRUZIONI S.p.a. - Italy (no. 2) (N° 45863/99)
TOR DI VALLE COSTRUZIONI S.p.a. - Italy (no. 3) (N° 45864/99)
TOR DI VALLE COSTRUZIONI S.p.a. - Italy (no. 4) (N° 45865/99)
TOR DI VALLE COSTRUZIONI S.p.a. - Italy (no. 5) (N° 45866/99)
TOR DI VALLE COSTRUZIONI S.p.a. - Italy (no. 6) (N° 45867/99)
FILIPPELLO - Italy (N° 45868/99)
CHIAPPETTA - Italy (N° 45869/99)
FERRAZZO and others - Italy (N° 45870/99)
D'ANNIBALE - Italy (N° 45872/99)
GRASS - France (N° 44066/98)
JÓRI - Slovakia (N° 34753/97)
*Judgments 9.11.2000 [Section II]

DELGADO - France (N° 38437/97)
P.V. - France (N° 38305/97)
*Judgments 14.11.2000 [Section III]

BIELECTRIC S.R.L. - Italy (N° 36811/97)
*Judgment 16.11.2000 [Section II]

BACIGALUPI - Italy (N° 45856/99)
Il MESSAGGERO S.a.s. - Italy (no. 2) (N° 46516/99)
Il MESSAGGERO S.a.s. - Italy (no. 3) (N° 46517/99)
Il MESSAGGERO S.a.s. - Italy (no. 4) (N° 46518/99)
Il MESSAGGERO S.a.s. - Italy (no. 5) (N° 46519/99)
DORIGO - Italy (N° 46520/99)
CICCARDI - Italy (N° 46521/99)
NOLLA - Italy (N° 46522/99)
LONARDI - Italy (N° 46523/99)
F, T. and E. - Italy (N° 46524/99 and N° 46525/99)
CARBONI - Italy (N° 46526/99)
CORSI - Italy (N° 46527/99)
GIANNALIA - Italy (N° 46528/99)
IULIO - Italy (N° 46530/99)
GIOVANNANGELI - Italy (N° 46531/99)
GASPARE CONTE - Italy (N° 46532/99)
F.L.S. - Italy (N° 46533/99)
BURGHESU - Italy (N° 46534/99)
D.C. - Italy (N° 46536/99)
CERULLI and ZADRA - Italy (N° 46537/99)
COSTANTINI - Italy (N° 46538/99)

TOR DI VALLE COSTRUZIONI S.p.a. - Italy (no. 7) (N° 46539/99)
MMB DI BELOLI LUCIANO & C. S.n.c. and BELOLI - Italy (N° 46540/99)
CALBINI - Italy (N° 46541/99)
LANINO - Italy (N° 46542/99)
G.S. and L.M. - Italy (N° 46543/99)
*Judgments 16.11.2000 [Section IV]

D'ARRIGO and GARROZZO - Italy (N° 40216/98)
CECCHINI - Italy (N° 44332/98)
MIELE - Italy (N° 44338/98)
D.G. - Italy (N° 46507/99)
TEOFILI - Italy (N° 46508/99)
PICCONI - Italy (N° 46509/99)
CATALANO - Italy (N° 46510/99)
SPARANO - Italy (N° 46512/99)
ROTIROTI - Italy (N° 46513/99)
MURRU - Italy (N° 46514/99)
*Judgments 21.11.2000 [Section I]

LECLERCQ - France (N° 38398/97)
*Judgment 28.11.2000 [Section III]

These cases concern the length of civil or administrative proceedings – violation.

SENESE - Italy (N° 43295/98)
PISCOPO - Italy (N° 44357/98)
DI MURO - Italy (N° 44363/98)
CALVANI - Italy (N° 44365/98)
PAGLIACCI - Italy (N° 44366/98)
G.G. - Italy (N° 44367/98)
SAPIA - Italy (N° 44368/98)
P.C. - Italy (N° 44369/98)
D'INNELLA - Italy (N° 44370/98)
CANZANO - Italy (N° 44371/98)
PEROSINO - Italy (N° 44372/98)
PARESCHI - Italy (N° 44373/98)
ARQUILLA - Italy (N° 44374/98)
IORIO - Italy (N° 44375/98)
*Judgments 21.11.2000 [Section I]

These cases concern the length of proceedings in the Audit Court – violation.

P.G.V. - Italy (N° 45889/99)
PICCOLO - Italy (N° 45891/99)
*Judgment 7.11.2000 [Section III]

These cases concern the length of civil or administrative proceedings – no violation (5 votes to 2 and 4 votes to 3 respectively).

CAPDEVILLE - Portugal (N° 40250/98)
Judgment 9.11.2000 [Section IV]

RIBEIRO FERREIRA RUAH - Portugal (N° 38325/97)
Judgment 16.11.2000 [Section IV]

PULVIRENTI - France (N° 41526/98)
Judgment 28.11.2000 [Section III]

M.A. and 83 others - Italy
(N° 44814/98, 45401/99, 45732/99, 47463/99, 47724/99)
Judgment 30.11.2000 [Section II]

These cases concern the length of civil proceedings – friendly settlement.

D'ANTONI - Italy (N° 45890/99)
*Judgment 7.11.2000 [Section III]

SAVINO - Italy (N° 45854/99)
TESCONI - Italy (N° 45862/99)
*Judgments 9.11.2000 [Section II]

THURIN - France (N° 32033/96)
LUCAS - France (N° 37257/97)
*Judgment 28.11.2000 [Section III]

These cases concern the length of criminal proceedings which the applicants joined as *parties civiles* – violation.

BARBOSA ARAUJA - Portugal (N° 39110/97)
Judgment 9.11.2000 [Section IV]

The case concerns the length of criminal proceedings which the applicant joined as *assistente* – friendly settlement.

RÖSSLHUBER - Austria (N° 32869/96)
BOURIAU - France (N° 39523/98)
*Judgment 28.11.2000 [Section III]

These cases concern the length of criminal proceedings – violation.

Article 1 of Protocol No. 1

YAŞAR and others - Turkey (N° 27697/95 and N° 27698/95)
*Judgment 14.11.2000 [Section I]

The case concerns delays in payment by the State of addititional compensation for expropriation – violation.

B.T. and others - Turkey (N° 26093/94 and N° 26094/94)
V.N.K. and 44 others - Turkey (N° 29888/96, 29889/96, 29890/96, 29891/96, 29892/96, 29893/96, 29894/96, 29895/96 and 29896/96)
Judgments 14.11.2000 [Section I]

These cases concern delays in payment by the State of additional compensation for expropriation – friendly settlement.

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