CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 11
on the case-law of the Court
October 1999

Statistical information

		October	1999
I. Judgments delivered			
Grand Chamber		5	57
Chamber I		0	2
Chamber II		19	26
Chamber III		3	11
Chamber IV		2	12
Total		**29**	**108**
II. Applications declared admissible			
Section I		8	103
Section II		41	280
Section III		33	173
Section IV		7	84
Total		**89**	**640**
III. Applications declared inadmissible			
Section I	- Chamber	4	48
	- Committee	41	435
Section II	- Chamber	16	107
	- Committee	98	458
Section III	- Chamber	12	125
	- Committee	87	490
Section IV	- Chamber	16	108
	- Committee	149	976
Total		**423**	**2747**
IV. Applications struck off			
Section I	- Chamber	0	5
	- Committee	2	8
Section II	- Chamber	1	7
	- Committee	4	9
Section III	- Chamber	0	24
	- Committee	1	9
Section IV	- Chamber	0	11
	- Committee	0	11
Total		**8**	**84**
Total number of applications decided[1]		**520**	**3471**
V. Applications communicated			
Section I		39	345
Section II		117	334
Section III		83	357
Section IV		15	228
Total number of applications communicated		**254**	**1264**

[1] **Not including partial decisions**

ARTICLE 2

LIFE
Loss of evidence during an inquest into the death of the applicants' son during his arrest: *inadmissible*.

GRAMS - Germany (Nº 33677/96)
Decision 5.10.99 [Section IV]

The applicants are the parents of a presumed member of the Red Army Fraction who was killed while the police were trying to arrest him. Following his death, the applicants decided to lay a criminal complaint of intentional homicide by a person or persons unknown. A large number of forensic investigative measures took place in order to establish the exact circumstances of the death, which were of essential importance in the investigation given that there had been no eye witnesses. On the basis of a very detailed report of the investigation (itself drawn up on the basis of forensic reports) and of evidence from some sixty witnesses, the public prosecutor concluded that it had been a case of suicide and decided, in consequence, not to prosecute anyone. The applicants, who opposed that decision, applied to the Principal Public Prosecutor, submitting their own expert reports. They also pointed to a number of flaws in the investigation, flaws which had resulted in the loss of evidence supporting the homicide theory. The decision not to pursue the matter was, however, upheld. The applicants then applied to the court of appeal to have the police officers charged. Their application was dismissed on the ground that the investigation had not uncovered enough evidence to charge the officers. The court held that the flaws in the investigation relied on by the applicants were not of a kind to cast doubt on the suicide theory and thus to justify reopening the case.
Inadmissible under Article 2: The authorities had responded to the applicants' criticisms of the way in which the investigation had been handled, even admitting that there had been some shortcomings. However, they had established that those shortcomings, when weighed against all the evidence supporting the suicide theory, had not justified charging the police officers. The fact that the investigation had not been able to progress beyond hypotheses had been essentially due to the absence of eye witnesses to the applicants' son's death. Both the public prosecutor and the court of appeal had given ample reasons for their decisions, referring, in particular, to numerous expert reports. Thus it was not clear that, if the investigation had not been flawed, its results would have supported the homicide, rather than the suicide, theory. Hence, the comprehensiveness, impartiality and thoroughness of the investigation could not be regarded as having been significantly prejudiced: manifestly ill-founded.

LIFE
Death allegedly resulting from medical negligence - adequacy of investigation: *inadmissible*.

ERIKSON - Italy (Nº 37900/97)
Decision 26.10.99 [Section I]

In 1989 the applicant's mother, who was suffering severe abdominal pain, was sent by her doctor, without any prior examination, to the local public hospital to undergo an X-ray examination. She was asked at the hospital to drink barium for the purpose of the examination. Although she collapsed in the course of the examination, she was sent back home straight after it was completed. The next day she had to be rushed back to hospital, where she died soon after arriving. In 1992, doubts as to the exact causes of her death arose from a conversation the applicant had with a doctor, and hence he decided to seek medical opinions. It emerged that his mother had died of an intestinal occlusion which the ingestion

of barium had seriously exacerbated. The applicant consequently instituted criminal proceedings against his mother's doctor for having failed to examine her before sending her to hospital and requested that the radiologist who had directed the X-ray examination be identified and prosecuted. After a first phase of the investigation, the public prosecutor came to the conclusion that the investigation had to be discontinued for lack of evidence. The judge for preliminary investigations discontinued it accordingly, but reopened it upon the applicant's request with a view to identifying the radiologist involved. Following a thorough investigation by the police, the public prosecutor requested once more that the investigation be discontinued on the ground that the radiologist had not been identified with sufficient certainty. The judge for preliminary investigations finally discontinued the investigation.
Inadmissible under Article 2: The positive obligations for a State to protect life include the requirement for hospitals to have regulations for the protection of their patients' lives and also the obligation to establish an effective system of judicial investigation into medical accidents and any liability on the part of medical practitioners. In the instant case, the hospital authorities did not investigate the death of the applicant's mother, although the circumstances surrounding it were unclear. On the other hand, the judicial authorities did carry out a thorough investigation into the events. As a result of the time which had elapsed before the investigation started, the evidence gathered could not lead to a committal for trial and the applicant's scope of criminal action was quite limited. In this respect, there is no right to secure a conviction in criminal proceedings, and neither the applicant nor the authorities could be held responsible for the lateness of the investigation. In addition, there were no elements to show that the prosecuting authorities assessed the evidence before them in an arbitrary manner. It was also open to the applicant to bring an action for negligence against the hospital, the criminal investigation carried out being limited to the improbable identification of the medical practitioners involved. Further evidence could have been sought and the scope of such an action would have been wider than the criminal action he brought. In conclusion, the investigation into the circumstances of the case did not appear deficient and there was a mechanism whereby the criminal or civil responsibility of the medical practitioners involved could be examined: manifestly ill-founded.

ARTICLE 3

EXPULSION
Expulsion to Iran - risk of stoning to death for adultery: *admissible*.

JABARI - Turkey (Nº 40035/98)
Decision 28.10.99 [Section IV]

The applicant, an Iranian national, had a relationship, involving sexual relations, with a married man in Iran. She maintains that stoning to death, flogging and whipping are penalties prescribed by Iranian law for the offence of adultery. She was arrested as she was walking with the man in the street and was submitted to a virginity examination. After being released, she fled to Turkey. Her intention was to fly to Canada via France with a forged passport. However, on her arrival at Paris airport, she was intercepted by the French police who sent her back to Turkey after having established that she was in possession of a forged passport. She was arrested at Istanbul airport for having entered the country with a forged passport and was transferred to the Aliens Department of the Istanbul Security Directorate. The public prosecutor before whom she was presented ordered her release, finding she had not entered the country of her free will. She was re-transferred to the Istanbul Security Directorate with a view to her deportation. She then lodged an asylum application which was rejected as being out of time. She was later granted refugee status by the UNHCR. Her applications against the deportation order and to obtain a stay of execution were rejected.

Admissible under Article 3 and 13.

INHUMAN TREATMENT
Precarious economic and social situation resulting from refusal of residence permit: *inadmissible*.

PANČENKO - Latvia (Nº 40772/98)
Decision 28.10.99 [Section II]

In 1985, the applicant, who was a citizen of the former USSR, moved to Latvia, where she has been living since. In 1992, in accordance with the Status of the Former USSR Citizens Act, she was entered in the Register of Latvian Residents on the basis of her status of "ex-USSR citizen". In 1994, she chose to adopt Russian citizenship. As a result, the authorities annulled her entry in the register and issued her with a temporary residence permit valid until February 1996. Her subsequent attempts to be registered as a permanent resident, including an appeal to the Supreme Court, remained fruitless. In the meantime, she had renounced her Russian citizenship. In 1997 she was served with a deportation order. She unsuccessfully started another court action to be registered as a permanent resident. In 1999 she acquired Ukrainian citizenship and was granted a permanent residence permit on the basis of her foreign citizen status. The deportation order against her was finally quashed. The applicant complained about the economic and social precariousness of her situation from 1995 to 1999, which allegedly resulted from the refusal by the authorities to grant her the status of permanent resident. She referred in particular to local tax debts, unemployment and lack of free medical assistance and financial support from the State.
Inadmissible under Article 3: In so far as the applicant complained about the social and economic precariousness of her situation from 1995 to 1999 when she was refused registration as a permanent resident, the Convention does not guarantee socio-economic rights as such, and in particular does not include the right to a charge-free dwelling, the right to work, the right to free medical assistance or the right to financial assistance from the State to ensure a certain standard of living. To the extent that the applicant's contentions related to Article 3, her living conditions did not attain the minimum level of severity amounting to ill-treatment within the meaning of that Article: manifestly ill-founded.

ARTICLE 5

Article 5(1)

LAWFUL DETENTION
Detention for non-payment of community charge: *no violation*.

PERKS and others - United Kingdom (Nº 25277/94, 25279/94, 25280/94, 25282/94, 25285/94, 28048/95, 28192/95 and 28456/95)
Judgment 12.10.99 [Section III]
(See Article 6(3)(c), below).

LAWFUL DETENTION
Suspected members of a sect held in a hotel against their will in order to undergo "de-programming": *violation*.

RIERA BLUME and others - Spain (Nº 37680/97)
Judgment 14.10.99 [Section IV]
(See Appendix I).

LAWFUL ARREST OR DETENTION
Member of a group of foreigners without residence permits allegedly deprived unlawfully of her freedom: *communicated.*

CISSE - France (N° 51346/99)
[Section II]

In June 1996, a group of non-French nationals, mainly from Africa, who did not have residence permits and so were liable to be deported from French territory, occupied a church in Paris to protest against their situation. They were joined by representatives of human-rights organisations. On 22 August 1996, under a prefectoral order made on the grounds that the occupation constituted a threat to public health, peace, safety and order, the police took control of the church in order to clear it. Persons whose skin colour indicated *prima facie* that they were foreigners were sent to a detention centre run by the administrative authorities. The applicant, a Senegalese citizen, was taken to a police station for questioning and, two days later, brought before the criminal court, which sentenced her to two months' imprisonment (suspended) for unlawfully entering and remaining in France. The court of appeal upheld the sentence and added a deportation order banning the applicant from re-entering French territory. The Court of Cassation found that the order for the church to be cleared had been unlawful, as the applicant had argued, but held that that fact did not affect the outcome of the criminal proceedings and dismissed her appeal on points of law. Before the European Court, the applicant complains *inter alia* that the deprivation of her liberty had no foundation in law since the order for the church to be cleared had been unlawful and the *sans-papiers*' peaceful gathering could not ground the conclusion that an offence calling for police intervention was imminent. She also submits that the decisive criterion in the identity check which led to her arrest was the skin colour of the persons in the church.
Communicated under Articles 5(1), 11 and 14.

ARTICLE 6

Article 6(1) [civil]

CIVIL RIGHTS AND OBLIGATIONS
Absence of right for father to have proceedings to contest paternity instituted by public prosecutor: *inadmissible*.

YILDRIM - Austria (Nº 34308/96)
Decision 19.10.99 [Section III]

The applicant, a Turkish national, married an Austrian national already expecting a baby who he knew was not his. The applicant and the mother being married at the time of birth, the legal presumption of paternity provided for in the Austrian Civil Code applied to him. He allegedly realised this only when he and his wife started divorce proceedings more than a year later, by which time the time-limit within which he could contest the child's legitimacy had expired. The applicant made use of the possibility offered by law of requesting the public prosecutor after expiry of the time-limit to institute proceedings to contest the paternity of the child. His request, however, was rejected on the ground that the denunciation of his paternity would threaten the child's interests, the natural father being unknown and the mother relying on her maintenance claim against the applicant to bring up the child. The applicant's further appeals were to no avail.
Inadmissible under Article 6(1): A public prosecutor may contest a child's legitimacy following the expiry of the one-year time-limit when he considers that either the public interest or the interests of the child or its descendants justify such action. However, according to the wording of the provision and the domestic courts' decisions, the applicant did not have a right to have such proceedings instituted by the public prosecutor once his own action was time-barred: incompatible *ratione materiae*.
Inadmissible under Article 8: In a similar case (Rasmussen v. Denmark judgment of 28.11.84), in which a husband wished to institute proceedings to contest the paternity of a child born in wedlock, the question was left open whether there was "family life" in such instances because of the finding that the matter in any case undoubtedly concerned "private life". As regards the issue raised by the instant case, there are legitimate reasons relating both to a need for legal certainty and to the security of family relationships to apply a general presumption of paternity to a married man with regard to his wife's children. It appears reasonable for the public prosecutor to give more weight to the child's interests than to those of the applicant when deciding whether to institute proceedings to contest the child's legitimacy. Consequently, the public prosecutor's refusal did not disclose a lack of respect for the applicant's private life: manifestly ill-founded.

ACCESS TO COURT
Annulment by Supreme Court of Justice of final and binding judgment: *violation*.

BRUMARESCU - Romania (Nº28342/95)
Judgment 28.10.99 [Grand Chamber]
(See Appendix II).

ACCESS TO COURT
Annulment by the Supreme Court of final and binding judgment: *communicated*.

WOJCIK - Poland (N° 32729/96)
[Section II]

A 1991 Act annulled the convictions of any person prosecuted between 1944 and 1956 for offences related to fighting for the independence of Poland and provided for such persons to receive compensation. The scope of the Act was later extended to include persons prosecuted by the Soviet authorities after the Soviet army entered Polish territory. The applicant was an officer in the underground Polish army, which was regarded by the Communist authorities as a dissident organisation. He was arrested and tried by the Soviets in 1944 and was deported to the USSR for 10 years. In 1994 he was awarded damages by a court pursuant to the Act referred to above. The sum awarded was not, however, paid to him, although the judgment had become final. In June 1995 the Minister of Justice, in his role as the guardian of the law, lodged an extraordinary application challenging the judgment on the ground that the proceedings which had been brought against the applicant were not covered by the 1991 Act, since they did not meet the temporal and territorial criteria laid down in it. The Supreme Court allowed the application and thus quashed a judicial decision which had become *res judicata*.
Communicated under Article 6 and Article 1 of Protocol No. 1.

ACCESS TO COURT
Failure of municipal authorities to comply with court decision declaring building permits unlawful: *communicated*.

ÜNVER - Turkey (Nº 36209/97)
[Section I]

The applicant owns a house with a sea view. The land lying between his property and the sea was zoned by the State as a conservation area where, according to the original building plan, no construction was authorised. The building plan, however, was revised by the municipal authorities with the result that housing developments became possible in the protected area. Consequently, the municipal authorities granted building permits to several property developers. The applicant challenged these building permits before the administrative court, which ordered on two occasions that the building permits be suspended pending its decision on the matter. The local authorities did not suspend the impugned building permits. The court finally annulled the revised building plan and the incidental building permits but the municipal authorities failed to comply with the court decision.
Communicated under Article 6(1) (applicability, access to court) and Article 1 of Protocol No. 1.

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

ZIELINSKI and PRADAL and GONZALEZ and others - France
(Nº 24846/94 and Nº 34165/96 to Nº 34173/96)
Judgment 28.10.99 [Grand Chamber]
(See Appendix III)

REASONABLE TIME
Length of civil proceedings: *no violation*.

HUMEN - Poland (Nº 26614/95)
Judgment 15.10.99 [Grand Chamber]

Facts: In 1983 the applicant was convicted of participating in a violent demonstration. In 1993 the conviction was quashed. He lodged a request for compensation for wrongful conviction and unjustified detention. Following a hearing in June 1994, the case was adjourned *sine die* for evidence of any causal link between the detention and the applicant's ill-health to be obtained. The applicant subsequently refused to submit to a brain tomography. In June 1995 his claims were granted in part. This decision was quashed on appeal and the case was remitted to the first instance court, which ordered fresh medical reports. After several adjournments, the applicant was awarded compensation in March 1996.
Law: Article 6(1): The period to be examined began on 1 May 1993 (date of Poland's recognition of the right of petition coming into effect) and ended in March 1996. The proceedings thus lasted almost 2 years 11 months. Certain features of the case were complex (the need to obtain medical evidence and evidence relating to the applicant's employment and loss of earnings). Although the applicant's conduct in the initial stages cannot be regarded as hindering the progress of the case, his subsequent behaviour was scarcely consistent with the diligence which should normally be shown by a claimant. The court took 14 months to prepare for the first hearing and the existence of a backlog is not a convincing explanation for the entire length, but otherwise there was no substantial period of inactivity for which the authorities could be held responsible - hearings were held at reasonable intervals and adjourned only when it was necessary to obtain evidence and even during a one-year adjournment the court did not remain passive. On the whole, the authorities did not fail to act with all due diligence and the length cannot be said to be unreasonable.
Conclusion: No violation (unanimous).

REASONABLE TIME
Length of civil proceedings: *violation*.

CONCEIÇÃO GAVINA - Portugal (Nº 33435/96)
Judgment 5.10.99 [Section IV]

The case concerns the length of civil proceedings brought by the applicant in October 1984. The proceedings are pending before the Supreme Court and had therefore lasted, at the date of the judgment, almost 15 years.
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 3,000,000 escudos (PTE) in respect of pecuniary and non-pecuniary damage and 725,000 escudos in respect of costs and expenses.

REASONABLE TIME
Length of civil proceedings: *violation*.

CERIELLO - Italy (Nº 33620/97)
Judgment 26.10.99 [Section II]

The case concerns the length of civil proceedings brought by the applicant in September 1987. The proceedings ended in December 1997 (10 years 2 months).
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 20,000,000 lire (ITL) in respect of non-pecuniary damage and 5,000,000 lire in respect of costs.

REASONABLE TIME
Length of civil proceedings: *violation*.

SCALVINI - Italy (Nº 36621/97)
Judgment 26.10.99 [Section II]

The case concerns the length of civil proceedings brought by the applicant in June 1989, which are still pending (10 years 3 months), the date of the next hearing being in February 2001.
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 35,000,000 lire (ITL) in respect of non-pecuniary damage and 5,000,000 lire in respect of costs.

REASONABLE TIME
Length of civil proceedings: *violation*.

CALOR SUD - Italy (Nº 36724/97)
Judgment 26.10.99 [Section II]

The case concerns the length of civil proceedings brought against the applicant company in June 1987, which are still pending (12 years 3 months), the date of the next hearing being in May 2001.
Conclusion: Violation (unanimous).
Article 41: The applicant company's claim, which concerned alleged pecuniary loss, was dismissed by the Court on the ground that the domestic courts may still award financial compensation.

REASONABLE TIME
Length of civil proceedings: *violation*.

VARIPATI - Greece (Nº 38459/97)
Judgment 26.10.99 [Section II]

Facts: A piece of land belonging to the applicant was expropriated in 1964. In 1983 the court of appeal held that the expropriation order had been automatically revoked. That judgment was merely declaratory and the applicant did not succeed in having the expropriation order formally revoked until 1991. The public-sector company occupying the land applied to the Supreme Administrative Court to have that decision quashed, an application opposed by the applicant in June 1992. After a number of adjournments due to a lawyers' strike, the Supreme Administrative Court heard the case in January 1995. It gave judgment in March 1997 dismissing the company's application. The company nevertheless continued to occupy the land until August 1997, when it reached an agreement with the applicant.
Law: Preliminary objection - The Court failed to see why the applicant should be regarded as having abused the right of individual petition by reaching an agreement with the company and thus according to the Government, deliberately waiving her financial claims. The applicant had wished to recover possession of her property, something which the agreement had enabled her to do without further court proceedings. Moreover, her complaints essentially concerned the length of the proceedings.
Article 6(1) - By applying for the decision in the applicant's favour to be quashed, the company had cast doubt on the legal status of the applicant's property, so that a dispute (*contestation)* had arisen between them, the outcome of which had been decisive for the applicant's right of property. Article 6(1) therefore applied. The period to be taken into consideration had begun in June 1992 and ended in March 1997 (approximately four years

and nine months for proceedings in a single court). Despite the fact that the delays caused by the lawyers' strike could not be attributed to the State, the length of the proceedings could not be regarded as reasonable.
Conclusion: Violation (unanimous).
Article 1 of Protocol No. 1 - Any adverse financial effects entailed by the excessive length of the proceedings had to be regarded as consequences of the violation of the right guaranteed by Article 6(1) of the Convention and could only be taken into consideration for the purposes of the just satisfaction which the applicant could obtain as a result of that finding of violation.
Conclusion: No violation (unanimous).
Article 41 - The Court, considering that the long period for which the applicant had not been able to dispose of her property – a period much of which had been taken up by the proceedings in the Supreme Administrative Court – had caused her both pecuniary damage and stress and considerable anxiety, awarded her the total sum of 3,000,000 drachmas (GRD) for pecuniary and non-pecuniary damage. It awarded her GRD 1,000,000 for costs and expenses.

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

MAINI - France (Nº 31801/96)
Judgment 26.10.99 [Section III]

Facts: In September 1991 the applicant filed a criminal complaint and applied to join the criminal proceedings as a civil party. In March 1996 the investigating judge held that there was no case to answer. The applicant appealed but in June 1996 the Indictments Division of the Court of Appeal upheld that decision. The applicant's appeal on points of law was dismissed by the Court of Cassation (Criminal Division) on 1 October 1997.
Law: In his criminal complaint, the applicant had expressly referred to the damage to property, psychological suffering and financial damage caused him by the alleged offences. Thus his complaint had concerned a civil right. The fact that he had not quantified the damage at the time of filing the complaint could not be held against him for, under French law, it had been open to him to file a claim for damages at any time before or during the trial. Moreover, the aim of his complaint had been to have criminal proceedings commenced with a view to obtaining a guilty verdict which would have enabled him to exercise his civil rights in relation to the alleged offences – in particular, to obtain compensation for the harm he claimed to have suffered. The outcome of the proceedings was, therefore, decisive for establishing his right to redress. Consequently, Article 6(1) of the Convention was applicable. The period to be taken into consideration (September 1991 to October 1997) was six years and one month. The case had not been complex and the Government had not accused the applicant of delaying the proceedings by his conduct. As to the conduct of the authorities dealing with the matter, the Court found two delays in the investigation, delays which had held it up for two years and eleven months of its total length of four years and six months. The Government had advanced no convincing explanation for those delays.
Conclusion: Violation (unanimous).
Article 41 - The Court awarded the applicant FRF 30,000 for non-pecuniary damage. With regard to the claim for costs incurred in the domestic proceedings, the Court held that those costs had not been "necessarily" incurred for the purposes of redressing the violation of the Convention and that they should not, therefore, be reimbursed. As to the claim for the costs of the proceedings before the Convention bodies, the Court awarded the applicant FRF 413 by way of reimbursement of proven, justified costs.

Article 6(1) [criminal]

APPLICABILITY
Appeal concerning amount of tax adjustment: *inadmissible*.

GANTZNER - France (Nº 43604/98)
Decision 5.10.99 [Section III]

The applicant was the subject of supplementary income tax assessments under which he was required to pay additional income tax, together with a 50% surcharge for acting in bad faith imposed under a provision of the old General Tax Code. His appeals against the supplementary assessments were unsuccessful.
Inadmissible under Article 6(1): It was the settled case-law of the Convention institutions that the limb of Article 6(1) covering "civil rights and obligations" did not apply to tax disputes, even where the fiscal measures in question had repercussions on pecuniary rights. In the instant case, the tax surcharge had been imposed on the applicant as a penalty for bad faith, and if that penalty had been the subject matter of the domestic proceedings, Article 6(1) could have applied. However, the applicant had focused his arguments in the administrative courts exclusively on the level of additional tax he had been required to pay. The impugned proceedings had not, therefore, dealt with the penalty imposed: incompatible *ratione materiae*.

CRIMINAL CHARGE
Temporary withdrawal of driving licence following accident: *Article 6 not applicable*.

ESCOUBET - Belgium (Nº 26780/95)
Judgment 28.10.99 [Grand Chamber]
(See Appendix IV).

REASONABLE TIME
Length of criminal proceedings: *violation*.

DONSIMONI - France (Nº 36754/97)
Judgment 5.10.99 [Section III]

The case concerns the length of criminal proceedings brought against the applicant. The proceedings began in March 1994 and are still pending before the court of appeal. They have therefore lasted around five and a half years, including five years and almost two months before the first instance court.
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 35,000 francs (FRF) in respect of non-pecuniary damage and 15,000 francs in respect of costs and expenses.

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

SCARUFFI - Italy (Nº 33455/96)
BAGEDDA and DELOGU - Italy (Nº 33992/96)
PESONI - Italy (Nº 39694/98)
MANGIOLA - Italy (Nº 40179/98)
LA BROCCA and others - Italy (Nº 40293/98 and 40295/98)
FRANCESCA - Italy (Nº 40665/98)
SILVESTRI and others - Italy
(Nº 41327/98, 41328/98, 41329/98 and 41560/98)
Judgments 5.10.99 [Section II]

The cases concern the length of different sets of criminal proceedings. The Government has reached settlements with each of the applicants, on the basis of the following payments to cover any non-pecuniary damage and, where appropriate, any pecuniary damage, as well as legal costs:
Scaruffi - 4,979 Euros;
Bagedda and Delogu - 10 million lire (ITL) to each applicant plus 6 million lire for the costs incurred by the two applicants;
Pesoni - 10,204 Euros;
Mangiola - 17 million lire;
La Brocca and others - 14.5 million lire to the first applicant (12 million lire for non-pecuniary damage and 2.5 million lire for legal costs) and 43.5 million lire to the other three applicants (12 million lire each for non-pecuniary damage and 2.5 million lire each for costs);
Francesca - 23 million lire (18 million lire for non-pecuniary damage and 5 million lire for costs);
Silvestri and others - 30 million lire for each of the first three applicants (25 million lire for any pecuniary or non-pecuniary damage and 5 million lire for costs) and 56 million lire for the fourth and fifth applicants (25 million lire each for damages and 6 million lire for the costs incurred by both).

REASONABLE TIME
Length of criminal proceedings: *violation*.

GELLI - Italy (Nº 37752/97)
Judgment 19.10.99 [Section II]

Facts: The applicant was arrested in Switzerland in September 1982 in connection with the bankruptcy of the private bank, Banco Ambrosiano. The case involved 40 co-accused. He escaped from prison in August 1983 and remained at liberty until re-arrested in September 1987. He was extradited to Italy in February 1988 and was convicted in April 1994. The conviction was upheld in March 1996. In a judgment of November 1996, lodged with its registry in December 1996, the Court of Cassation held that certain charges were time-barred and reduced the applicant's sentence accordingly. The applicant complained about the length of the proceedings.
Law: The proceedings began at the latest in September 1982 and ended in December 1996, but the period during which the applicant absconded, totalling 4 years 1 month, must be deducted from the period to be examined, since the applicant has not shown any reason to rebut the presumption that he is not entitled to complain about the length of the proceedings following his flight. Accordingly, the period to be examined is 10 years 2 months for three levels of jurisdiction. The case was extremely complex and it is not for the Court to say whether the particular charge in respect of which the applicant complained should have been separated from the others. However, no delay can be attributed to the applicant, other than

the period during which he absconded, whereas a very long delay between 1985 and 1991 is attributable to the judicial authorities. No explanation has been provided by the Government for this period, which amounts to more than half the total period and is in itself sufficient to conclude that the case was not heard within a reasonable time.
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 20 million lire (ITL) in respect of non-pecuniary damage. Although the applicant had not provided details of legal costs, the Court, taking into account the simplicity of the case, awarded him 2 million lire.

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

G.S. - Italy (Nº 34204/96)
EMMOLO - Italie (Nº 42500/98)
SCANDELA - Italy (Nº 43494/98)
MACCIOCCHI - Italy (Nº 43584/98)
CARROZZA - Italy (Nº 43598/98)
Judgments 19.10.99 [Section II]

The cases concern the length of different sets of criminal proceedings. The Government has reached settlements with each of the applicants, on the basis of the following payments:
G.S. - 37 million lire (ITL) for all pecuniary and non-pecuniary damage as well as legal costs;
Emmolo - 23 million lire (18 million for damages and 5 million for costs);
Scandella - 17 million lire (12 million for damages and 5 million for costs);
Macciocchi - 19 million lire (14 million for damages and 5 million for costs);
Carrozza - 19 million lire (14 million for damages and 5 million for costs).

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

FRANZIL - Italy (Nº 34214/96)
FERRARA and DE LORENZO - Italy (Nº 40282/98 and Nº 40283/98)
Judgments 26.10.99 [Section II]

The cases concern the length of criminal proceedings. The Government has reached settlements with each of the applicants, on the basis of the following payments:
Franzil - 29 million lire (ITL) (24 million for damages and 5 million for costs);
Ferrara and De Lorenzo - 32 million lire (13 million to each applicant for non-pecuniary damage and 6 million for both applicants in respect of costs).

Article 6(3)(c)

FREE LEGAL ASSISTANCE
Unavailability of legal aid in proceedings relating to non-payment of community charge: *violation*.

PERKS and others - United Kingdom (Nº 25277/94, 25279/94, 25280/94, 25282/94, 25285/94, 28048/95, 28192/95 and 28456/95)
Judgment 12.10.99 [Section III]

(Extract from press release)

Facts: The applicants, Kevin Perks, Andrea Rowe (Kennedy), Gordon Mudryj, Robert Massey, Alan Beattie, Leveson Knight, Arthur Tilley and John Crane, are British nationals living in Wolverhampton, Manchester, Newcastle, Bristol, Stoke-on-Trent, Manchester, Bolton and Preston respectively.
In the early 1990's, all eight applicants were imprisoned for failure to pay community charge (poll tax) following separate proceedings in various Magistrates' Courts. Legal aid was not available and they were not legally represented. At the time, they were all dependent on State benefits, with the exception of Mr Crane, who was living on a very low income. The applicants were released on bail after applying for judicial review before the High Court. Following judicial review proceedings each applicant obtained an order quashing the magistrates' imprisonment order in his or her case. The High Court did not overturn the findings of the Magistrates' Courts according to which each applicant's failure to pay was due to his or her wilful refusal or culpable neglect. However, the High Court found, in the case of Mr Perks, that the Magistrates' Court should have inquired into the change of the applicant's circumstances since a previous hearing, and, in the cases of Mrs Rowe, Mr Mudryj, Mr Massey, Mr Knight, Mr Tilley and Mr Crane, that the magistrates should have considered alternatives to imprisonment in order to secure payment.
The applicants complained that their imprisonment had been unlawful and contrary to Article 5 § 1 of the Convention, that in violation of Article 5 § 5 they could not obtain compensation for their allegedly unlawful imprisonment, and that Article 6 §§ 1 and 3(c) had been infringed in that legal aid had not been available to them in the committal proceedings before the Magistrates' Courts.
Law: Article 5 § 1: The applicants (except Mr Beattie who did not pursue his complaints under Article 5) complained that their detention had been contrary to Article 5 § 1. The Court held that, as in its Benham v. the United Kingdom judgment of 10 June 1996, the main issue to be determined was whether the disputed detention was "lawful", including whether it complied with "a procedure prescribed by law". The Convention here essentially referred back to national law and stated the obligation to conform to the substantive and procedural rules of national law, but it required in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness. It was in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with domestic law entailed a breach of the Convention, it followed that the Court could and should exercise a certain power to review whether this law had been complied with. It was agreed by those appearing before the Court that the principles of English law which should be taken into account in this case distinguished between errors made by a magistrates' court which were of such a degree of gravity as to deprive the magistrates of jurisdiction, and other, less serious, mistakes. Orders made by a magistrates' court within its jurisdiction were valid and effective unless or until they were overturned by a superior court, so that any intervening period of detention would be lawful; whereas orders made in excess of jurisdiction were null and void from the outset, so that any interim detention would be unlawful. The Court found that it could not be said with any degree of certainty that the judgments of the national courts

quashing the magistrates imprisonment orders were to the effect that the magistrates' errors had been so grave as to deprive them of jurisdiction within the meaning of English law. It followed that the Court did not find it established that the detention orders were invalid, and thus that the applicants' detention was unlawful under national law. The mere fact that the orders were set aside on appeal did not in itself affect the lawfulness of the detention. The Court further did not find it established that a question arose as to the applicability of paragraph 1(b) of Article 5 or that the imprisonment orders were arbitrary.

Conclusion: No violation (5 votes to 2 with regard to Mr Perks, otherwise unanimously).

Article 5 § 5: Article 5 § 5 guarantees an enforceable right to compensation only to those who have been the victims of arrest or detention in contravention of the provisions of Article 5. In view of its finding that there was no violation of Article 5 § 1 in this case, the Court concluded that Article 5 § 5 was not applicable.

Conclusion: Not applicable (unanimous).

Article 6 §§ 1 and 3(c): The Court had to decide whether the interests of justice required that the applicants be provided with free legal representation at the hearings before the magistrates. It considered that this case, insofar as the issues under Article 6 §§ 1 and 3(c) of the Convention were concerned, was practically identical to the Benham judgment. The applicants lacked sufficient means to pay for legal representation and, having regard to the severity of the penalty risked by them and the complexity of the law, the interests of justice demanded that, in order to receive a fair hearing, they ought to have benefited from free legal representation. Since this was not the case in any of the applications, the Court found a violation of Article 6 §§ 1 and 3 (c) in each case.

Conclusion: Violation (unanimous).

Article 41: In respect of Mr Perks the Court noted the Government's position to the effect that in all likelihood he would not have been imprisoned had he been legally represented. According to the High Court's finding in Mr Perks' case, it was unlikely that the magistrates would have committed him to prison if they had known more about his health problems and personal circumstances. The Government conceded that a reasonably competent solicitor would have drawn the magistrates attention to those circumstances. Seeing no reason to disregard the Government's position, the Court awarded Mr Perks £5,500 for non-pecuniary damage. As regards the remaining seven applicants the Court found that there was no basis to speculate as to the outcome of the proceedings before the Magistrates' Courts and that their cases did not disclose a feature distinguishing them from the case of Benham (cited above). In respect of these seven applicants, therefore, the finding of a violation of Article 6 §§ 1 and 3(c) of the Convention was sufficient just satisfaction.

The applicants sought reimbursement of legal costs and expenses totalling £29,424.54, which the Government considered to be excessive. The Court considered that only a minimal reduction of the applicants' claims, on account of the partial rejection of their complaints, should be applied, given that it had been the Government who referred the applications to the Court.

Judges Greve and Tulkens expressed dissenting opinions which are annexed to the judgment.

Article 6(3)(d)

EXAMINATION OF WITNESSES
Absence of opportunity to cross-examine witnesses serving prison sentences abroad: *communicated*.

SOLAKOV - Former Yugoslav Republic of Macedonia (Nº 47023/99)
[Section II]

The applicant was arrested on suspicion of having smuggled drugs into the United States. The investigation judge decided that several witnesses who were serving prison sentences in the United States should be heard. A hearing was scheduled there, and the applicant's lawyer was informed of it. The American authorities, however, failed to provide the lawyer with the necessary visa to enter the country. Consequently, the witnesses were heard by the investigating judge together with the public prosecutor but in the lawyer's absence. The witnesses unequivocally accused the applicant of having set up the whole drug trafficking operation. As they were unable to attend the subsequent public hearing in the Former Yugoslav Republic of Macedonia, transcriptions of their testimonies were read out in open court. The applicant was eventually found guilty and sentenced to imprisonment. His appeals were rejected.
Communicated under Article 6 (1) and (3)(d).

ARTICLE 7

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

STRELETZ - Germany (N° 34044/96)
KRENZ - Germany (N° 44801/98)
KESSLER - Germany (N° 35532/97)
K.-H.W. - Germany (N° 37201/97)
[Section IV]
(See Article 30, below).

NULLUM CRIMEN SINE LEGE
Conviction of East German public prosecutor in respect of his submissions during the trial of a dissident: *communicated*.

GLÄSSNER - Germany (N° 46362/99)
[Section IV]

The treaty of reunification between East and West Germany provided that offences committed in the former German Democratic Republic (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 applicant, a former public prosecutor in the GDR, was sentenced in 1996 to twelve months' imprisonment, three of them suspended, for (amongst other things) deliberately asking for an excessively harsh sentence on a dissident in 1978. The applicant was convicted pursuant to both FRG and GDR criminal-law provisions under which it was an offence deliberately to assist in a violation of the law and to assist in unlawfully

depriving a person of his liberty. Before the Court he relies on the principle that the criminal law should not be retrospective, submitting, first, that the submission as to sentence he had made 1978 had been based on the law as it stood in the GDR at the time and, secondly, that the provisions of the GDR criminal code on which his own conviction had been based had been interpreted in a manner contrary to that which would have applied at the material time.
Communicated under Article 7(1) in respect of the time-barring of criminal proceedings.

ARTICLE 8

PRIVATE LIFE
Refusal to contest presumption of paternity: *inadmissible*.

YILDRIM - Austria (Nº 34308/96)
Decision 19.10.99 [Section III]
(See Article 6(1) [civil], above).

FAMILY LIFE
Precedence of male heirs in inheritance of titles of nobility: *inadmissible*.

CIERVA OSORIO DE MOSCOVO - Spain (N° 41127/98)
FERNANDEZ De CORDOBA - Spain (Nº 41503/98)
ROCA Y FERNANDEZ MIRANDA - Spain (Nº 41717/98)
O'NEILL CASTRILLO - Spain (Nº 45726/99)
Decision 28.10.99 [Section IV]
(See Article 14, below).

FAMILY LIFE
Threatened expulsion from the country where applicant's family lives: *communicated*.

NJIE - Sweden (Nº 47956/99)
[Section I]

The applicant, a national of Gambia, settled in Sweden in 1994 and married a Swedish national. The couple has two dependent children. Although he has been to Gambia with his wife on several occasions, the applicant seems to have no relatives left there. In 1998, he was arrested for having heroin in his possession with intent to sell it. He was convicted and sentenced to two years' imprisonment to be followed by life-long expulsion. The Court of Appeal confirmed the conviction, but in view of his family situation decided to limit his expulsion to a determined period. He was refused leave to appeal, and the Government rejected his petition for revocation of the expulsion order. The applicant, however, was to be released on probation after having served only half of the term of his sentence. No information is available as to whether he has been released and deported.
Communicated under Article 8.

ARTICLE 9

FREEDOM OF THOUGHT
Suspected members of a sect held in a hotel against their will in order to undergo "de-programming": *not necessary to examine.*

RIERA BLUME and others - Spain (Nº 37680/97)
Judgment 14.10.99 [Section IV]
(See Appendix I).

FREEDOM OF RELIGION
Withdrawal of licence to run private security agency due to connections with a sect : *inadmissible*.

RIONDEL - Switzerland (N° 40130/98)
Decision 14.10.99 [Section II]

Swiss law makes the operation of a private security firm subject to a licence and provides that applicants must offer "every guarantee of honourableness". The applicant's licence was withdrawn because he and some of his employees belonged to a sect and the authorities had taken the view that that was incompatible with the statutory requirement of honourableness. An application to the courts for judicial review of the withdrawal decision was finally dismissed by the Federal Court. The court examined the special characteristics of a security guard and held that their advantages, in particular the right to carry a gun, gave them greater power and authority than ordinary citizens, which could be abused. Pursuing that line of reasoning, it held that the beliefs of the sect to which the applicant belonged were potentially destabilising for public order and that the measure in issue, albeit harsh, did not constrain the applicant to abandon his convictions and was proportionate to the danger to the public interest.
Inadmissible under Article 9: The statutory requirement of honourableness was precise enough to enable persons affected to regulate their conduct. It pursued a legitimate aim, that of protecting public order. The applicant's religious convictions had been fully weighed against this necessity and so the measure in question was necessary: manifestly ill-founded.
Inadmissible under Articles 9 and 18 taken in conjunction: The applicant had not furnished any evidence to show that the restriction on his religious freedom had been imposed for an improper purpose: manifestly ill-founded.

MANIFEST RELIGION
Prohibition on teacher wearing Islamic veil at work: *communicated.*

DAHLAB - Switzerland (N° 42393/98)
[Section II]

The applicant, a primary-school teacher, converted to Islam, after which she started wearing a headscarf at work. This was reported to the primary-education department, which first asked the applicant to stop and then issued a ban on Muslim employees wearing headscarves, on the ground that by doing so teachers were "imposing a conspicuous sign of identity on pupils" and that this was "all the more unacceptable in a public, secular education system". The Geneva *Conseil d'Etat* dismissed the teacher's challenge to the ban. That judgment was upheld by the Federal Court, which, noting that the applicant's job made her a representative of the State, held that the headscarf constituted a strong vestimentary sign of belief in a

particular religion and that the restriction imposed by the education authorities was accordingly necessary to preserve both the principle of neutrality as between different faiths and that of equality between the sexes within the school.
Communicated under Article 9.

ARTICLE 10

FREEDOM OF EXPRESSION
Refusal to appoint to public office: *violation*.

WILLE - Liechtenstein (Nº 28396/95)
Judgment 28.10.99 [Grand Chamber]
(See Appendix V).

FREEDOM OF EXPRESSION
Conviction of journalist for using insulting words while referring to a well-know politician's wife: *admissible*.

TAMMER - Estonia (Nº 41205/98)
Decision 19.10.99 [Section I]

The applicant, a journalist by profession, was convicted of having insulted the wife of a prominent politician when interviewing another journalist with the help of whom she had written her memoirs but who had allegedly published them without her consent. A fine of 220 EEK was imposed. The woman had been the politician's assistant when he was Prime Minister and later Minister of the Interior, and had had his child while he was still married to his first wife. She admitted in her memoirs that she had privileged her career, leaving their child's upbringing to her parents, and looked back on her premarital relationship with her husband and the detrimental effects it had had on his former marriage. The applicant used two Estonian words in the interview which described her as being a "marriage breaker" and an unfit and careless mother. His appeals, notably to the Supreme Court, were dismissed.

ARTICLE 11

FREEDOM OF ASSOCIATION
Legal prohibition on freemasons holding public offices: *admissible*.

GRANDE ORIENTE D'ITALIA DI PALAZZO GIUSTINIANI - Italy
(N° 35972/97)
Decision 21.10.99 [Section IV]

In 1996 the Marche region passed a regional Law laying down the principles governing appointments to public offices within its gift. The Law requires candidates for those offices to produce a declaration certifying that they are not freemasons. The applicant is an Italian Masonic Order which enjoys the status of an association governed by civil law. Acting through its Grand Master, it complains of the prejudice caused it by the Law in question.
Admissible under Article 11 taken alone and in conjunction with Articles 13 or 14.
Inadmissible under Articles 8, 9 and 10 and, consequently, under those Articles in conjunction with Articles 13 or 14. The applicant association could not rely on those Articles,

since a breach of them could not prejudice an association but only its members. The fact that an association is made up of individuals cannot bestow rights on it analogous to those enjoyed by its members: incompatible *ratione personae*.

FREEDOM OF PEACEFUL ASSEMBLY
Intervention by authorities in a meeting held by a group of foreigners without residence permits: *communicated.*

CISSE - France (N° 51346/99)
[Section II]
(See Article 5(1), above).

ARTICLE 14

DISCRIMINATION (COLOUR)
Identity check allegedly based on racial criteria: *communicated*.

CISSE - France (N° 51346/99)
[Section II]
(See Article 5(1), above).

DISCRIMINATION (Article 8)
Precedence of male heirs in inheritance of titles of nobility: *inadmissible*.

CIERVA OSORIO DE MOSCOVO - Spain (N° 41127/98)
FERNANDEZ De CORDOBA - Spain (Nº 41503/98)
ROCA Y FERNANDEZ MIRANDA - Spain (Nº 41717/98)
O'NEILL CASTRILLO - Spain (Nº 45726/99)
Decision 28.10.99 [Section IV]

In Spain, titles of nobility are passed down in the first place to male heirs. The four applicants are female and are each the firstborn of a noble family. They all brought unsuccessful court proceedings challenging the transmission of titles to their younger brothers. On an appeal by the first applicant, the Constitutional Court gave a ruling on the conformity of the relevant legal provisions with the constitutional principle of non-discrimination. The court, noting the purely symbolic nature of noble titles and the fact that they have no legal significance in the contemporary Spanish legal system, held that amending the rules of law governing their transmission in order to comply with the principle of the equality of the sexes would be to introduce anachronistic requirements into a practice moulded by history.
Inadmissible under Article 8 and, consequently Article 14 read in conjunction with Article 8. Unlike surnames and forenames, noble titles did not fall within the scope of the Convention. They were entered on the civil status register but merely as "additional information": inadmissible *ratione materiae*.
Inadmissible under Article 1 of Protocol No. 1 and, consequently, Article 14 read in conjunction with Article 1 of Protocol No. 1: Article 1 of Protocol No. 1 applied only to existing possessions and did not guarantee the right to acquire possessions by way of succession (see the judgments in the cases of Marckx v. Belgium, Series A no. 31, p. 23, and Van der Mussele v. Belgium, Series A no. 70, p. 22). A legitimate expectation of acquiring a possession depended on the agreement of a third party. A noble title could not be considered as a possession within the meaning of Article 1 of Protocol No. 1. The possibility that a title

could be commercially exploited, for example as a brand name, was not enough to make it a possession for the purposes of that provision: inadmissible *ratione materiae.*

ARTICLE 30

RELINQUISHMENT OF JURISDICTION BY A CHAMBER IN FAVOUR OF THE GRAND CHAMBER
Access to court - State immunity: *relinquishment of jurisdiction*.

AL-ADSANI - United Kingdom (Nº 35763/97)
FOGARTY - United Kingdom (Nº 37112/97)
[Section III]

Each of the applicants brought civil proceedings which were unsuccessful as a result of the State Immunity Act. The first applicant brought proceedings against Kuwait in respect of alleged torture; the second applicant brought proceedings against the US government, her former employer in London, in respect of alleged sex discrimination.
[NB. Other cases raising this issue have already been referred to the Grand Chamber.]

RELINQUISHMENT OF JURISDICTION IN FAVOUR OF THE GRAND CHAMBER
Conviction of GDR officials for participating in the killing of East Germans attempting to escape to West Germany *: proposed relinquishment of jurisdiction.*

STRELETZ - Germany (N° 34044/96)
KRENZ - Germany (N° 44801/98)
KESSLER - Germany (N° 35532/97)
K.-H.W. - Germany (N° 37201/97)
[Section IV]

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.

EFFECTIVE DOMESTIC REMEDY (Finland)
Petition to Ombudsman not considered as a domestic remedy to be exhausted.

LEHTINEN - Finland (Nº 39076/97)
Decision 14.10.99 [Section IV]

The police carried out a search in the premises of the applicant's limited liability company and his home on suspicion of aggravated fraud and a book-keeping offence. The applicant lodged a petition with the Ombudsman, complaining about the manner in which the search had taken place and claiming that most of the documents seized were outside the scope of the search warrant. He was eventually acquitted of the charges held against him. The Ombudsman found that the petition did not call for any further developments. The applicant has neither challenged the seizure before the domestic courts nor instituted proceedings for damages.
Inadmissible under Article 8: As a rule, a petition to the Ombudsman cannot be considered as an effective remedy within the meaning of Article 35(1). In the instant case, the applicant's main concern was that the search had gone beyond the terms of the requisite warrant since the major part of the documents seized did not concern the company or the period under investigation. However, the applicant had at his disposal a remedy whereby he could have obtained a court review of the necessity of the seizure. Had the court found that there were no grounds justifying the seizure, it would have quashed it, which the Ombudsman in any case could not have done. Moreover, pursuant to domestic law, the first instance courts have to examine petitions relating to seizures speedily. Finally, there were no specific reasons absolving the applicant from exhausting the court remedy provided in domestic law.

EFFECTIVE DOMESTIC REMEDY (Spain)
Effective remedies for complaining of excessive length of proceedings.

GONZALEZ MARIN - Spain (N° 39521/98)
Decision 5.10.99 [Section IV]

The applicant, an engineer working on a dam, was prosecuted for his part in its bursting and the fatal flood that had ensued. He was charged by the investigating judge on 27 January 1983. On 18 December 1993 the Valencia *Audiencia Provincial* ordered the case-file to be returned to the investigating judge to allow further victims to join the criminal proceedings in order to claim damages. On 1 December 1994 the Constitutional Court ruled, in the context of an *amparo* application, that the proceedings had gone on for an excessive time and ordered the *Audiencia Provincial* to open the trial immediately. The proceedings did not, however, end until 15 April 1997 when the Supreme Court sentenced the applicant to one month's imprisonment and to pay fines. Thereupon, the applicant lodged an *amparo* application with the Constitutional Court, complaining of, amongst other matters, the excessive length of the proceedings. Since *amparo* applications concerning the length of judicial proceedings must be lodged while those proceedings are still continuing, the applicant's action was dismissed as out of time. The Constitutional Court also recalled that it had already dealt with the complaint in question and remedied it in the earlier *amparo* proceedings.
Inadmissible under Article 6(1): The applicant had chosen to complain of the length of the proceedings – after the case had been disposed of – to the Constitutional Court, whereas he could have applied to the Ministry of Justice for compensation on the grounds that the judicial system had not functioned properly in his case. Since any decision by the minister could have

been challenged in the administrative courts, that legal avenue had been sufficiently accessible and effective: non-exhaustion.

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Precedence of male heirs in inheritance of titles of nobility: *inadmissible*.

CIERVA OSORIO DE MOSCOVO - Spain (N° 41127/98)
FERNANDEZ De CORDOBA - Spain (Nº 41503/98)
ROCA Y FERNANDEZ MIRANDA - Spain (Nº 41717/98)
O'NEILL CASTRILLO - Spain (Nº 45726/99)
Decision 28.10.99 [Section IV]
(See Article 14, above).

DEPRIVATION OF PROPERTY
Annulment by the Supreme Court of Justice of judgment restoring nationalised property: *violation*.

BRUMARESCU - Romania (Nº 28342/95)
Judgment 28.10.99 [Grand Chamber]
(See Appendix II).

PEACEFUL ENJOYMENT OF POSSESSIONS
Rejection of applicant's claim for restitution of coins confiscated under the communist regime, on the ground that he could not establish their whereabouts: *communicated*.

KOPECKÝ - Slovakia (Nº 44912/98)
[Section II]

In 1992 the judgment by which the applicant's father had been convicted in 1959 for possessing gold and silver coins was quashed by the Supreme Court. In accordance with the Extra-Judicial Rehabilitation Act 1991, the applicant lodged a claim for restitution of the coins which had been confiscated. The Ministry of the Interior, to which the coins had been transferred after their confiscation, was ordered by the District Court to restore them. The Ministry appealed to the Regional Court, which found that the applicant had not shown where the coins were, as required by the Extra-Judicial Rehabilitation Act, and had thus failed to provide evidence establishing that the Ministry had the coins in its possession. The applicant's appeal to the Supreme Court was dismissed.
Communicated under Article 1 of Protocol No. 1.

PROCEDURAL MATTERS

TRANSITIONAL PROVISIONS
ARTICLE 5(4) OF PROTOCOL Nº 11

CASES REFERRED BY THE EUROPEAN COMMISSION OF HUMAN RIGHTS

At its 287th and final session, the European Commission of Human Rights referred the following 36 cases to the Court:

GUL v. Turkey (Nº 22676/93) concerning the shooting of the applicant's son.

ONEN v. Turkey (Nº 22876/93) concerning the killing of the applicant's parents and brother, allegedly by village guards.

AYDER and others v. Turkey (Nº 23656/94), **BILGIN v. Turkey** (Nº 23819/94) and **Z.D. v. Turkey** (Nº 25801/94) concerning the destruction of homes and property, allegedly by the security forces.

AKDENIZ v. Turkey (Nº 23954/94), **TAS v. Turkey** (Nº 24396/94) and **SARLI v. Turkey** (Nº 24490/94) concerning the disappearance of relatives of the applicants.

AKTAS v. Turkey (Nº 24351/94) concerning the death of the applicant's brother in custody, allegedly as a result of torture.

WIERBICKI v. Poland (Nº 24541/94) concerning the refusal of a government ministry to disclose secret documents for use in proceedings under the Election Act.

COSTER v. the United Kingdom (Nº 24876/94), **BEARD v. the United Kingdom** (Nº 24882/94), **SMITH v. the United Kingdom** (Nº 25154/94), **LEE v. the United Kingdom** (Nº 25289/94), **VAREY v. the United Kingdom** (Nº 26662/95) and **CHAPMAN v. the United Kingdom** (Nº 27238/95) concerning the refusal of the authorities to allow gypsies to live in caravans on their own land.

SADAK and others v. Turkey (Nº 25142/94 and Nº 27099/95) concerning the length of and conditions in police custody.

YURTTAS v. Turkey (Nº 25143/94 and Nº 27098/95) concerning the length of police custody *incommunicado* and denial of access to a lawyer).

The FORMER KING OF GREECE and others v. Greece (Nº 25701/94) concerning the ownership of royal property.

D.N. v. Switzerland (Nº 27154/95) concerning the impartiality of a court deciding on a request for release from psychiatric detention.

KEENAN v. the United Kingdom (Nº 27229/95) concerning the alleged failure of the authorities to prevent the applicant's son's suicide in prison.

SABUKTERIN v. Turkey (Nº 27243/95) concerning the murder of the applicant's husband by unidentified persons.

JEZNACH v. Poland (Nº 27580/95) concerning alleged ill-treatment and lawfulness of detention.

MIKULSKI v. Poland (Nº 27914/95) concerning the length of detention on remand and the length of criminal proceedings.

KREUZ v. Poland (Nº 28249/95) concerning alleged denial of access to a court due to the level of the court fees.

HOPPE v. Germany (Nº 28422/95) concerning child access and custody.

T.P. and L.M. v. the United Kingdom (Nº 28945/95) concerning the taking of a child into care and the alleged absence of procedural safeguards.

CREDIT & INDUSTRIAL BANK v. the Czech Republic (Nº 29010/95) concerning the imposition of temporary compulsory administration on a bank.

Z. and others v. the United Kingdom (Nº 29392/95) concerning the alleged failure of a local authority to take adequate measures to protect children from ill-treatment by their parents.

KUDLA v. Poland (Nº 30210/96) concerning the adequacy of psychiatric treatment in prison, the length of detention on remand and the length of criminal proceedings).

EGMEZ v. Cyprus (Nº 30873/96) concerning alleged ill-treatment and the lawfulness of detention.

HASAN and CHAUCH v. Bulgaria (Nº 30985/96) concerning the replacement of a Muslim leader by the State.

JECIUS v. Lithuania (Nº 34578/97) concerning the length and lawfulness of detention and the alleged failure to bring promptly before a judge.

GAULIEDER v. Slovakia (Nº 36909/97) concerning the termination of the mandate of a Member of Parliament on the basis of a letter of resignation which he claims was never sent.

POLTORATSKIY v. Ukraine (Nº 38812/97) and **KUZNETSOV v. Ukraine** (Nº 39042/97) concerning the conditions in which prisoners sentenced to death are held.

APPENDIX I

Case of Riera Blume and others v. Spain - Extract from press release

Facts: The applicants, Ms Elena Riera Blume, Ms Concepción Riera Blume, Ms Maria Luz Casado Perez, Ms Daria Amelia Casado Perez, Ms Maria Teresa Sales Aige and Mr Javier Bruna Reverter, were born in 1954, 1952, 1950, 1950, 1951 and 1957 respectively and live in Valencia (Spain).

On 20 June 1984, during a preliminary judicial investigation, the homes of the applicants, who were thought to be members of a sect, were searched. The applicants were arrested and transferred to the Barcelona investigating court, where a judge decided to release them but gave oral instructions that they should be handed over to their families, to whom it should be suggested that it would be as well to have them interned in a psychiatric centre. That decision was subsequently confirmed in writing. The applicants were then transferred from the court to the premises of the Public Safety Department of the *Generalitat* (government) of Catalonia on the orders of its Director-General and, on 21 June 1984, were taken by members of the Catalan police in official vehicles to a hotel some thirty kilometres from Barcelona. There they were handed over to their families and taken to individual rooms with firmly closed windows, where they were kept under constant supervision; they were not allowed to leave the rooms for the first three days. They were subjected to a process of "deprogramming" by a psychologist and a psychiatrist. On 29 and 30 June 1984, after being informed of their rights, they were questioned by the Assistant Director-General of Public Safety in the presence of a lawyer not appointed by them and on 30 June 1984 they left the hotel. As soon as they had regained their freedom, they lodged a criminal complaint alleging, among other things, false imprisonment against the Director-General, the Assistant Director-General and a Public Safety Department official. At the end of the criminal proceedings that followed, the Barcelona *Audiencia provincial* acquitted the accused, holding that the acts complained of had been prompted by a philanthropic, legitimate and well-intentioned motive, so that the offence of false imprisonment was not made out. Appeals lodged by the prosecution and the applicants, and an *amparo* appeal by the applicants to the Constitutional Court were all dismissed.

The applicants complained of the unlawfulness of their deprivation of liberty and of the interference with their right to freedom of thought, contrary to Articles 5 and 9 of the Convention.

Law: Article 5 § 1 - The Court considered that the applicants' transfer to the hotel by the Catalan police and their subsequent confinement to the hotel for ten days had amounted in fact, on account of the restrictions placed on the applicants, to a deprivation of liberty. The Court found that there had been no legal basis for that deprivation of liberty. It was therefore necessary to consider the part played by the Catalan authorities and to determine its extent. The Court considered that the national authorities had at all times acquiesced in the applicants' loss of liberty. While it was true that it was the applicants' families and the *Pro Juventud* association that had borne the direct and immediate responsibility for the supervision of the applicants during their ten days' loss of liberty, it was equally true that without the active cooperation of the Catalan authorities the deprivation of liberty could not have taken place. As the ultimate responsibility for the matter complained of had thus lain with the authorities in question, the Court concluded that there had been a violation of Article 5 § 1 of the Convention.

Conclusion: Violation (unanimous).

Article 9 - The applicants argued that the "deprogramming" measures to which they had been subjected during their detention had infringed Article 9 of the Convention. The Court observed that the applicants' detention was at the core of the complaints under consideration. Having held that it had been arbitrary and hence unlawful for the purposes of Article 5 § 1 of the Convention, the Court did not consider it necessary to undertake a separate examination of the case under Article 9.

Article 41 - The Court noted that the applicants had submitted an aggregate claim for compensation without providing any information in support of their claims in respect of pecuniary damage. It therefore considered that they should not be awarded any compensation under that head. As to non-pecuniary damage, the Court was of the view that each of the applicants had undeniably sustained non-pecuniary damage on account of the violation found. Making its assessment on an equitable basis, it awarded ESP 250,000 to each of them under this head. The applicants and the Government had wished to leave the matter of costs and expenses to the Court's discretion. Making its assessment on an equitable basis, the Court awarded the applicants jointly the sum of ESP 500,000 for costs and expenses.

APPENDIX II

Case of Brumarescu v. Romania - Extract from press release

Facts : The case concerns an application lodged with the European Commission of Human Rights by a Romanian national, Dan Brumărescu, who was born in 1926 and lives in Bucharest. In 1950 the applicant's parents' house in Bucharest was nationalised without payment of compensation. On 9 December 1993, in proceedings brought by the applicant, the Bucharest Court of First Instance held that the nationalisation had been unlawful. As there was no appeal, the judgment became final and irreversible, since it could no longer be challenged by way of an ordinary appeal. In May 1994 the applicant regained possession of the house, whereupon he stopped paying rent on the flat he was occupying within it and began paying land tax on the house. On an unknown date the Procurator-General of Romania lodged an application to have the judgment of 9 December 1993 quashed. On 1 March 1995, the Supreme Court of Justice quashed the judgment of 9 December 1993 on the ground that the house had passed into State ownership under a legislative instrument and that the manner in which such an instrument was applied could not be reviewed by the courts, that being a matter for the executive or the legislature. Thereupon, the tax authorities informed the applicant that the house would be reclassified as State property with effect from 2 April 1996. On an unknown date the applicant lodged an application for restitution of the house under Law no. 112/1995. On 24 March 1998 the Board responsible for implementing that Law decided that ownership of the flat rented by the applicant should be returned to him and awarded him financial compensation for the rest of the house. The applicant challenged that decision in an application dismissed by Bucharest Court of First Instance on 21 April 1999. The applicant's appeal against the judgment of 21 April 1999 is currently pending in the Bucharest County Court.

The applicant complained that his right of access to a court, as secured by Article 6 § 1 of the Convention, had been violated in that the Supreme Court of Justice had held that the lower courts had no jurisdiction to deal with a claim for recovery of possession such as his. He also complained that the Supreme Court of Justice's judgment had deprived him of one of his possessions, contrary to Article 1 of Protocol No. 1 to the European Convention on Human Rights.

Law : Government's preliminary objections -

A. Whether the applicant was a "victim": The Court rejected the Government's argument that the new developments which had occurred since the admissibility decision of 22 May 1997 meant that the applicant was no longer a "victim" within the meaning of Article 34 of the Convention. It reiterated that a decision or measure favourable to an applicant was not in principle sufficient to deprive him of his status as a "victim" unless the national authorities had acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention. The Court noted that the applicant was currently in the same situation as he had been on 1 March 1995, since there had been no final decision acknowledging, at least in substance, and redressing any violation of the Convention caused by the judgment of the Supreme Court of Justice. The Court therefore considered that the applicant was still affected

by the ruling of that court and continued to be the victim of the violations of the Convention which he asserted flowed from that judgment.

B. Whether domestic remedies had been exhausted: The Court likewise rejected the Government's argument that the applicant had failed to exhaust domestic remedies in that he had not brought a fresh action for recovery of possession although it had been open to him to do so. The Court took the view that the Government, which were responsible for the quashing of a final judgment determining an action for recovery of possession, could not subsequently rely on the argument that the applicant had failed to exhaust domestic remedies by failing to bring a fresh action for recovery of possession, the outcome of which would be uncertain, regard being had to the principle of *res judicata*.

Article 6 § 1 of the Convention - The Court reiterated that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention had to be interpreted in the light of the Preamble to the Convention, which declares that part of the common heritage of the Contracting States is the rule of law, one aspect of which is the principle of legal certainty. The Court noted that at the material time the Procurator-General of Romania had had a power under Article 330 of the Code of Civil Procedure to apply for a final judgment to be quashed at any time. By allowing the application lodged under that power, the Supreme Court of Justice had set at naught an entire judicial process which had ended in a judicial decision that was "irreversible" and thus *res judicata* – and which had, moreover, been executed. In applying the provisions of Article 330 in that manner, the Supreme Court of Justice had infringed the principle of legal certainty. On the facts of the case, that action had breached the applicant's right to a fair trial under Article 6 § 1 of the Convention. The Court noted, moreover, that the *ratio* of the Supreme Court of Justice's judgment was that the courts had no jurisdiction whatsoever to decide civil disputes such as the action for recovery of possession in the instant case. It considered that such an exclusion was in itself contrary to the right of access to a tribunal guaranteed by Article 6 § 1 of the Convention, so that there had been a violation of Article 6 § 1 in that respect also.

Conclusion: Violation (unanimous).

Article 1 of Protocol No. 1 to the Convention - It was common ground in the proceedings before the Court that the judicial recognition of the applicant's title on 9 December 1993 represented a "possession" for the purposes of Article 1 of Protocol No. 1 and that the judgment of the Supreme Court of Justice had amounted to interference with the applicant's right of property as guaranteed by that Article. The Court found that the interference fell under the second sentence of the first paragraph of Article 1 of Protocol No. 1. The effect of the Supreme Court of Justice's judgment had been to deprive the applicant of the rights of ownership of the house vested in him by the final judgment in his favour at first instance. A taking of property within this second rule could be justified only if it was shown, *inter alia*, to be "in the public interest" and "subject to the conditions provided for by law". Moreover, any interference with the property had also to satisfy the requirement of proportionality. The Court observed that no justification had been offered for the situation brought about by the judgment of the Supreme Court of Justice. In particular no plausible argument had been advanced to show that the deprivation of property had been justified "in the public interest". Further, as at the date of the judgment the applicant had been deprived of ownership of the property for more than four years without the payment of compensation reflecting its true value and his efforts to recover ownership had proved unsuccessful. The Court found that in those circumstances, even assuming that the taking could be shown to serve some public interest, the requisite fair balance had been upset since the applicant had borne and continued to bear an individual and excessive burden. There had accordingly been, and continued to be, a violation of Article 1 of Protocol No. 1 to the Convention.

Conclusion: Violation (unanimous).

Article 41 of the Convention - The Court considered that the question of the application of Article 41 was not ready for decision and should therefore be reserved, regard being had to the possibility of an agreement between the respondent State and the applicant.

Judges Rozakis, Sir Nicolas Bratza and Zupančič expressed concurring opinions and these are annexed to the judgment.

APPENDIX III

Case of Zielinski and Pradal and Gonzalez and others v. France - Extract from press release

Facts: The case concerns eleven applications lodged by French nationals: on the one hand Benoît Zielinski and Patrick Pradal, who were born in 1954 and 1955 respectively, and, on the other, Jeanine Gonzalez, Martine Mary, Anita Delaquerrière, Guy Schreiber, Monique Kern, Pascal Gontier, Nicole Schreiber, Josiane Memeteau and Claude Cossuta, who were born in 1956, 1953, 1955, 1948, 1949, 1957, 1950, 1954 and 1957 respectively. The applicants live in France and work for social-security bodies in Alsace-Moselle. On 28 March 1953 the representatives of the social-security offices of the Strasbourg region signed an agreement with the regional representatives of the trade unions whereby a "special difficulties allowance" (*indemnité de difficultés particulières* – "*IDP*") was introduced. The implementation of the agreement having given rise to difficulties, legal proceedings were brought by a number of staff members of the social-security offices concerned and the applicants in their turn applied to industrial tribunals. In judgments of 2 July 1991 the Colmar industrial tribunal allowed the applications of Ms Gonzalez and others. The Colmar Health Insurance Office and the Director of Health and Social Affairs appealed. In judgments of 4 December 1991 and 21 October 1992 the Metz industrial tribunal allowed Mr Zielinski's and Mr Pradal's applications, and those judgments were upheld by the Metz Court of Appeal in judgments of 19 and 20 April 1993. The prefect and the Director of Health and Social Affairs appealed on points of law to the Court of Cassation. Concurrently, proceedings brought by other staff members of the health-insurance offices covered by the 1953 agreement gave rise to a judgment of the Court of Cassation quashing judgments of the court below and then a rehearing of the cases by the Besançon Court of Appeal, whose judgment of 13 October 1993 laid down a method of payment favourable to the plaintiffs. By means of an amendment (which became section 85) to Law no. 94-43 of 18 January 1994, Parliament endorsed the amount of the *IDP* argued for in the courts by the State's representative and the health-insurance offices, and did so with retrospective effect. The Constitutional Council ruled in a decision of 13 January 1994 that the disputed provision was constitutional. On the grounds of the terms of the new Act, the Court of Cassation quashed the judgments given in Mr Zielinski's and Mr Pradal's favour by the Metz Court of Appeal. The Colmar Court of Appeal likewise relied on the new Act when it reversed the judgments that had been given in favour of Ms Gonzalez and others.

The applicants complained that the State's intervention in a lawsuit affecting it, by means of retrospective legislation (section 85 of Law no. 94-43 of 18 January 1994), had contravened the principle of equality of arms and rendered the proceedings unfair. Except for Mr Zielinski and Mr Pradal, they also complained of the length of the proceedings. They relied on Articles 6 § 1 and 13 of the Convention.

Law: Article 6 § 1 of the Convention as to the fairness of the proceedings - The Court could not overlook the effect of the content of section 85 of the Act of 18 January 1994 (Law no. 94-43), taken together with the method and timing of its adoption. To begin with, while section 85 expressly excluded from its scope court decisions that had become final on the merits, it had settled once and for all the terms of the dispute before the ordinary courts and had done so retrospectively and "notwithstanding any provisions to the contrary in collective or individual agreements in force on the date of publication of [the] Act". Secondly, section 85 had been part of an Act on "public health and social welfare". It was only in the course of the parliamentary debates and shortly after the delivery on 13 October 1993 of the Besançon Court of Appeal's judgment that an amendment on the *IDP* had been tabled. Lastly, section 85 had quite simply endorsed the position taken up by the State in pending proceedings. The Court noted that a majority of earlier decisions by the tribunals of fact had been favourable to the applicants. Admittedly, whereas the Metz Court of Appeal had found wholly in favour of the employees of the social-security offices concerned, the Colmar Court of Appeal, unlike the Colmar industrial tribunal, had dismissed the claims. However, the

special role of the Besançon Court of Appeal, the court which had had to rehear the cases after the Court of Cassation's judgments of 22 April 1992, had to be emphasised. The Besançon Court of Appeal had been designated to resolve the dispute, notably the issues of "fact", within the legal framework previously laid down by the Court of Cassation itself. Keeping strictly within the compass of the issues as laid down in the Court of Cassation's judgments of 22 April 1992, it had found that no practice had arisen and had rejected the method contended for by the State. It had set a new reference index and, allowing a claim in the alternative by certain employees of the social-security offices concerned, had held that the *IDP* had to be calculated on the basis of 6.1055% of the minimum wage, that being the percentage corresponding to the amount of the *IDP* as calculated on the basis of twelve points at 1 January 1953. Such a decision, which had clarified the issues while remaining within the limits laid down by the Court of Cassation on 22 April 1992, had been favourable to the applicants, since it had had the effect of more than doubling the amount of the allowance actually paid by the social-security offices and had conferred a right to back payment of the difference on allowances paid over several years. The Court could not discern in the facts of the case why the conflicting court decisions had required legislative intervention while proceedings were pending. It considered that such divergences were an inherent consequence of any judicial system which, like the French one, was based on a network of trial and appeal courts with authority over the area of their territorial jurisdiction. As the role of the Court of Cassation was precisely to resolve conflicts between decisions of the courts below, it was, moreover, impossible to conjecture what its decision in the face of these conflicting decisions would have been but for the intervention of the Act in issue. In the Court's opinion, the circumstances of the case did not make it possible to assert that the intervention of the legislature had been foreseeable, any more than they could support the argument that an original intention had been frustrated, seeing that the dispute had been over the application of an agreement that had been discussed and adopted under a prescribed procedure by the employers and trade unions concerned. The Court considered that the financial risk adverted to by the Government and expressly noted by the Constitutional Council in the reasons it gave for its decision could not in itself warrant the legislature's substituting itself both for the parties to the collective agreement and for the courts in order to settle the dispute. The adoption of section 85 had in reality determined the substance of the dispute. The application of it by the domestic courts, in particular the Court of Cassation in its judgments of 2 March 1995, had made it pointless to continue the proceedings. In view of the foregoing, the Court also considered that no distinction could validly be made between the applicants according as they had or had not obtained a final decision on the merits. As to the Government's argument that the dispute had not been one between the applicants and the State, the finding was inescapable that the intervention of the legislature in the instant case had taken place at a time when legal proceedings to which the State was a party had been pending. There had consequently been a violation of Article 6 § 1 in respect of the right to a fair trial.

Conclusion: Violation (unanimous).

Article 6 § 1 of the Convention as to the length of the proceedings - The Court considered that the subject matter of the case before the domestic courts was undoubtedly complex, as had been confirmed by the finding in the Court of Cassation's judgments of 22 April 1992 that the reference index had ceased to exist. It could find nothing to suggest that the applicants had been responsible for prolonging the proceedings. In particular, the date on which the applicants' grounds of appeal had been filed had had no effect on the Colmar Court of Appeal's setting down of the case for hearing. The Court found that the proceedings had lasted three years, eight months and eight days in the Colmar Court of Appeal. Although the appeals had been lodged on 10 September 1991, the Court of Appeal had not set a date for the hearing until 12 July 1994, almost three years later. The Court considered that no persuasive explanation of that delay had been put forward. In particular, it noted that the Colmar Court of Appeal had already ruled on the issue of the *IDP* in its judgments of 23 September 1993, more than two years after the appeals lodged in the instant case. Furthermore, the Colmar Court of Appeal's judgment had been delivered on 18 May 1995, almost a year and a half after the passing of the Act of 18 January 1994. Having regard to all the evidence, the Court

considered that the "reasonable time" within which Article 6 § 1 required a case to be heard had been exceeded. There had accordingly been a violation of Article 6 § 1 as regards of the length of the proceedings.
Conclusion: Violation (unanimous).
Article 13 of the Convention - Having regard to the finding in the preceding paragraph, the Court held that it was unnecessary to rule on the complaint in question.
Article 41 of the Convention - The Court noted that in the instant case an award of just satisfaction could only be based on the fact that the applicant had not had the benefit of the guarantees of Article 6, including the one regarding the length of the proceedings in respect of Ms Gonzalez, Ms Mary, Ms Delaquerrière, Mr Schreiber, Ms Kern, Mr Gontier, Ms Schreiber, Ms Memeteau and Mr Cossuta. As to the fairness of the proceedings, whilst the Court could not speculate as to the outcome of the trial had the position been otherwise, it did not find it unreasonable to regard the applicants as having suffered a loss of real opportunities. To that had to be added non-pecuniary damage, which the findings of violations in this judgment did not suffice to remedy, except in the case of Mr Zielinski and Mr Pradal, who had made no claim under that head. Making its assessment on an equitable basis as required by Article 41, the Court awarded FRF 47,000 each to Mr Zielinski and Mr Pradal and FRF 80,000 to each of the other nine applicants, in respect of all heads of damage taken together. The Court noted that Mr Zielinski and Mr Pradal had been represented by the same lawyer throughout the proceedings before the Commission and the Court, the other nine applicants having used the services of the same lawyer only after the Grand Chamber had ordered the joinder of the applications. Consequently, and on the basis of the information in its possession, the Court, making its assessment on an equitable basis, awarded Mr Zielinski and Mr Pradal FRF 30,000 each in respect of the proceedings before the Commission and the Court and each of the other applicants FRF 4,000.
Judge Bacquet expressed a concurring opinion, which is annexed to the judgment.

APPENDIX IV

Case of Escoubet v. Belgium - Extract from press release

Facts: The applicant, Alain Escoubet, a French national, was born in 1948 and lives in Brussels (Belgium). At 6.30 p.m. on 16 June 1994 the applicant was involved in a road accident. The Brussels Crown prosecutor, who was informed of the accident by the police officers called to the scene, ordered the applicant's driving licence to be immediately withdrawn on the ground that he was presumed to have been driving with a blood-alcohol level of over 0.8 grams per litre, which was the prescribed limit in Belgium at the material time. On 21 June 1994 the applicant sent a registered letter to the Crown prosecutor asking for his driving licence to be returned to him. In a letter of 23 June 1994 he was invited to collect it, which he did.
The applicant complained that, under Belgian law, no appeal to a judicial body lay against the immediate withdrawal of a driving licence ordered by the Crown prosecutor. He relied on Article 6 § 1 and Article 13 of the Convention.
Law: Applicability of Article 6 - The first issue before the Court was whether Article 6 of the Convention applied to the present case. It therefore had to determine whether a "criminal charge" or a "civil" right had been in issue.In ascertaining whether there was a "criminal charge", the Court had regard to three criteria: the legal classification of the measure in question in national law, the very nature of the measure, and the nature and degree of severity of the "penalty".
As regards the classification in domestic law of the immediate withdrawal of a driving licence, that measure was not, according to the Court of Cassation, a measure imposed under the criminal law, since it was a "preventive measure designed to take a dangerous driver off the roads for a specific period of time". Classification in domestic law was not, however,

decisive for the purposes of the Convention, having regard to the autonomous and substantive meaning to be given to the term "criminal charge".
As regards the nature of the measure, the Court observed that section 55 of the consolidated Acts of 16 March 1968 did not presuppose any investigation or finding of guilt and that its application was totally independent of any criminal proceedings which might subsequently be brought. The immediate withdrawal of a driving licence was a precautionary measure; the fact that it was an emergency measure justified its being applied immediately and there was nothing to indicate that its purpose was punitive. Withdrawal of a driving licence could be distinguished from disqualification from driving, a measure ordered by the criminal courts in the context of, and after the outcome of, a criminal prosecution.
With regard to the degree of severity, the Court pointed out that the effect of immediate withdrawal of a driving licence was limited in time, since it could not be withheld for more than fifteen days, other than in special circumstances. The impact of such a measure, in scope and in length, was not sufficiently substantial to allow it to be classified as a "criminal" penalty. In the instant case the Court observed that the withdrawal of the applicant's driving licence had not caused him significant prejudice, since he had been able to get it back six days after he had handed it over to the police and two days after he had requested its return.
Having regard to the foregoing, the Court concluded that Article 6 was not applicable under its criminal head. Moreover, the applicant had not submitted any evidence in support of his argument that a "civil" right had been at issue in the present case.
Conclusion: No violation (14 votes to 3).
Article 13 - At the end of his memorial filed with the Court, the applicant had asked the Court to "hold that there [had] been a violation of Article 6 of the Convention or, in the alternative, a violation of Article 13". Neither in his memorial, nor in his oral submissions to the Court, had the applicant made any other reference to a complaint based on Article 13. Under the circumstances, and since no separate issue appeared to arise under that provision, the Court could see no reason to examine it.
Conclusion: Not necessary to examine (unanimous).
Judges Tulkens, Fischbach and Casadevall expressed a dissenting opinion and this is annexed to the judgment.

APPENDIX V

Case of Wille v. Liechtenstein - Extract from press release

Facts: The applicant, Herbert Wille, a Liechtenstein national, was born in 1944 and lives in Balzers (Liechtenstein). In 1992 a controversy arose between His Serene Highness Prince Hans-Adam II of Liechtenstein (hereafter "the Prince") and the Liechtenstein Government on political competences in connection with the plebiscite on the question of Liechtenstein's accession to the European Economic Area. At the relevant time, the applicant was a member of the Liechtenstein Government. Following an argument between the Prince and members of the Government at a meeting on 28 October 1992, the matter was settled on the basis of a common declaration by the Prince, the Diet and the Government. In May 1993 the applicant did not stand for election of the new Diet. In December 1993 he was appointed President of the Liechtenstein Administrative Court (*Verwaltungsbeschwerdeinstanz*) for a fixed term of office. On 16 February 1995, in the context of a series of lectures on questions of constitutional jurisdiction and fundamental rights, the applicant gave a public lecture at the Liechtenstein-Institut, a research institute, on the "Nature and Functions of the Liechtenstein Constitutional Court". In the course of the lecture, the applicant expressed the view that the Constitutional Court was competent to decide on the "interpretation of the Constitution in case of disagreement between the Prince (Government) And the Diet". This lecture was reported in the local press. On 27 February 1995 the Prince addressed a letter to the applicant concerning the above lecture. The Prince disagreed with the applicant's statement on the

competence of the Constitutional Court and also noted an earlier political controversy. He continued that he had reason to believe that the applicant did not feel bound by the Constitution and expressed opinions which clearly infringed the Constitution. The applicant was, therefore, disqualified from holding a public office. The Prince wished to inform him in good time that he would not appoint him to public office, should he be proposed by the Diet or any other body. In his reply of 20 March 1995, the applicant explained his legal opinion and complained that the Prince's announcement interfered with his right to freedom of expression and to freedom to express academic opinions. In a further letter to the applicant dated 4 April 1995, the Prince replied that he had attempted to avoid a public discussion in informing the applicant, in a personal letter, about his decision as early as possible. In April 1997 the applicant was proposed by the Liechtenstein Diet for a further term of office as President of the Administrative Court. However, the Prince did not appoint him.

The applicant complains that the Prince's letter of 27 February 1995 informing him that he would not appoint him to public office, should he be proposed by the Diet or any other body, violated his right to freedom of expression, as guaranteed by Article 10 of the Convention. He further complains under Articles 6 and 13 of the Convention that he had no remedy to defend his reputation and to seek protection of his personal rights.

Law: Article 10 - The Court found that the disputed measure, the Prince's letter of 27 February 1995, amounted to an interference with the applicant's exercise of his right to freedom of expression. It considered that recruitment to the civil service, a right not secured in the Convention, did not lie at the heart of the issue submitted to the Court. Even though the Prince raised the matter of a possible re-appointment of the applicant as President of the Administrative Court in the future, his communications to the applicant essentially consisted in a reprimand to the applicant for the opinions he previously had expressed. In this respect the Court noted that the measure complained of occurred in the middle of the applicant's term of office as President of the Administrative Court and that it was unconnected with any concrete recruitment procedures involving an appraisal of personal qualifications. From the terms of the letter of 27 February 1995 it appeared that the Prince had come to a decision regarding his future conduct towards the applicant, and one which was connected to the exercise of one of his sovereign powers, i.e. his power to appoint State officials. Moreover, the said letter was expressly addressed to the applicant as the President of the Administrative Court, though sent to his home address. The Court did not accept the Government's argument that the letters of the Prince were private correspondence not constituting an act of state. The Court recalled that such an interference gives rise to a breach of Article 10 unless it can be shown that it was "prescribed by law", pursued one or more legitimate aim or aims as defined by paragraph 2 and was "necessary in a democratic society" to attain them.

Starting from the assumption that the interference was prescribed by law and pursued a legitimate aim, i.e. to maintain public order and promote civil stability, and to preserve judicial independence and impartiality, as claimed by the Government, the Court considered that it was, however, not "necessary in a democratic society". In assessing whether the measure taken by the Prince as a reaction to the statement made by the applicant corresponded to a "pressing social need" and was "proportionate to the legitimate aim pursued", the Court considered the impugned statement in the light of the case as a whole and attached particular importance to the office held by the applicant, the applicant's statement as well as the context in which it was made and the reaction thereto. The Court observed that at the time of the events the applicant was a high-ranking judge. It considered that, whenever the right of freedom of expression of persons in such a position was at issue, the "duties and responsibilities" referred to in Article 10 § 2 assume a special significance since it can be expected of public officials serving in the judiciary that they should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of judiciary are likely to be called in question. Nevertheless the Court also found that an interference with the freedom of expression of a judge in a position such as the applicant's called for close scrutiny on the part of the Court. The Court observed that the applicant's lecture on 16 February 1995 formed part of a series of academic lectures on questions of constitutional jurisdiction and fundamental rights. The applicant's lecture, since it dealt with

matters of constitutional law and more specifically with the issue of whether one of the sovereigns of the State was subject to the jurisdiction of a constitutional court, inevitably had political implications. However, in the Court's view, this element alone should not have prevented the applicant from making any statement on this matter. The opinion expressed by the applicant could not be regarded as an untenable proposition since it was shared by a considerable number of persons in Liechtenstein. Moreover, there was no evidence to conclude that the applicant's lecture contained any remarks on pending cases, severe criticism of persons or public institutions or insults to high officials or the Prince. The Court found that the Prince's reaction, as expressed in his letter of 27 February 1995, was based on general inferences drawn from the applicant's previous conduct in his position as a member of Government, in particular on the occasion of the political controversy in 1992, and his brief statement, as reported in the press, on a particular, though controversial, constitutional issue of judicial competence. No reference was made to any incident suggesting that the applicant's view, as expressed at the lecture in question, had a bearing on his performance as President of the Administrative Court or on any other pending or imminent proceedings. The Court concluded that the interference complained of was not "necessary in a democratic society" and held that there had been a violation of Article 10 of the Convention.
Conclusion: Violation (16 votes to 1).
Article 13 - The applicant, relying on Article 13 of the Convention, also complained that he did not have an effective judicial or other remedy enabling him to challenge the action taken by the Prince with regard to the opinion expressed on the occasion of his lecture. The Court found that Government had failed to show that there exists any precedent in the Constitutional Court's case-law, since its establishment in 1925, that that court has ever accepted for adjudication a complaint brought against the Prince. The Government have therefore failed to show that such a remedy would have been effective. It followed that the applicant had also been the victim of a violation of Article 13.
Conclusion: Violation (16 votes to 1).
Article 6 and Article 14 in conjunction with Article 10 - Before the Commission the applicant had also relied on Article 6 and Article 14, taken in conjunction with Article 10. However, before the Court the applicant did not reiterate these complaints and the Court did not find it necessary to deal with the matter of its own motion.
Article 41 - The Court considered that the applicant may be taken to have suffered distress on account of the facts of the case and, on an equitable basis, awarded compensation for non-pecuniary damage in the amount of 10,000 CHF. It rejected the remainder of the applicant's claim for compensation. Furthermore the Court awarded 91,014.05 CHF in respect of costs and expenses relating to his representation before the Convention institutions.
Judges Caflisch, Cabral Barreto, Zupančič and Hedigan expressed separate opinions and these are annexed to the judgment.

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

Convention

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

Protocol No. 1

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

Protocol No. 2

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

Protocol No. 6

Article 1	:	Abolition of the death penalty

Protocol No. 7

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