CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 23
on the case-law of the Court
October 2000

Statistical information[1]

		October	2000
I. Judgments delivered			
Grand Chamber		5	24
Chamber I		20	63
Chamber II		7	209
Chamber III		21	144
Chamber IV		19	74
Total		**72**	**514**
II. Applications declared admissible			
Section I		25(27)	180(330)
Section II		6	169
Section III		10(13)	175(200)
Section IV		9	124(130)
Total		**50(53)**	**648(829)**
III. Applications declared inadmissible			
Section I	- Chamber	10	84(98)
	- Committee	210	952
Section II	- Chamber	6	75(81)
	- Committee	189	1120
Section III	- Chamber	10	98(110)
	- Committee	253	1305(1364)
Section IV	- Chamber	14	81(85)
	- Committee	305	1690
Total		**997**	**5405(5500)**
IV. Applications struck off			
Section I	- Chamber	3	8
	- Committee	7	16
Section II	- Chamber	0	34
	- Committee	0	10
Section III	- Chamber	2	14(36)
	- Committee	4	27
Section IV	- Chamber	2	15
	- Committee	4	27
Total		**22**	**151(173)**
Total number of decisions[2]		**1070(1073)**	**6205(6503)**
V. Applications communicated			
Section I		50	266(328)
Section II		17	271(281)
Section III		20(21)	300(306)
Section IV		19	236(237)
Total number of applications communicated		**106(107)**	**1073(1152)**

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

Judgments delivered in October 2000					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	4	0	0	1[1]	5
Section I	17(18)	3	0	0	20(21)
Section II	7	0	0	0	7
Section III	17(19)	4(9)	0	0	21(28)
Section IV	16(17)	2	1	0	19(20)
Total	**61(65)**	**9(14)**	**1**	**1**	**72(81)**

Judgments delivered January - October 2000					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	21(22)	1	0	2(3)[1]	24(26)
Section I	49(53)	10	2	2[2]	63(67)
Section II	56(60)	153	0	0	209(213)
Section III	117(125)	21(26)	4	2(4)[1]	144(159)
Section IV	54(64)	15(16)	4	1(10)[1]	74(94)
Total	**297(324)**[3]	**200(206)**	**10**	**7(19)**	**514(559)**

[1] Just satisfaction.
[2] One revision request and one lack of jurisdiction.
[3] Of the 276 judgments on merits delivered by Sections, 65 were final judgments.

ARTICLE 2

LIFE
Shooting by unidenfied perpetrator and effectiveness of investigation: *violation*.

AKKOÇ - Turkey (N° 22947/93 and N° 22948/93)
Judgment 10.10.2000 [Section I]

Facts: A disciplinary penalty of one year's suspension of promotion was imposed on the applicant, a teacher, in 1993 after she had made a statement to a newspaper in her capacity as head of the local branch of a teachers' union. She had made allegations of verbal abuse, harassment and assaults by the police during a meeting. The penalty was ultimately annulled in 1999.
The applicant's husband, of Kurdish origin and also involved in the union, was shot dead by an unknown assailant in 1993. The applicant had received threats both before and after the incident and her husband had been detained on several occasions. The prosecutor issued an indictment in respect of a student alleged to be a member of Hizbollah. The latter claimed to have signed a confession under duress and he was later acquitted due to lack of evidence. The applicant was also detained on several occasions and claims that she was tortured. A decision not to prosecute two police officers was issued by the prosecutor.
The European Commission of Human Rights took evidence from witnesses and concluded that the applicant's testimony was credible, whereas that of the police officers was evasive and unreliable.
Law: Government's preliminary objections (non-exhaustion as to the complaints under Articles 2, 3 and 10) – The Government were estopped from raising these objections, since the Commission had declared this part of the application admissible without the Government having submitted observations, despite the extension of the time-limit.
Article 10 – The applicant used the available means of redress in respect of the disciplinary penalty and the procedure cannot be characterised as an extraordinary one. Although the proceedings took six years, this did not in the circumstances deprive them of their effectiveness in providing redress, and while the applicant did not receive any compensation she has not specified any concrete financial loss resulting from the decision. Consequently, she can no longer claim to be a victim of a violation.
Conclusion: no violation (unanimously).
Article 2 (positive obligation to protect life) – It has not been established beyond a reasonable doubt that any State agent or person acting on behalf of the State authorities was involved in the killing. However, the victim was of Kurdish origin and involved in the activities of a union regarded as unlawful and he had been detained and received threats; moreover, a significant number of "unknown perpetrator killings" of suspected PKK sympathisers occurred around that time, so that the applicant was at particular risk and the risk was real and immediate. The authorities must be regarded as having been aware of the risk and of the possibility that it derived from persons acting with the knowledge or acquiescence of elements within the security forces, this being born out by certain reports which strongly indicated that contra-guerrilla groups were active. The Court has already found defects in the functioning of the criminal law in south-east Turkey with regard to acts involving the security forces (the role of administrative councils, the failure of prosecutors to investigate and the lack of independence of the State Security Courts) and these defects undermine the effectiveness of the system of criminal justice to the extent that the legal protection which the victim should have had was removed. A wide range of preventive measures would have been available to the authorities to provide protection but they failed to take reasonable measures.
Conclusion: violation (6 votes to 1).

Article 2 (effectiveness of investigation) – Having regard to the limited scope and short duration of the investigation carried out into the killing, the authorities failed to carry out an effective investigation. In particular, the person charged with the murder was not charged with the murder of a second victim in the same incident, giving the impression that the charges were made arbitrarily.
Conclusion: violation (unanimously).
Article 13 – Although it has not been shown beyond a reasonable doubt that there was any State agent involved in the killing, the applicant may be regarded as having an arguable claim, since it is undisputed that her husband was the victim of an unlawful killing. For the reasons given in relation to Article 2, no effective criminal investigation can be regarded as having been conducted for the purposes of Article 13, the requirements of which are broader.
Conclusion: violation (6 votes to 1).
Article 3 – Accepting the facts as established by the Commission (that the applicant had been subjected to electric shocks, hot and cold water treatment, blows to the head, psychological pressure), the Court concluded that she had been subjected to very serious and cruel suffering which could be characterised as torture. It endorsed the view of the European Committee for the Prevention of Torture that proper medical examinations are an essential safeguard against ill-treatment of persons in custody and emphasised that such examinations must be carried out by a properly qualified doctor, without any police officer being present; the report must include the detail of any injuries found as well as the patient's explanations as to how they occurred and the doctor's opinion as to whether the injuries are consistent with those explanations.
Conclusion: violation (unanimously).
Article 34 – The Court accepted the Commission's finding that during her detention the applicant had been questioned about her application. Having regard to the context in which this took place, and in particular the fact that she was the victim of torture during the interrogations, the Court found that she must have felt intimidated in respect of her application to the Commission. This constituted undue interference with her petition.
Conclusion: failure to comply with obligations (unanimously).
Alleged practice infringing Articles 2, 3 and 13 – Having regard to its above conclusions, the Court did not find it necessary to determine whether the failings identified in the case were part of a practice adopted by the authorities.
Article 41 – The Court considered that there was a causal link between the violation found in respect of the failure to protect the applicant's husband's life and the loss of his financial support by his widow and children and awarded £35,000 (GBP) in that respect. It awarded £15,000 in respect of the non-pecuniary damage suffered by the applicant's husband, to be held by her as surviving spouse, and £25,000 in respect of the non-pecuniary damage suffered by the applicant herself. It also made an award in respect of costs.

ARTICLE 3

TORTURE
Torture in custody: *violation*.

AKKOÇ - Turkey (N° 22947/93 and N° 22948/93)
Judgment 10.10.2000 [Section I]
(See Article 2, above).

INHUMAN TREATMENT
Assault on prisoners: *violation*.

SATIK and others - Turkey (N° 31866/96)
*Judgment 10.10.2000 [Section I]

Facts: The ten applicants and twelve other prisoners objected when prison officers attempted to search them while they were waiting to be transferred to the State Security Court for trial. They claim that the prison authorities then enlisted the help of the gendarmes who were to accompany them on the trip and that 50 gendarmes and 30 prison staff assaulted them with truncheons and planks, causing injuries. The Government maintain that the prisoners linked arms to protest against the proposed search and fell down the stairs, injuring themselves on the walls, stairs and railings. The public prosecutor was informed of the incident and questioned the victims and prison staff. Medical examinations were carried out and reports mentioned body trauma resulting from battery. However, the prosecutor decided not to prosecute the prison staff and declined jurisdiction in respect of the gendarmes in favour of the Administrative Council in April 1996. The file then went missing. After an inquiry in April 2000 the Administrative Council decided that no investigation should be carried out in respect of the gendarmes responsible for the transfer of the prisoners.
Law: Article 3 – The principle that it is incumbent on the Government to provide a plausible explanation for injuries sustained by someone who was in good health when detained applies equally in the prison context. In this case, the Government's explanation sits ill with the nature of the injuries recorded in the medical reports. Moreover, the applicants were unequivocal in their account and the Government have not suggested that the gendarmes' intervention was considered necessary to quell a riot or a planned attack. When prison authorities have recourse to outside help to deal with an incident in prison, there should be some form of independent monitoring in order to ensure accountability for the force used. The Administrative Council decided not to authorise a criminal investigation more than four years after receiving the case file and during that time the file had disappeared: the authorities' failure to secure the integrity of important case documents must be considered a most serious defect in the investigative process. The absence of the case file must cast doubt on the merits of the decision finally reached and indeed the decision to entrust the Administrative Council with the investigation must call into question the possibility of making any independent finding as to what happened. In the absence of a plausible explanation on the part of the authorities for the injuries sustained by the applicants, it must be concluded that they were beaten by State agents as alleged. This treatment amounts to a violation of Article 3. Furthermore, the Government's preliminary objection (non-exhaustion) cannot be sustained: the inadequacy of the investigation is in itself inconsistent with the authorities' duty under Article 3 to carry out an investigation into an arguable claim that an individual has been seriously ill-treated at the hands of State agents.
Conclusion: violation (unanimously).
Article 2 – In the light of the above conclusion, the Court considered that it was not necessary to examine this complaint.

Conclusion: not necessary to examine (unanimously).
Article 41 – The Court awarded each of the applicants £5,000 (GBP) in respect of non-pecuniary damage. It made a global award in respect of costs.

INHUMAN TREATMENT
Alleged ill-treatment by the police: *friendly settlement*.

KARATAŞ and BOĞA - Turkey (N° 24669/94)
Judgment 17.10.2000 [Section I]

The applicants, both journalists, claimed that they had been beaten by police when arrested during a funeral on which they were reporting and also later while in custody. The public prosecutor concluded that the force used had been lawful.
The parties have reached a friendly settlement providing for payment to each of the applicants of the equivalent in Turkish liras of 85,000 French francs (FRF), including reimbursement of 10,000 francs for costs and fees.

INHUMAN TREATMENT
Alleged failure to provide adequate medical care for detainee: *no violation*.

KUDŁA - Poland (N° 30210/96)
Judgment 26.10.2000 [Grand Chamber]
(See Article 13, below).

ARTICLE 5

Article 5(1)

LAWFUL DETENTION
Transfer from place of detention on remand to place of compulsory residence 6 days after being ordered: *admissible.*

MANCINI - Italy (Nº 44955/98)
Decision 12.10.2000 [Section II]

Both applicants and two other people were arrested following an armed robbery. The goods that had been stolen were found in a shop owned by the applicants' company. The investigating judge placed the applicants under house arrest, from which they were released in December 1996. Suspicion again fell on them after two further armed robberies and they were detained pending trial in December 1997 by order of the investigating judge. They appealed against the order. On 7 January 1998 the division of the relevant court dealing with applications for review of preventive measures ordered their release from pre-trial detention and placed them under house arrest instead, on the ground that the risk of their committing a similar offence was not high enough to justify their detention. However, they were not transferred from the prison where they were being held to their homes until 13 January 1998 because no police officers were available.
Admissible under Article 5(1).

Article 5(1)(c)

LAWFUL DETENTION
Absence of legal basis for prolongation of detention on remand: *violation*.

GRAUSLYS - Lithuania (N° 36743/97)
*Judgment 10.10.2000 [Section III]

Facts: The applicant was arrested in March 1996 and his detention on remand was authorised by a prosecutor the following day and subsequently extended on several occasions. The last extension was ordered by the Regional Court until 9 October 1996. The investigation ended on 27 September and the applicant's co-accused had access to the file from then until 7 November; the applicant had access to the file from 3 to 31 October. He applied for bail on 30 October, complaining that his detention after 9 October was unlawful. The prosecutor replied that there were no grounds to vary the detention on remand and referred to the fact that the accused had had access to the file until 7 November and that the case had been transmitted for confirmation of the bill of indictment. At the relevant time, periods during which the accused had access to the file did not count as detention on remand. The applicant was committed for trial on 5 December 1996, when the District Court judge decided that the "remand shall remain unchanged". The applicant's subsequent application for bail was dismissed and the detention was extended for a further three months in January 1997; no mention was made of his allegations of unlawful detention. He lodged appeals against the various decisions and the Regional Court ordered his release in February 1997. It gave no reasons and did not refer to the allegations of unlawful detention. At the time, no appeal against decisions ordering detention on remand was possible. No first instance judgment on the merits has been given yet.
Law: Article 5(1) (9 October to 5 December) – The Court found in the case of Jėčius v. Lithuania (judgment of 31 July 2000) that neither access to the case file under the former provisions of the Code of Criminal Procedure nor the sole fact that the case had been transmitted to the court constituted a "lawful" basis for detention on remand under Article 5 of the Convention and that they could not prolong or replace the valid detention order required by domestic law. In the present case, no order was made by a court authorising the applicant's detention between 9 October and 5 December 1996 and there was no other lawful basis for his detention.
Conclusion: violation (unanimously).
Article 5(1) (from 5 December) – While in its decision of 5 December 1996 the District Court did not say that it "ordered" a new remand measure and did not specify which type of remand would remain unchanged, its meaning – that the applicant should remain in detention – must have been clear to him, given the context. The domestic court does not appear to have acted in bad faith or failed to apply the relevant domestic law correctly and it has not been established that the detention order was invalid in domestic law.
Conclusion: no violation (unanimously).
Article 5(3) – In view of the terms of Lithuania's reservation, there was no obligation to bring the applicant promptly before a judge or other officer during the initial period of the his detention, from 25 March to 21 June 1996. Moreover, during the subsequent period of detention no new obligation arose to bring the applicant before a judge or other officer (cf. the above-mentioned Jėčius judgment).
Conclusion: no violation (unanimously).
Article 5(4) – The decisions of the domestic courts did not include any reference to the applicant's numerous appeals concerning the unlawfulness of his detention after 9 October 1996. Even in its decision to release the applicant, the Regional Court refused to examine his allegations because of the bar then in force under domestic law. Moreover, it did not give any reasons for ordering the applicant's release and the release order could thus be interpreted as an acknowledgement that the lawfulness of the applicant's remand was open to question. However, this did not constitute an adequate judicial response for the purposes of Article 5(4).

Conclusion: violation (unanimously).
Article 6(1) (length of proceedings) – The proceedings have lasted five years and are still pending. They are complex, but the authorities have not shown diligence and no explanation has been provided as to what procedural steps have been taken since June 1998 to warrant a further two years.
Conclusion: violation (unanimously).
Article 41 – The Court considered that there was no causal link between the violations and the pecuniary damage claimed by the applicant. It awarded him 40,000 litai (LTL) in respect of non-pecuniary damage and also made an award in respect of costs.

LAWFUL DETENTION
Lack of precision in decision prolonging unlawful detention on remand: *no violation*.

GRAUSLYS - Lithuania (N° 36743/97)
*Judgment 10.10.2000 [Section III]
(See above).

REASONABLE SUSPICION
Detention in respect of acts allegedly not constituting criminal offence: *no violation*.

WŁOCH - Poland (N° 27785/95)
*Judgment 19.10.2000 [Section IV]
(See Article 5(4), below).

Article 5(1)(d)

MINORS
Minor suffering from mental disorder kept in secure accommodation until reaching age of majority: *inadmissible*.

KONIARSKA - United Kingdom (N° 33670/96)
Decision 12.10.2000 [Section II]

In March 1995, the applicant, then aged 17, was convicted of common assault, criminal damage and affray. In accordance with the Mental Act 1983, an interim hospital order was issued and the applicant was transferred to hospital to be examined. While a consultant psychiatrist established that she suffered from a psychopathic disorder, her solicitor's own psychiatrist reached the opposite conclusion. In August 1995, the applicant was discharged from hospital. Since 1994, she had been kept under a care order by the local authority, which exercised parental rights over her. In November 1995, the applicant was placed in secure accommodation until February 1996 at the local authority's request, since it was considered that she was likely to injure herself or others. She was sent to an institution specialised in the handling of seriously disturbed children. She attended classes there and took part in self-assessment programmes. Before the expiry of the order, an order prolonging her placement in secure accommodation until the age of majority was made by at the request of the local authority.
Inadmissible under Article 5(1)(d)[and (e)]: The applicant was diagnosed as suffering from a psychopathic disorder and it was established that she represented a threat to herself as well as to others. Her detention being covered by Article 5(1)(d), it was no longer relevant to determine whether it was encompassed by Article 5(1)(e). The former present provision

authorises the detention of minors for the purpose of educational supervision. The applicant having been a minor throughout the whole period in issue, it had to be determined whether her detention served the purpose of educational supervision. The detention orders were made in the context of a long history of effort to ensure the best up-bringing for the applicant. The care order she was subject to and the application for a secure accommodation order were the local authorities' way of keeping her in safe surroundings which appeared necessary given her mental condition. As regards the detention of minors, educational supervision should not be equated rigidly with notions of classroom teaching. In the context of a young person in the local authority care, educational supervision must embrace many aspects of the exercise by the local authorities of parental rights for the benefit and protection of the person concerned. The court orders in the present case constituted part of the educational supervision of the applicant. The institution where she was sent was a specialised residential facility for seriously disturbed children. She attended classes and took part in life skills and social skills programmes. Overall, it could be considered that her detention was for the purpose of educational supervision: manifestly ill-founded.

Article 5(1)(e)

PREVENTION OF SPREADING OF INFECTIOUS DISEASES
Compulsory isolation in hospital of person with HIV: *communicated*.

E.E. - Sweden (N° 56529/00)
[Section I]

The applicant is HIV positive. It was established that he had transmitted the virus to a 15-year old boy and his compulsory isolation in a hospital was ordered pursuant to the Infectious Diseases Act, on the ground that he had failed to comply with measures preventing the spread of the virus. His compulsory isolation was prolonged every six months by court orders, against which he unsuccessfully appealed. He absconded from the hospital several times.
Communicated under Article 5(1).

PERSONS OF UNSOUND MIND
Absence of legal basis for detention in psychiatric hospital and failure to obtain medical evidence of mental illness: *violation*.

VARBANOV - Bulgaria (N° 31365/96)
Judgment 5.10.2000 [Section IV]

Facts: Following complaints about the applicant's threatening behaviour, the public prosecutor ordered the police to investigate. The police reported that the applicant appeared to have mental problems and was likely to carry out his threats. The applicant did not have a history of mental illness and obtained a certificate confirming that he was mentally healthy. The prosecutor continued his inquiry and the applicant was apparently invited on two occasions in 1994 to undergo psychiatric examination. In January 1995 a prosecutor ordered that the applicant be taken by force to a psychiatric hospital in order to undergo examination for 20 days. This was carried out by the police the following August. On 15 September the applicant was transferred to a general hospital, suffering from pneumonia. He was told not to leave his room and at night was tied to the bed. This lasted until 24 September. On 16 October he was discharged from hospital. According to the psychiatrist who had examined him, no psychiatric treatment was necessary. The applicant's complaints about his detention were rejected by the City Prosecutor's Office and the Chief Public Prosecutor's Office. A subsequent request for an order committing the applicant to psychiatric hospital was rejected by the District Court.
Law: The Court accepted the facts as established by the Commission, finding that the criticisms made by the applicant did not raise any matter of substance which might warrant the Court's exercising its own powers of verifying the facts. It also rejected the Government's preliminary objection that there had been an abuse of the right of petition: while the use of offensive language in proceedings before the Court is undoubtedly inappropriate, an application may only be rejected as abusive, except in extraordinary cases, if it was knowingly based on untrue facts. However, in this case the applicant's complaints were based on real facts, some of which are undisputed by the Government.
Article 5(1)(e) – No deprivation of liberty of a person considered to be of unsound mind can be in conformity with this provision if ordered without obtaining a medical opinion. The particular form and procedure may vary, depending on the circumstances: in urgent cases, an opinion may have to be obtained immediately after arrest, but in all other cases there should be prior consultation. Where no other possibility exists, for instance due to a refusal to undergo examination, there must be at least an assessment by a medical expert on the basis of the file. Furthermore, the medical assessment must be based on the actual state of mental health of the person concerned and not solely on past events. In the present case, the applicant was detained without consultation of any medical expert and, while the aim was to have him examined, prior appraisal by a psychiatrist, at least on the basis of the available documentary evidence, was possible and indispensable: the applicant had no history of mental illness and it was not maintained that the case involved an emergency. Although the applicant was taken to a psychiatric hospital where he was seen by medical doctors, there is no indication that they were asked for an opinion as to whether he needed to be detained for examination, his detention having already been decided by a prosecutor without the involvement of a medical expert. It follows that the applicant was not reliably shown to be of unsound mind and his detention was consequently not lawful.
Moreover, the law at the time did not contain any provision empowering prosecutors to commit a person to compulsory confinement for the purpose of psychiatric examination. An instruction of the Minister of Public Health, which implied that prosecutors had such powers, did not lay down any rules and thus lacked the requisite clarity. Furthermore, the law did not (and does not) provide that a medical opinion be obtained as a pre-condition to ordering such confinement. These shortcomings were not remedied by the fact that internal guidelines for prosecutors contained provisions regarding compulsory psychiatric examinations, since the guidelines were an unpublished document without formal legal force.

Conclusion: violation (unanimously).
Article 5(4) – At the relevant time Bulgarian law did not provide for an appeal to a court against detention ordered by a prosecutor in the framework of an inquiry with a view to instituting proceedings for psychiatric internment. The applicant's detention was ordered by a prosecutor, who subsequently became a party to proceedings against him, and the order was subject to appeal only to higher prosecutors. The remedy required by Article 5(4) was therefore not available to the applicant and supervision of the lawfulness was not incorporated in the initial decision for the applicant's detention either.
Conclusion: violation (unanimously).
Article 41 – The Court considered that there was no causal link between the violation and the pecuniary loss alleged by the applicant. It awarded him 4,000 levs (BGL) in respect of non-pecuniary damage and also made an award in respect of costs.

PERSONS OF UNSOUND MIND
Continuing detention in mental hospital: *communicated*.

REID - United Kingdom (N° 50272/99)
[Section II]

In 1967, the applicant was convicted of culpable homicide. It was established by psychiatrists that he suffered from a mental deficiency which required his detention in a mental hospital. According to the Mental Health Act 1984, a person suffering from a persistent mental disorder with abnormally aggressive or seriously irresponsible conduct had to be released if detention in hospital was not appropriate for his treatment or if the treatment provided in hospital was not necessary for his health and safety or the protection of other persons. In 1985, the applicant was conditionally discharged and transferred to an open hospital. In 1986, he was arrested after having attempted to abduct a child. He was sentenced to three months' imprisonment, psychiatrists having considered that his detention in a mental hospital would be inefficient given the incurable character of his personality disorder. However, after having served his sentence, he was sent back to hospital by the Secretary of State, pursuant to the 1984 Act, on the recommendation of a doctor. The applicant sought a discharge, relying on numerous psychiatric reports establishing that he did not suffer from a mental disorder justifying continuing detention in view of its incurable character. His application was refused and his subsequent petition for judicial review rejected. The Court of Session allowed his appeal and quashed the decision of the sheriff but on a further appeal by the Secretary of State the House of Lords restored the decision dismissing the applicant's petition.
Communicated under Article 5(1)(e) and (4).

Article 5(1)(f)

EXPULSION
Detention pending deportation: *communicated*.

MAZIMPAKA - Denmark (N° 39964/98)
[Section II]

In September 1994, the applicant, who claimed to be a Rwandan citizen, arrived in Denmark without any identification papers. The authorities rejected his request for asylum on the ground that it was not substantiated that he was from Rwanda. The decision was upheld on appeal and a deportation order, to be enforced in February 1996, was issued. The applicant's request for exceptional leave to remain was rejected. but his deportation was delayed as it could not be established with certainty which country he was from and thus where he ought to be deported to. He was ordered to report to a police station every day and, having failed to do so on a number of occasions, was placed in custody from 8 September to 29 October 1997. His detention was found to be lawful by the criminal courts. His appeals against his detention were unsuccessful.
Communicated under Article 5(1), in particular 5(1)(f).

Article 5(3)

BROUGHT PROMPTLY BEFORE JUDGE
Lithuanian reservation and non-retroactivity of requirement of "promptness" on expiry of the reservation: *no violation*.

GRAUSLYS - Lithuania (N° 36743/97)
*Judgment 10.10.2000 [Section III]
(See Article 5(1)(c), above).

LENGTH OF PRE-TRIAL DETENTION
Length of detention on remand: *violation*.

KUDŁA - Poland (N° 30210/96)
Judgment 26.10.2000 [Grand Chamber]
(See Article 13, below).

Article 5(4)

TAKE PROCEEDINGS
Absence of possibility of review by a court of psychiatric detention ordered by a prosecutor: *violation*.

VARBANOV - Bulgaria (N° 31365/96)
Judgment 5.10.2000 [Section IV]
(See Article 5(1)(e), above).

REVIEW OF LAWFULNESS OF DETENTION
Absence of proper review of lawfulness of detention: *violation*.

GRAUSLYS - Lithuania (N° 36743/97)
*Judgment 10.10.2000 [Section III]
(See Article 5(1)(c), above).

PROCEDURAL GUARANTEES OF REVIEW
Hearings on prolongation of detention on remand held in absence of detainee: *violation*.

GRAUZINIS - Lithuania (N° 37975/97)
*Judgment 10.10.2000 [Section III]

Facts: The applicant was arrested on 19 May 1997 and his detention on remand was ordered by a District Court two days later. His appeal of 27 June was dismissed on 3 July after a hearing at which he was represented but not present. On 17 July the District Court extended the detention but changed the grounds; the applicant was again represented but did not attend in person. On 5 September he appealed but the appeal was returned to him with an explanation that the law did not provide for any appeal against a decision extending detention on remand. On 16 October the applicant was committed for trial and his detention was extended; he was neither present nor represented at the hearing. He was convicted in February 1998.
Law: Article 5(3) – The applicant was brought before a judge two days after his arrest and the requirement of Article 5(3) was therefore met. His complaint that in the following months he was not brought repeatedly before a judge falls to be examined under Article 5(4), since Article 5(3) does not include a right to be brought repeatedly before a judge.
Conclusion: no violation (unanimously).
Article 5(4) – While this provision does not guarantee a right, as such, to appeal against decisions ordering or extending detention, and the intervention of one organ is sufficient, provided the procedure followed has a judicial character and provides the guarantees appropriate to the kind of deprivation of liberty, where domestic law does provide for a system of appeal the appellate body must also comply with Article 5(4). This provision thus applied to the applicant's appeal against the initial decision and also to the extension of his detention on 17 July 1997. However, the applicant was not present at the relevant hearings, which took place several weeks after the original detention decision. Thereafter, the applicant had no remedy and the subsequent decision to continue his detention on 16 October was taken in the absence of the parties. Given what was at stake, as well as the lapse of time between the various decisions, and the re-assessment of the basis for the detention, the applicant's presence was required throughout the hearings of 3 and 17 July 1997 in order to be able to give satisfactory information and instructions to his counsel. Furthermore, viewed as a whole, these and the subsequent proceedings failed to afford the applicant an effective control of the lawfulness of his detention. In these circumstances, he was not given the guarantees appropriate to the kind of deprivation of liberty in question.
Conclusion: violation (unanimously).
Article 41 – The Court considered that there was no causal link between the violation and the pecuniary damage claimed by the applicant. It awarded him 5,000 litai (LTL) in respect of non-pecuniary damage and also made an award in respect of costs.

PROCEDURAL GUARANTEES OF REVIEW
Hearings concerning detention on remand held in absence of detainee and lawyer: *violation*.

WŁOCH - Poland (N° 27785/95)
*Judgment 19.10.2000 [Section IV]

Facts: In September 1994, the applicant was charged with trading in children and incitement to give false testimony. He was remanded in custody by a prosecutor and written grounds for the charge were subsequently served on him. They referred to numerous case-files in which the applicant had obtained money from foreigners wishing to adopt children and had allegedly incited the natural parents to give up their children. The applicant appealed against his detention, maintaining that the acts of which he was accused could not constitute the offence of trading in children. In October 1994, the Regional Court dismissed his appeal. The applicant was not present; his lawyers were exceptionally allowed to attend the hearing and make oral interventions but were required to leave before the prosecutor made his final submissions. In December 1994, the prosecutor asked the court to prolong the detention for a further three months, which the court duly did. Neither the applicant nor his lawyer was present at the hearing. However, his appeal against the prolongation was upheld in January 1995 by the Court of Appeal, which held that the acts with which he was charged could not reasonably be qualified as trading in children, since this offence implied actions detrimental to the child, whereas adoption may be in the child's own interest. The applicant was duly released, but the criminal proceedings against him are still pending, largely due to delays in the execution of letters rogatory in the United States.
Law: Government's preliminary objections – An action for damages for unlawful detention is not a remedy to be exhausted, since the right to have the lawfulness of detention examined by a court and the right to compensation for unlawful detention are separate rights. The procedure under Article 552 of the Code of Criminal Procedure enables a detainee to apply for compensation for unlawful detention in criminal proceedings which have terminated. The Court held in its admissibility decision that the applicant had availed himself of available remedies by appealing against the detention order and against the prolongation of his detention and there is no reason to reach a different conclusion. Furthermore, there are no grounds on which to hold that there has been an abuse of the right of petition. The preliminary objections must therefore be dismissed.
Article 5(1) – The provision by virtue of which the applicant was detained had never been applied by the Polish courts and it was therefore a source of serious difficulties of interpretation as regards the constitutive elements of the offence. The decisions referred to by the parties dated from after the applicant's release and the Court could not speculate whether the most relevant one, from February 2000, was likely to affect the criminal case against the applicant. In any event, the Court must have regard to the legal situation at the material time. The Polish courts examined a number of elements which they deemed relevant in reaching the conclusion that the factual aspects of the suspicion were reasonably justified; moreover, while the legality of the detention may have been doubtful if based solely on suspicion of involvement in trading in children, the detention was also based on suspicion of having incited persons to give false testimony. On the whole, there is nothing to show that the interpretation relied on by the domestic courts was arbitrary or unreasonable.
Conclusion: no violation (unanimously).
Article 5(4) – The law at the time did not entitle a detainee or his lawyer to attend the hearing concerning an appeal against a detention order issued by a prosecutor. Although the applicant's lawyers were in fact allowed to attend the Regional Court hearing in October 1994, the prosecutor had an opportunity to address the court after the lawyers had been ordered to leave. While the applicant was able to advance arguments against his detention on remand, neither he nor his lawyers had access to the file at that stage. In these circumstances, the proceedings were not compatible with Article 5(4). Moreover, with regard to the subsequent proceedings relating to the prosecutor's request for a prolongation, even assuming they satisfied the procedural requirements of this provision, the time which elapsed between

the applicant's initial detention in September 1994 and the Regional Court's decision in December 1994 meant that the review was not carried out "speedily".
Conclusion: violation (unanimously).
Article 6(1) (length of proceedings) – The case was undoubtedly complex. However, the proceedings were prolonged primarily as a result of evidence being taken abroad, there being significant delays in obtaining evidence from the American authorities. The prosecution took measures to expedite matters, but to no avail. Responsibility for the length cannot be attributed to the Polish authorities.
Conclusion: no violation (unanimously).
Article 41 – Since the Court cannot speculate as to whether the applicant would have been detained if the procedural guarantees of Article 5(4) had been provided, the finding of a violation in itself constitutes sufficient just satisfaction. Moreover, there is no causal link between the violation and the pecuniary damage claimed by the applicant. The Court made an award in respect of costs.

SPEEDINESS OF REVIEW
Length of examination by Court of Cassation of an appeal on points of law against a decision refusing to order release: *inadmissible*

TOUROUDE - France (N° 35502/97)
Decision 3.10.2000 [Section III]

The applicant was sentenced to thirty-years' imprisonment by the assize court on 14 June 1995 for offences including rape and attempted murder. That conviction was quashed by the Court of Cassation and the case remitted for retrial before a different bench of the assize court. An application for release lodged by the applicant with the indictment division on 6 May 1996 was dismissed on 20 May. He lodged a further application with the assize court on 4 June 1996, but it was dismissed on 11 June. Both the indictment division and the assize court held that his continued detention was necessary to ensure that he did not reoffend or interfere with witnesses and that he would appear at the trial. On 7 and 17 June 1996 he lodged appeals with the Court of Cassation against those decisions. His appeal against the decision of the indictment division was dismissed on 14 November 1996 and his appeal against the decision of the assize court on 29 April 1997. Further applications for release lodged with the indictment division between June and August 1996 were dismissed between July and September 1996. He did not appeal to the Court of Cassation against those decisions. On 14 November 1996 the assize court to which his case had been remitted sentenced him to twenty-years' imprisonment and ordered that at least two-thirds of the sentence be served. The applicant alleged that while he was in prison the prison authorities had opened confidential correspondence on a number of occasions. In support of his allegations he produced an envelope which had been addressed to him by the registry of the Court. It was marked "opened in error" and bore the prison authorities' stamp. The applicant had complained about that breach of confidence and the administrative court had forwarded his complaint to the President of the *Conseil d'État*.
Inadmissible under Article 5(4): The Court had concerns about the length of time the Court of Cassation had taken to examine the appeal lodged by the applicant on 17 June 1996. However, the applicant had had a statutory right under French law to make further applications for release at any time and had done so on five occasions. The indictment division had determined those applications within periods of fourteen to eighteen days and the applicant had not appealed to the Court of Cassation against the decisions: manifestly ill-founded.
Inadmissible under Article 8: As regards the exhaustion of domestic remedies, the Government had not shown that any binding authority existed on that point; in particular, it was not an issue that had been before the *Conseil d'État*. As to the merits, the applicant had produced only one envelope – which had indeed been opened by the prison authorities – in

support of his allegations of repeated failures to respect his correspondence. Under the domestic legislation, the Secretariat of the Commission and the Registry of the Court were among the authorities with whom prisoners could correspond in a sealed envelope which it was unlawful to open. Communications between prisoners and the Court had to be free of any unnecessary restrictions. However, out of forty or so letters exchanged between the applicant and the Court, only one had been opened "in error" and that had occurred in a prison to which the applicant had recently been transferred. There was nothing therefore to support the conclusion that the authorities had intended to interfere in the exchanges between the applicant and the Convention institutions or that there had been a malfunctioning of the postal service that could indisputably be said to constitute an interference with the right to respect for his correspondence: manifestly ill-founded.

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Proceedings concerning a request to lift an exclusion order in respect of a foreign national: *Article 6 not applicable*.

MAAOUIA - France (N° 39652/98)
Judgment 5.10.00 [Grand Chamber]

Facts: The applicant, a Tunisian national, entered France in 1980 at the age of twenty-two and in 1992 married a French national there with whom he had been living for nine years. In 1988 Alpes-Maritimes Assize Court sentenced him to six years' imprisonment for offences committed in 1985. He was released in April 1990. In August 1991 a deportation order was made against him, but he did not become aware of its existence until it was served on him on 6 October 1992 when he attempted to regularise his immigration status at a centre for administrative formalities. The applicant refused to leave France and was prosecuted for failing to comply with a deportation order. In November 1992 Nice Criminal Court sentenced him to one year's imprisonment and made an order excluding him from French territory for ten years. That decision became final in April 1997. Meanwhile, in December 1992 the applicant had sought judicial review of the deportation order before the administrative courts. In a judgment which became final in March 1994, Nice Administrative Court quashed the deportation order, *inter alia*, on the ground that no notice had been served on the applicant requiring him to appear before the Deportation Board. On the strength of the Administrative Court's judgment, the applicant applied to the Principal Public Prosecutor's Office at Aix-en Provence Court of Appeal on 12 August 1994 for rescission of the exclusion order. In July 1995 the applicant renewed that application and requested a date for hearing as it had been outstanding for some time. After an inquiry concerning the applicant had been carried out the principal public prosecutor's office informed the applicant in November 1997 that the case would be heard on 26 January 1998. On that date the Court of Appeal granted the applicant's application and rescinded the exclusion order on the ground that the deportation order had been quashed. The applicant also made various attempts to regularise his status with the immigration authorities and recently obtained a ten-year residence permit with the right to seek employment. The applicant complained of the unreasonable length of the proceedings to obtain rescission of the exclusion order.
Law: Article 6(1) – Although the Court had not previously examined the issue of the applicability of Article 6(1) to procedures for the expulsion of aliens, the Commission had consistently expressed the opinion that the decision whether or not to authorise an alien to

stay in a country of which he was not a national did not come within the scope of Article 6(1) of the Convention. The provisions of the Convention had to be construed in the light of the entire Convention system and, in the case before the Court, it had to be noted that Article 1 of Protocol No. 7, which France had ratified, contained procedural guarantees applicable to the expulsion of aliens. In addition, the preamble to that instrument referred to the need to take "further steps to ensure the collective enforcement of certain rights and freedoms by means of the Convention..." Taken together, those provisions showed that the States were aware that Article 6(1) did not apply to procedures for the expulsion of aliens and wished to take special measures in that sphere. That construction was supported by the explanatory report. By adopting Article 1 of Protocol No. 7 the States had clearly intimated their intention not to include such proceedings within the scope of Article 6(1) of the Convention. In the light of the foregoing, the proceedings for the rescission of the exclusion order did not concern the determination of a "civil right" for the purposes of Article 6(1) and the fact that the exclusion order had had major repercussions on the applicant's private and family life or on his prospects of employment could not suffice to bring those proceedings within the scope of civil rights protected by Article 6(1). Exclusion orders did not concern the determination of a criminal charge either. In that connection, the Court noted that their characterisation within the domestic legal order was open to different interpretations. However, that point could not, by itself, be decisive and other factors, notably the nature of the penalty concerned, had to be taken into account. On that subject, the Court noted that, in general, exclusion orders were not characterised as criminal within the member States of the Council of Europe. Such orders, which in most States could also be made by the administrative authorities, constituted a special preventive measure for the purposes of immigration control and did not concern the determination of a criminal charge for the purposes of Article 6(1). The fact that they were imposed in the context of criminal proceedings could not alter their essentially preventive nature. It followed that proceedings for rescission of such measures could not be regarded as being in the criminal sphere either. The Court therefore concluded that decisions regarding the entry, stay and deportation of aliens did not concern the determination of civil rights or obligations or of a criminal charge, within the meaning of Article 6(1).
Conclusion: Article 6 not applicable (15 votes to 2).

APPLICABILITY
Recognition of the right to an allowance : *article 6 applicable*.

MENNITTO - Italy (n° 33804/96)
Judgment 3.10.2000 [Grand Chamber]

Facts: In 1984 the Campania Regional Council enacted Regional Law no. 11, Article 26 of which authorised local public health services ("USLs") to grant allowances to families caring for disabled relatives at home. Application of the Regional Law gave rise to a number of appeals and it became apparent during the appeal proceedings that there was a conflict of jurisdiction between the ordinary and the administrative courts. The Court of Cassation held that a claimant could not assert a personal right until the administrative authority had adopted a decision to award the allowance and specified the amount to be paid. Where no decision had been taken a claimant could only plead a legitimate interest. In a number of cases the Campania Regional Administrative Court ("the RAC") recognised the right of the relatives of disabled persons to receive the allowance provided for in the Regional Law and held that a USL did not have discretion to fix the amount of the sum payable but was required to restrict itself to a mere arithmetical calculation. The *Consiglio di Stato* held that the Region could not evade the obligation to provide the funds necessary for application of Regional Law no. 11, and that the amount of the allowance could not be reduced by the administrative authority, thus confirming that the latter had no discretion to fix the amount to be paid.
In 1989 the USL decided that the applicant's son satisfied the conditions entitling his family to payment of the allowance. Pursuant to that decision, the applicant received a sum for the

months of November and December 1985. In June 1993 he served the USL with a notice to pay, pointing out that he had not received the full amount of the allowance. As the USL did not reply, the applicant brought proceedings against it in the RAC. In August 1993 he unsuccessfully requested the RAC to fix a date for the hearing. In July 1995 he again asked for a date to be fixed for a hearing, this time going through the urgent procedure. The case was heard on 14 January 1997. The RAC held that the administrative authority had no discretionary power in such cases and that its role should have been restricted to verifying whether the claimant satisfied the statutory qualifying conditions, and if so calculating the sum he was to be paid. Noting that the applicant did satisfy the statutory conditions, it held that the USL should therefore have ruled on his application. However, applying the case-law of the Court of Cassation, it held that he had only a *legitimate interest* in obtaining such a decision and refused his application because in it he had asserted a *right* to the allowance. In June 1997 the USL appealed against the above judgment to the *Consiglio di Stato*. By a decision of 30 August 1997 the *Consiglio di Stato* stayed execution of the RAC's judgment. In November 1997 the body which had taken the place of the USL, noting that the courts had given judgment against the administrative authorities in numerous similar cases, reached a settlement with the applicant. The *Consiglio di Stato* took formal note of the agreement and struck the case out of its list on 25 November 1997.

Law: Article 6(1) – Applicability: The Government did not deny that there had been a dispute between the applicant and the administrative authority over the existence of a right, and that this dispute had been sufficiently serious to have been determined by the RAC. Moreover, the outcome of the proceedings whose length was complained of had undoubtedly been decisive for the applicant, since it concerned recognition of his right to obtain the full amount of the allowance. Although the RAC had held that the applicant had no *right* to receive the allowance, it had noted that the administrative authorities had no discretion over the amount of the allowance, which was fixed by law. The same RAC had, moreover, held that persons in the same situation as the applicant were entitled to the allowance. The *Consiglio di Stato* had likewise affirmed that the administrative authorities had no discretion and ruled that the Region was under a duty to provide the funds needed to ensure that the allowance was paid to beneficiaries in the amount laid down by law. It was not necessary for the Court to consider whether a mere *legitimate interest* came within the scope of the autonomous concept of "rights" within the meaning of Article 6. It was sufficient to note that the RAC and the *Consiglio di Stato* had not followed the case-law of the Court of Cassation on that point and that the latter court did not have authority to impose a solution of the legal question in issue on the administrative courts. Consequently, the applicant could reasonably assert the *right* to payment of the allowance, especially as he had already received two monthly instalments. Such a right, being of an economic nature, was a "civil" right within the meaning of the Court's case-law. Article 6(1) was therefore applicable (fifteen votes to two).

The period to be taken into consideration had begun with the application to the RAC in August 1993, had ended when the *Consiglio di Stato* struck the case out of its list in December 1997, and had lasted nearly four years and five months. The existence in Italy of a practice incompatible with the Convention resulting from an accumulation of breaches of the "reasonable time" requirement was an aggravating circumstance of any violation. The Mennitto case was one more instance of that practice.

Conclusion: violation (fifteen votes to two).

Article 41: The Court awarded the applicant ITL 5,000,000 for non-pecuniary damage and a sum for costs and expenses.

APPLICABILITY
Dispute over the career of a civil servant : *Article 6 applicable*.

CASTANHEIRA BARROS - Portugal (N° 36945/97)
*Judgment 26.10.00 [Section IV]

Facts: At the material time, the applicant was a civil servant, initially at the Coimbra Institute of Criminology and subsequently at the National Institute of Criminology, where he had the grade of senior assistant. In February 1989 he lodged an application for judicial review with the Judicial Division of the Supreme Administrative Court against a decision of the Minister of Justice refusing him an increment for the risk element in his job. That application was dismissed in November 1990. In December 1990 the applicant appealed against that decision to the full court of the Judicial Division of the Supreme Administrative Court. On 11 December 1996 that court dismissed his appeal. An application for that decision to be set aside was also dismissed in March 1997. In the meantime, the applicant had lodged a constitutional appeal against certain provisions of the decree by virtue of which the minister's contested decision had been taken. In a judgment of 24 June 1997, the full court accepted the recommendation of its judge rapporteur and declared the constitutional appeal inadmissible. The applicant appealed against that judgment, but his appeal was dismissed by the Constitutional Court in February 1998. The applicant complained of the length of the proceedings.
Law: Article 6(1) – As regards the applicability of Article 6(1), it could not be said that the right asserted by the applicant was not recognised in domestic law, since the proceedings brought by him had not been dismissed on a preliminary point, but after consideration of the merits by the domestic courts in duly reasoned decisions. It remained to be determined whether the right was "civil" within the meaning of Article 6(1), as the dispute concerned the career of an agent working for the civil service. In accordance with the criteria established by the Court in its leading decision in the Pellegrin case, it had to be noted that the evidence did not suggest that the applicant's duties entailed sovereign functions. According to the commentary on the National Institute of Criminology regulations, the applicant, as a lawyer, would have been responsible primarily for scientific research into criminality. Those duties thus appeared to come within the category of "research for non-military purposes in public establishments" set out in the European Commission's communication of 18 March 1988, a sphere in which, as a general rule, the exercise of the public prerogative and protection of the general interests of the State were not in issue. Article 6 was therefore applicable.
As regards the merits, the proceedings had lasted nine years and no pertinent explanation had been given as to why it had taken the full court of the Judicial Division of the Supreme Administrative Court six years to consider the applicant's appeal. The fact that that court had an excessive workload could not constitute a satisfactory explanation.
Conclusion: violation (unanimously).
Article 41 – The Court awarded a certain sum to the applicant for pecuniary damage and an amount on account of costs and expenses.

APPLICABILITY
Non-contentious proceedings concerning registration of an association: *Article 6 applicable*.

APEH ÜLDÖZÖTTEINEK SVÖVETSÉGE and others - Hungary (N° 32367/96)
*Judgment 5.10.2000 [Section II]

Facts: The first applicant is an unregistered association whose title means "Alliance of Persecutees of APEH", APEH being the tax authority; the other applicants are respectively vice-presidents and president of the association. They and other individuals founded the association in 1993 with the aim of promoting the interests of tax-payers. Their application for registration was returned by the Regional Court, which ordered them to obtain APEH's

approval for the use of its name and to change the word "persecutees" to something more neutral. APEH received a copy of this order before it was served on the applicants. The applicants refused to comply with the order and complained that the Regional Court was biased, referring to the fact that they had not been informed that the public prosecutor had intervened in the proceedings. This complaint was rejected by the Supreme Court. The public prosecutor proposed that the application for registration should be refused by the Regional Court and the court duly refused the application on the grounds that the applicants had not obtained the approval of APEH and that the term "persecutees" was defamatory. The applicants appealed to the Supreme Court, which dismissed the appeal after receiving the submissions of the Attorney General. These had not been disclosed to the applicants. A petition for review was also rejected by the Supreme Court.

Law: Article 6(1) – The "right" in dispute was the right to register an association, a right recognised under the relevant legislation. The proceedings thus undisputedly concerned a genuine and serious dispute as to the existence and exercise of that right. As to whether the right was "civil", while under domestic law the right of association belongs primarily to the field of public law, the dispute essentially arose over the application of rules contained in the Civil Code. In any event, these considerations alone are not decisive for the applicability of Article 6. Under the relevant legislation, associations acquire legal existence only through court registration and it follows that an unregistered association constitutes only a group of individuals whose position is very different from that of a legal entity. It was therefore the association's very capacity to become a subject of civil rights and obligations under Hungarian law that was at stake in the registration proceedings. In these circumstances, the proceedings concerned the association's civil rights and Article 6 was thus applicable.

Article 6(1) guarantees in principle the opportunity for the parties to court proceedings to have knowledge of and comment on all evidence adduced or observations filed, even by an independent member of the national legal service, with a view to influencing the court's decision. Since the public prosecutor and the Attorney General intervened in the proceedings, Article 6(1) should have been respected, notwithstanding the non-contentious nature of the procedure. It cannot be said that the intervention by the public prosecutor, of which the Regional Court failed to notify the applicants, did not have any repercussions on the conduct of the judge in charge of the case; furthermore, the fact that a copy of the court's order was in APEH's possession before being served on the applicants casts doubt on the fairness of the proceedings. As to the failure to notify the applicants of the Attorney General's submissions to the Supreme Court, the principle of equality of arms does not depend on further, quantifiable unfairness flowing from a procedural inequality: it is for the parties to assess whether a submission deserves a reaction and it is not acceptable for one party to make submissions to a court without the other knowing of them and having an opportunity to comment. It was therefore unfair that the applicants were not notified of the Attorney General's submissions, whether or not they had a bearing on the case.

Conclusion: violation (unanimous).

Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction.

APPLICABILITY

Constitutional proceedings concerning the dissolution of a political party: *Article 6 applicable*.

REFAH PARTISI, NECMETTIN ERBAKAN, SEVKET KAZAN and AHMET TEKDAL - Turkey (N° 41340/98, 41342-44/98)
Decision 3.10.2000 [Section III]
(See Article 11, below).

APPLICABILITY
Dispute relating to the salaries of Court of Appeal judges: *Article 6 not applicable*.

KAJANEN and TUOMAALA - Finland (N° 36401/97)
Decision 18.10.2000 [Section IV]
(See Article 11, below).

ACCESS TO COURT
Heirs of a haemophiliac with HIV deprived of right to bring court proceedings after accepting *ex gratia* compensation: *violation*.

LAGRANGE - France (N° 39485/98)
*Judgment 10.10.2000 [Section III]

Facts: The applicants were the parents and brother of Eric, a haemophiliac, who was contaminated by the HIV virus between October 1979 and May 1981 and died in July 1984. In 1992 they made an application to the Compensation Fund for Transfusion Patients and Haemophiliacs established by a law of 31 December 1991. In a letter of 26 November 1992 the applicants accepted an offer that had been made two weeks earlier by the Compensation Fund, but stated that they wished to reserve the right to bring an action against third parties. In June 1993 the applicants issued proceedings against the National Blood Transfusion Foundation, the Compensation Fund and the Health Insurance Office in Paris *tribunal de grande instance* (*TGI*). On 22 May 1995 the *TGI* stayed the proceedings pending the judgment of the European Court of Human Rights in the Bellet case. In its judgment on the merits of 29 September 1997 the *TGI* dismissed the applicant's claim for compensation on the basis of the judgment of the Court of Cassation in the F.E. case, a judgment that had been delivered after the judgment of the European Court of Human Rights in the Bellet case and in which the Court of Cassation had held that as the Fund paid the victims full compensation for their loss they could obtain reparation from the ordinary courts only for the heads of damage for which they had received no compensation from the Fund. Accordingly, the applicants had no *locus standi* to claim further compensation under the same head, since they had accepted the Fund's offer in full knowledge of the facts. The applicants applied for legal aid to lodge an appeal against that judgment, but their application was turned down on the ground that an appeal would have been manifestly ill-founded.
Law: Article 6(1) – The point in time when the applicants accepted the offer was relevant to understanding the applicants' perception of the system. At that time, it had not been possible from either the wording of the law of 31 December 1991 or the preparatory work thereto, to foresee the legal effects which the *TGI* would attribute to their acceptance of the offer, namely that acceptance could deprive them of *locus standi* to bring an action against the party responsible for the contamination for compensation on top of the Fund's award. Furthermore, when accepting the offer, they had not concealed their intention to reserve the right to take proceedings against any relevant third party. Lastly, the Court of Cassation's judgment in the Bellet case in which, for the first time, it had decided whether a person who had accepted an offer by the Fund continued to have *locus standi* in the courts, was delivered in 1994, that is to say after the applicants had accepted the offer. Thus, as had been the case with Mr Bellet and Mr F.E., it had been reasonable for the applicants to believe that they could bring proceedings in the civil courts concurrently with or subsequently to making an application for compensation from the Fund, and even after accepting an offer by the Fund. Therefore, when the applicants had accepted the offer, the system had not been sufficiently clear and did not offer adequate safeguards to avoid misunderstandings over the way in which the available remedies should be exercised or over the constraints resulting from their concurrent exercise. Since the applicants had no clear and practical method of seeking a review of the issue of quantum before a court, they had been deprived of a practical and effective right of access to a court.

Conclusion: violation (unanimously)
Article 41 – There was no reason to award the applicants less compensation because their son had died at the age of fifteen and had therefore been unable to bring the proceedings himself. They had therefore to be awarded compensation of FRF 1,000,000 and an amount for costs and expenses.

ACCESS TO COURT
Non-execution, due to lack of funds, of judgments ordering payment of a debt by a public authority: *communicated*.

POGASYI - Ukraine (N° 58932/00)
[Section IV]

The applicant had been employed under contract by a military unit. He resigned and claimed his unpaid wages. He was not paid as his unit had no funds and so applied to the courts for an order for payment against his former employer. He made various attempts through the Ministry of Defence and the judicial authorities to have the judgment enforced. While acknowledging that the debt was due, the regional authority of the Ministry of Defence advised him to refer to the ministry central office for payment since the military unit that had employed him no longer had any funds of its own. The central office informed the applicant that it had been impossible to execute the judgment as the Treasury was only reimbursing the ministry's current expenditure intermittently.
Communicated under Article 6(1) and Article 1 of Protocol No. 1.

ACCESS TO COURT
Dismissal of a cassation appeal as out of time, the failure to comply with the formalities being due to the lower court: *violation*.

LEONI - Italy (N° 43269/98)
*Judgment 26.10.00 [Section II]

Facts: The applicant applied to be registered as a surveyor. His application was refused by the National Institute of Surveyors and his appeal against that decision dismissed by the Court of Cassation in May 1987. In April 1995 the applicant brought an action before Rome Court of First Instance for compensation for the damage he had sustained as a result of an alleged fault by the judges of the Court of Cassation in its 1987 judgment. Rome Court of First Instance dismissed the action on the ground that it was manifestly unfounded. The applicant appealed against that decision. In a decision of 24 October 1995, which was lodged with the registry on 16 November 1995, the court of appeal dismissed the applicant's appeal. The applicant appealed to the Court to Cassation and on 31 October 1996 that court declared the appeal inadmissible as being out of time since, *inter alia*, the notice of appeal had been lodged with the registry of the Court of Cassation and not with the registry of the court of appeal, as required by the legislation. Furthermore, the notice had been lodged on 25 January 1996, that is after 29 December 1995 when the statutory time-limit of twenty days from the date of final notification expired. The applicant has produced a certificate from Rome Court of Appeal dated 29 December 1995 which shows that his appeal to the Court of Cassation was served on 21 December 1995 and was lodged with the registry of the Court of Appeal on 29 December 1995.
Law: Article 6(1) – The Court of Cassation had declared the applicant's appeal inadmissible as being out of time, observing that the notice of appeal had been lodged with the registry after the statutory twenty-day period from the date of final notification had expired. However, the document produced by the applicant showed that the notice served on 21 December 1995 had been lodged with the registry of the court of appeal on 29 December 1995. It was quite

clear that the applicant had complied with the statutory time-limit of ten days from the date of final notification for lodging the appeal with the registry of the court of appeal and thereafter it had been the responsibility of the court of appeal to send all the relevant documents to the Court of Cassation as soon as possible and, in any event, within ten days. In the light of the foregoing, the applicant could not be said to have been negligent. Nor could he be held responsible for Rome Court of Appeal's failure to comply with the procedural formalities. Consequently, the dismissal of the applicant's appeal for being out of time amounted to an unjustified interference with his right of access to the Court.
Conclusion: violation (unanimously).
Article 41 – The Court made an award in respect of non-pecuniary damage.

FAIR HEARING
Failure of court to reply to request for witnesses to be heard and to take into account written evidence submitted: *admissible*.

JOKELA - Finland (N° 28856/95)
Decision 5.10.2000 [Section IV]
(See Article 1 of Protocol No. 1, below).

PUBLIC HEARING
Lack of public hearing in administrative proceedings: *violation*.

EISENSTECKEN - Austria (N° 29477/95)
Judgment 3.10.2000 [Section III]
(See Article 57, below).

REASONABLE TIME
Length of administrative proceedings : *violation*.

CASTANHEIRA BARROS - Portugal (N° 36945/97)
*Judgment 26.10.00 [Section IV]
(See above).

REASONABLE TIME
Length of civil proceedings : *inadmissible*.

GEORGIOS STRAVORAVDIS - Greece (N° 45140/98)
Decision 12.10.00 [Section II]
(See Article 34, below).

REASONABLE TIME
Length of constitutional proceedings: *inadmissible*.

JANKOVIĆ - Croatia (N° 43440/98)
Decision 12.10.2000 [Section IV]
(See Article 1 of Protocol No. 1, below).

REASONABLE TIME
Starting point of period to be examined.

DACHAR - France (N° 42338/98)
*Judgement 10.10.2000 [Section III]

Facts: The applicant paid two contractors substantial sums for works which they failed to perform. In March 1994 he lodged a complaint against one of them. In May 1994 the investigating judge asked him to advise whether he wished to be joined as a civil party to the proceedings and, if so, to state the nature of the offence. On 8 June 1994 the judge determined the amount of security that was to be paid. The order made by the judge stated that the complaints included a request by the complainant to be joined as a civil party and alleged fraud by the contractors. In November 1994 the investigating judge noted that the applicant had not paid the requested security and declared his application to be joined as a civil party inadmissible. However, in an order of January 1995 the applicant was exempted from the requirement to pay security. He was heard by the investigating judge in April 1995. In September 1997 the investigating judge committed the two contractors for trial by the criminal court. That court sentenced them to a term of imprisonment and ordered them to reimburse the money received and to pay damages. As one of the accused did not attend the trial, he was convicted in his absence. One of the contractors appealed against the verdict. The court of appeal ruled on the appeal in June 1998. The contractor who had been convicted in his absence applied to the criminal court to have his conviction set aside and that court delivered its decision in September 1998.
Law: Article 6(1) – It was not possible from the documents furnished by the parties to retrace the procedure before January 1995 with certainty. It appeared, however, that the request lodged by the applicant in March 1994 had been incomplete. It also appeared that he had provided the information requested by the investigating judge quite quickly since the investigating judge's order of 8 June 1994 referred to a complaint against both contractors for fraud with a request by the complainant to be joined as a civil party. The proceedings had therefore to be regarded as having commenced, at the latest, at the beginning of June 1994, when the applicant clarified his complaint. The two sets of proceedings had thus lasted four years in the case of the first contractor and four years and three months in the case of the second contractor. The investigating judge had not ordered the contractors' committal to the trial court until almost three years after the applicant's joinder as a civil party. While the authorities had had some difficulty in locating one of the accused, the applicant should not have had to bear the consequences of that, especially as the accused concerned had ultimately been tried in his absence. Furthermore, there had been no complex factual or legal aspects to the case. Lastly, the judicial authorities had been aware of the applicant's critical financial situation as a result of the fraud of which he had been a victim. Regard being had to the importance of the outcome of the proceedings for the applicant, his complaint should have been dealt with more expeditiously.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 20,000 French francs for non-pecuniary damage.

REASONABLE TIME
Length of criminal proceedings: *violation*.

GRAUSLYS - Lithuania (N° 36743/97)
*Judgment 10.10.2000 [Section III]
(See Article 5(1)(c), above).

REASONABLE TIME
Length of criminal proceedings – starting point where proceedings reopened.

LÖFFLER - Austria (N° 30546/96)
Judgment 3.10.2000 [Section III]

Facts: The applicant was convicted of murder in 1987. His plea of nullity and appeal against sentence were dismissed. Following a request by the applicant, the proceedings were reopened in June 1992. He was acquitted in August 1996.
Law: Article 6(1) – The starting point in calculating the length of the proceedings is June 1992, when the proceedings were reopened – only after that was the applicant again charged with a criminal offence; before that date, his conviction in the first set of proceedings had become final. Consequently, the first set cannot be taken into account: if the applicant had considered that they had lasted too long, he could have introduced an application with the Convention organs at that time. The proceedings therefore lasted over four years and two months for one instance.
Conclusion: violation (unanimously).
Article 41 – The Court considered that there was no causal link between the violation and the alleged pecuniary loss. It awarded the applicant 100,000 schillings (ATS) in respect of non-pecuniary damage and also made an award in respect of costs.

REASONABLE TIME
Length of criminal proceedings: *violation*.

KUDŁA - Poland (N° 30210/96)
Judgment 26.10.2000 [Grand Chamber]
(See Article 13, below).

REASONABLE TIME
Length of criminal proceedings – delays attributable to foreign authorities: *no violation*.

WŁOCH - Poland (N° 27785/95)
*Judgment 19.10.2000 [Section IV]
(See Article 5(4), above).

REASONABLE TIME
Length of criminal proceedings : *inadmissible*.

GEORGIOS STRAVORAVDIS - Greece (N° 45140/98)
Decision 12.10.00 [Section II]
(See Article 34, below).

IMPARTIAL TRIBUNAL
Judge lodging an appeal and appointing the judges that will decide upon it: *violation*.

DAKTARAS - Lithuania (Nº 42095/98)
*Judgment 10.10.2000 [Section III]

Facts: Criminal proceedings were brought against the applicant. At the close of the pre-trial investigation he requested that the proceedings be discontinued. However, this was refused by the prosecutor, who stated in his decision that the evidence gathered clearly proved his guilt. The applicant was convicted in February 1997 by the Regional Court and sentenced to 7½ years' imprisonment. On the applicant's appeal, the Court of Appeal amended the judgment, finding that he should only have been convicted as a secondary party; the sentence was unchanged. The applicant then lodged a further appeal to the Supreme Court. The judge who had delivered the first instance judgment requested the president of the Criminal Division of the Supreme Court to lodge a cassation petition to have the appeal judgment quashed and the Regional Court judgment upheld. The president of the Criminal Division did so, making the same proposal, and then appointed the three judges who would examine the case, as well as the judge rapporteur. The prosecution endorsed the petition. The Supreme Court quashed the appeal judgment and upheld the Regional Court's judgment.
Law: Article 6(1) – Although the Government maintain that the president gave only an independent and impartial opinion as to the issues raised by the case, such an opinion cannot be regarded as neutral from the parties' point of view. By recommending that a particular decision be adopted or quashed, the president necessarily becomes the defendant's ally or opponent. The president was in effect taking up the case of the prosecution, which endorsed the petition. While he did not himself sit in the case, he appointed the judges who did and also the judge rapporteur, and in such circumstances it cannot be said from an objective standpoint that there are sufficient guarantees to exclude any legitimate doubt as to the absence of inappropriate pressure. The fact that the president's intervention was prompted by the first instance judge only aggravates the situation.
Conclusion: violation (unanimously).
Article 6(2) – The presumption of innocence may be infringed by prosecutors, particularly where the prosecutor performs a quasi-judicial function when ruling on a request to dismiss the charges at the stage of the pre-trial investigation. Nevertheless, in this case the statements were made in a reasoned decision at a preliminary stage of the proceedings, rather than in a context independent of the proceedings, such as a press conference. Moreover, the prosecutor used the same term as that used by the applicant in his request to discontinue the case on the ground that his guilt had not been "proved" by the evidence in the file. While the use of the term "proved" is unfortunate, having regard to the context in which it was used, both the applicant and the prosecutor were referring not to the question whether the applicant's guilt had been established by the evidence but to the question whether the case-file disclosed sufficient evidence of the applicant's guilt to justify proceeding to trial.
Conclusion: no violation (unanimously).
Article 41 – The Court considered that the finding of a violation constituted in itself sufficient just satisfaction. It made an award in respect of costs.

Article 6(2)

PRESUMPTION OF INNOCENCE
Statement by public prosecutor that accused's guilt has been "proved" by the evidence: *no violation*.

DAKTARAS - Lithuania (Nº 42095/98)
*Judgment 10.10.2000 [Section III]
(See Article 6(1), above).

Artice 6(3)(c)

DEFENCE IN PERSON
Refusal to allow appellant to attend hearing of appeal against sentence: *violation*.

POBORNIKOFF - Austria (N° 28501/95)
Judgment 3.10.2000 [Section III]

Facts: The applicant was convicted of the murder of his wife and sentenced to life imprisonment. He lodged a plea of nullity and an appeal against sentence. He was informed that with regard to the plea of nullity he could only appear through his lawyer, since he was detained, and that with regard to the appeal he would not be brought before the court, since he had not made any request and the interests of justice did not otherwise require his personal appearance. A new lawyer was appointed for the applicant and attended the Supreme Court hearing, following which both the plea of nullity and the appeal against sentence were dismissed.
Law: Article 6(1) and (3)(c) – In nullity proceedings the Supreme Court is primarily concerned with questions of law that arise in regard to the conduct of the trial and other matters and the presence of the accused, who is legally represented, is not generally required by Article 6. In this case, the plea of nullity related to procedural and legal matters and, although the applicant's lawyer was appointed only shortly before the date of the hearing, this was done in co-ordination with the lawyer who had assisted the applicant at the trial and the applicant had been informed accordingly. In these circumstances, the applicant's general apprehensions are not sufficient to cast doubt on the effectiveness of his representation. Accordingly, there were no special circumstances warranting the applicant's personal presence.
Conclusion: no violation (unanimously).
Article 6(1) and (3)(c) – As far as the appeal against sentence is concerned, the Supreme Court was called upon to examine whether the sentence of life imprisonment was to be reduced or not, the applicant having invoked mitigating circumstances and challenged the trial court's findings as to aggravating circumstances. The proceedings could not have resulted in an increased sentence, but the Supreme Court nevertheless carried out an assessment of the applicant's personality and character and a possible reduction in sentence was at stake. Consequently, the case could not be properly examined without gaining a personal impression of the applicant and it was essential that he be present at the hearing. While he did not ask to attend, as required by the law, the State was under a positive duty to ensure his presence.
Conclusion: violation (unanimously).
Article 41 – The applicant did not make any claim for just satisfaction.

DEFENCE IN PERSON
Refusal to allow appellant to attend hearing of plea of nullity: *no violation*.

POBORNIKOFF - Austria (N° 28501/95)
Judgment 3.10.2000 [Section III]
(See above).

FREE LEGAL ASSISTANCE
Refusal of court-appointed lawyer to lodge a cassation appeal after studying the case-file: *inadmissible*.

RUTKOWSKI - Poland (N° 45995/99)
Decision 19.10.2000 [Section IV]

The applicant was convicted of assault and sentenced to 8 months' imprisonment. The applicant's appeal was dismissed by the Regional Court and his officially appointed counsel informed him that his competence to act on his behalf had expired with the delivery of the appeal decision. On the applicant's request, the Regional Court appointed a lawyer under the legal aid scheme to prepare an appeal on points of law on the applicant's behalf. However, the lawyer informed the applicant, after studying the case-file, that she did not intend to draft the cassation appeal as she considered that there were no statutory grounds for an appeal. The applicant then renewed his request for a lawyer to represent him in cassation proceedings and requested leave to appeal out of time. The Regional Court rejected both requests. It noted that the objective of appointing a lawyer was to guarantee to the accused a right to effective legal representation in criminal proceedings and if the appointed lawyer, after having analysed the case-file, considered that there were no grounds for a cassation appeal, the court could not oblige the lawyer to act further. The Ministry of Justice also refused to lodge a cassation appeal on the applicant's behalf.
Inadmissible under Article 6(3)(c): A lawyer, even if officially appointed to represent the accused in criminal proceedings, cannot be considered as an organ of the State. It follows from the independence of the legal profession from the State that the conduct of the defence is essentially a matter between the defendant and his lawyer whether the lawyer is appointed under a legal aid scheme or paid for privately and, as such, cannot except in special circumstances incur the State's liability under the Convention. However, the authorities, in some circumstances, should not remain passive when an issue concerning legal representation has been brought to their attention. In the present case, the courts appointed a new lawyer after the applicant had informed them that the lawyer who had represented him in the criminal proceedings would not do so in the cassation proceedings. Therefore, it cannot be said that the courts remained inactive in that respect. There is no evidence that the new lawyer was negligent or not thorough in drawing the conclusion that no cassation appeal was viable and this conclusion was in fact supported by the Ministry of Justice, which refused to lodge a cassation appeal on the applicant's behalf. Furthermore, it is not for a domestic court to oblige a lawyer to lodge any remedy contrary to his or her opinion as to the prospects of success. Overall, there was no indication that the applicant's defence was ineffective: manifestly ill-founded.

Article 6(3)(d)

EXAMINATION OF WITNESSES
Impossibility for accused to cross-examine witnesses against him: *communicated*.

FORLANI - Italy (N° 50779/99)
[Section II]

Criminal proceedings were brought against the applicant in respect of covert funding received by his party, the Christian Democrats, when he was its Secretary-General. In the course of the investigation, five co-defendants were questioned by the prosecution. Only the lawyer of the person being questioned was present during questioning. In the interim, before the applicant was tried, the case of a third party implicated in the same proceedings was heard. The applicant's co-defendants agreed to answer questions put by the prosecution concerning the applicant in those proceedings. They were questioned as "defendants in a connected case". The applicant's lawyer was not allowed to take part in those proceedings. The same co-defendants subsequently refused to answer questions put to them at the applicant's trial. At the prosecution's request the trial court therefore ordered production of the depositions taken during the preliminary investigations and the statements made at the trial. In its judgment, the Court took those depositions into account and sentenced the applicant to two years and two months' imprisonment and ordered him to pay a large fine. The applicant appealed arguing that he had not been able to cross-examine his co-defendants at the trial. His appeal was dismissed as was his appeal to the Court of Cassation in which he raised, *inter alia*, the same argument.
Communicated under Article 6(3)(d).

ARTICLE 8

FAMILY LIFE
Inheritance rights of illegitimate child – non-retroactive effect of legitimation: *no violation*.

CAMP and BOURIMI - Netherlands (N° 28369/95)
Judgment 3.10.2000 [Section I]
(See Article 14, below).

FAMILY LIFE
Refusal of courts to establish biological paternity of illegitimate child in inheritance proceedings: *communicated*.

HAAS - Netherlands (N° 36983/97)
[Section I]

The applicant was born out of wedlock from a relationship between his mother and P. who never recognised the applicant as his son. P. nonetheless made payments to the applicant's mother on a regular basis and spent time with both of them, going out on day trips and offering the applicant presents. The applicant alleged that he called him "daddy". P. died intestate and K., his nephew and only heir, inherited his estate. The applicant instituted proceedings against K. to obtain P.'s estate. Firstly, he claimed that family ties within the meaning of Article 8 of the Convention existed between him and the deceased, who he asserted to be his biological father. Secondly, he contended that Dutch law created a difference of treatment between illegitimate and legitimate children, contrary to Article 14 of

the Convention. The Regional Court rejected his claim, considering that the rights and interests of third parties in relation to inheritance made the distinction between legitimate and illegitimate children necessary in the interests of legal certainty. The court found the interference with any hypothetical family life of the applicant to be in accordance with the law and necessary in a democratic society. Consequently, the court deemed that the establishment of the biological father was superfluous since in any case the applicant as an illegitimate child would not inherit. The applicant's appeals were unsuccessful.
Communicated under Articles 8, 13 and 14.

FAMILY LIFE
Natural father's right of access to his child, born of an adulterous relationshio and regarded as the legitimate child of a married couple: *communicated*.

LÜCK - Germany (N° 58364/00)
[Section IV]

The applicant is the natural father of Léa, who was born in 1989. Léa's mother was married when the child was born and remains so. In 1991 she began to restrict the contact that there had been up to that point between the child and the applicant and from March 1993 onwards completely refused all contact. The applicant applied to Cologne Court of First Instance for an order requiring the children's parents to grant him contact. In January 1994 the Court of First Instance dismissed his application holding, *inter alia*, that the law did not afford a right to contact as the child was regarded as having been born of the marriage of the mother and her husband. In September 1995 Cologne Regional Court upheld the decision of the court below without holding a hearing, holding, *inter alia*, that the consequence of the applicant's request was to undermine the full family life that already existed. It considered that as matters stood there was no need to hear the child in person or to request the opinion of an expert. The applicant's appeal against that decision was dismissed by Cologne Court of Appeal and his appeal lodged in July 1996 to the Federal Constitutional Court is still pending.
Communicated under Article 6(1) and Article 8. The application is to be given priority in accordance with Rule 41 of the Rules of Court.

FAMILY LIFE
Expulsion from country where close family lives: *inadmissible*.

KATANIC - Switzerland (N° 54271/00)
Decision 5.10.2000 [Section II]

The applicant, a citizen of Bosnia-Herzegovina, arrived in 1987 in Switzerland, where he married another citizen of Bosnia-Herzegovina who had gone to Switzerland several years before. They had a son two years later. Following a serious accident at work, the applicant was granted a disability pension. In 1995, he was found guilty of, *inter alia*, insurance fraud and gun-running and sentenced to 33 months' imprisonment and five years' exclusion from Switzerland. As a result of his conviction, the cantonal Aliens' Police decided not to prolong his residence permit. Whilst in prison, the applicant was fined for a drug-related offence. He was later released on probation. His successive appeals to the cantonal authorities to challenge the refusal to prolong his residence permit were unsuccessful. He finally brought his case before the Federal Court, which dismissed his appeal. The court noted that the applicant had repeatedly committed offences in Switzerland and that he had maintained contacts with his home country, to which he had returned on several occasions. The fact that his wife had steady employment was not sufficient to justify a prolongation of his own residence permit. As to his son, he could be deemed to be at an age (11) where adaptation to another country would not be difficult. The Federal Aliens' Office informed the applicant that he should leave

Switzerland by January 2000 and that his re-entry would be prohibited for five years thereafter.
Inadmissible under Article 8: The application's expulsion to Bosnia-Herzegovina and the five-year prohibition on re-entering Switzerland constituted an interference with his right to respect for private and family life. However, it was in accordance with the law and pursued the legitimate aim of prevention of crime. As to whether the measure was necessary in a democratic society, the authorities examined closely the issues of the applicant's case: he had been sentenced to imprisonment for fraud and gun-running and, while in prison, had been fined for a drug-related offence; furthermore, he had travelled back to Bosnia-Herzegovina without any difficulties during his stay in Switzerland. It was also submitted by the Government, without being contradicted by the applicant, that his invalidity pension would be transferred to him after he left Switzerland. Although, the applicant's wife was established professionally in Switzerland, she remained nonetheless a citizen of Bosnia-Herzegovina and it was not established that she would have difficulties in returning there. In addition, their son was at an age which permitted adaptation to a new country. In view of the margin of appreciation, the interference can be considered necessary in a democratic society for the prevention of crime: manifestly ill-founded.

FAMILY LIFE
Expulsion from country where wife lives: *admissible*.

BOULTIF - Switzerland (N° 54273/00)
Decision 5.10.2000 [Section II]

In 1992, the applicant, an Algerian citizen, entered Switzerland. He married a Swiss citizen the following year. He was convicted in 1994 of unlawful possession of arms and in 1997 of robbery. He was sentenced to two years' imprisonment in respect of the latter conviction. As a consequence, the cantonal authorities refused to renew his residence permit. His appeals were unsuccessful. The Administrative Court found that although it would prevent him from living with his wife on the Swiss territory, they could live in another country or arrange to visit each other. The Federal Court dismissed the applicant's administrative appeal, considering that he had close links with his home country and that although it might prove difficult for his wife to follow him there, it was nonetheless not excluded, as she spoke French and had had contacts with the applicant's mother. In 1999, the Federal Aliens' Office issued a prohibition on the applicant re-entering the country for an indeterminate period of time. Accordingly, he was ordered to leave Switzerland as from January 2000.
Admissible under Article 8.

HOME
Legislation abolishing a system of specially protected tenancies for privately owned flats: *inadmissible*.

STRUNJAK and others - Croatia (N° 46934/99)
Decision 5.10.2000 [Section IV]
(See Article 14, below).

CORRESPONDENCE
Opening by prison authorities of letter sent to a prisoner by the Court: *inadmissible*.

TOUROUDE - France (N° 35502/97)
Decision 3.10.2000 [Section III]
(See Article 5(4), above).

ARTICLE 9

FREEDOM OF RELIGION
State interference in religious affairs – lack of legal basis for recognition of rival leadership: *violation*.

HASAN and CHAUSH - Bulgaria (N° 30985/96)
Judgment 26.10.2000 [Grand Chamber]

Facts: The first applicant was Chief Mufti of Bulgarian Muslims; the second was a teacher at the Islamic Institute and submits that he worked on a part-time basis as secretary to the Chief Mufti's Office. A dispute between two rival factions of the Muslim community arose in the late 1980's and in 1992 the Directorate of Religious Denominations declared the election of G. in 1988 null and void. At a national conference organised by the interim leadership, the first applicant was elected as Chief Mufti; the new leadership was registered by the Directorate of Religious Denominations. However, in 1994 G.'s supporters held a national conference and elected an alternative leadership, which applied for registration as the legitimate leadership of Bulgaria's Muslims. Following a change of government, the Deputy Prime Minister issued a decree apparently approving the statute adopted at this alternative conference and the Directorate of Religious Denominations registered the leadership including G. No reasons were given and the decision was not notified to the first applicant. The new leadership forcibly ejected the first applicant and his staff from the Chief Mufti's Office and took over all documents and assets; the second applicant maintains that he was *de facto* dismissed. The prosecution authorities refused to take any action. The first applicant's appeal to the Supreme Court, on behalf of the Chief Mufti's Office, was dismissed on the basis that the Council of Ministers (under which the Directorate of Religious Denominations comes) enjoyed full discretion with regard to registration of religious groups. The first applicant was re-elected Chief Mufti at a national conference organised by him in 1995, but no reply was given to his requests for registration. He appealed to the Supreme Court, which held that the tacit refusal was unlawful. However, the Deputy Prime Minister refused to register the applicant because a leadership of the Muslims had already been registered. The applicant again appealed to the Supreme Court, which quashed the refusal, but the Council of Ministers continued to refuse registration. Eventually a joint conference was held and a new leadership elected and registered.
Law: Government's preliminary objection (non-exhaustion) – this was raised after the Commission's decision on admissibility and there is therefore estoppel.

Article 9 – The personality of ministers of religion is undoubtedly of importance to every member of a religious community and participation in the life of the community is thus a manifestation of one's religion. Where organisation of the religious community is at issue, Article 9 must be interpreted in the light of Article 11 – the believer's freedom of religion encompasses the expectation that the community will be allowed to function free from arbitrary State intervention; indeed, the autonomous existence of religious communities is indispensable for pluralism and thus at the very heart of the protection which Article 9 affords. Since the applicants are active members of their religious community and the events complained of concerned their freedom of religion, Article 9 is applicable.
A failure of the authorities to remain neutral in the exercise of their powers in the field of registration of religious communities must lead to the conclusion that the State interfered with the believers' freedom to manifest their religion. Except in very exceptional cases, the right to freedom of religion excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express them are legitimate. State action favouring one leader of a divided religious community or to force the community to come under a single leadership against its wishes would likewise constitute an interference. In this case, the changes in the leadership of the Muslim community were announced without any reasons being given and the effect was to favour one faction, granting it the status of the single officially recognised leadership while depriving the first applicant of the possibility of continuing to represent at least part of the community. There was therefore an interference with the applicants' right to freedom of religion. However, since the relevant law does not provide for any substantive criteria for registration and there are no procedural safeguards against arbitrary exercise of discretion, the interference was not prescribed by law. Furthermore, the repeated refusal of the Council of Ministers to comply with the Supreme Court's judgments was a clearly unlawful act of particular gravity.
Conclusion: violation (unanimously).
Article 11 – The Court considered that no separate issue arose under this provision, since Article 9 had already been interpreted in the light of Article 11.
Conclusion: not necessary to examine (unanimously).
Article 13 – The scope of the obligation under this provision varies depending on the nature of the right involved. Article 13 cannot be seen as requiring a possibility for every believer to institute in his individual capacity formal proceedings challenging a decision concerning the registration of his religious leaders; the individual believer's interests can be safeguarded by their turning to their leaders and supporting any legal action which the latter may initiate. The State may thus fulfil its obligation by providing remedies which are accessible only to representatives of the community. Since the Supreme Court accepted the case for examination, a representative of the religious community was provided with access to a judicial remedy. However, the court refused to examine the substantive issues, holding that the Council of Ministers had full discretion, so that the initial appeal was not an effective remedy. The two further appeals were not effective either, as the Council of Ministers refused to comply with the judgments. Moreover, the Government have not indicated how criminal proceedings could have led to an examination of the substance of the applicants' complaints and have not indicated any other remedy.
Conclusion: violation (unanimously).
Article 6(1) – The applicants have not substantiated the legal basis and content of their alleged civil rights and have not shown that there are any obstacles preventing them from bringing civil proceedings in respect of their right to remuneration.
Conclusion: no violation (unanimously).
Article 1 of Protocol No. 1 – The applicants did not reiterate their complaints under this provision.
Conclusion: not necessary to examine (unanimously).
Article 41 – The Court considered that the second applicant had not established a causal link between the violation and the loss of income or other pecuniary damage which he claimed, since the case did not concern his position as a teacher but the interference resulting from the forced removal of the leadership of his community. It further noted that while the first

applicant must have suffered some pecuniary damage he had not supported his claim by reliable documentary evidence. His claim for pecuniary damage could not therefore be granted. However, the Court recognised that the inability to provide proof might be due to a certain extent to the denial of access to documents and it therefore took these circumstances into account in assessing the claim for non-pecuniary damage. It awarded him BGN 10,000 in that respect. It also made an award in respect of costs and expenses.

ARTICLE 10

FREEDOM OF EXPRESSION
Prohibition on making public information relating to criminal proceedings initiated by a civil party who joins the proceedings: *violation*.

DU ROY and MALAURIE - France (N° 34000/96)
*Judgment 3.10.2000 [Section III]

Facts: The publication of information concerning criminal proceedings instituted by a complaint with a request for the complainant to be joined as a civil party is prohibited by a 1931 statute, until such time as the court has given its ruling. There is no such prohibition where the proceedings are brought by the public prosecutor's office or on an ordinary complaint. The Civil Code and Code of Criminal Procedure contain provisions intended to protect the presumption of innocence. The two applicants, one an editor and the other a journalist, published an article revealing that the directors of a public company had lodged a complaint with a request to be joined as a civil party against the company's former management, which, like them, was linked to the political party in power. Relying on the 1931 statute, the former management lodged a complaint against the applicants, who were ordered to pay damages and a fine of 3,000 French francs (FRF) each. The court of appeal upheld the conviction, but reduced the damages payable to FRF 1. The Court of Cassation held that the criminal proceedings had lapsed as a result of an amnesty law and dismissed the appeal in the civil proceedings.
Law: Article 10 – The 1931 statute imposed a total and general ban, irrespective of the nature of the information published. The need to protect the reputation of others and to guarantee the authority of the judiciary did not suffice to justify such a ban. Moreover, the ban only applied to criminal proceedings instituted following a complaint with an application by the complainant to be joined as a civil party, but not to prosecutions brought by the public prosecutor's office or by ordinary complaint. Such a difference in treatment did not appear to be founded on any objective basis and deprived the public of all information on matters that could be of public interest. The proceedings before the Court were of public interest as they concerned political figures implicated in the management of a public company. In any event, the fact that other machinery for protecting the rights of the accused existed meant that the absolute ban under the Law of 1931 had been unnecessary.
Conclusion: violation (by six votes to one).
Article 41 – The finding of a violation in itself constituted sufficient just satisfaction. The Court made an award in respect of costs and expenses.

FREEDOM OF EXPRESSION
Convictions of politician for disseminating separatist propaganda: *violation*.

İBRAHIM AKSOY - Turkey (N° 28635/95, 30171/96 and 34535/97)
*Judgment 10.10.2000 [Section III]

Facts: The applicant, a Turkish citizen of Kurdish origin, was elected to the National Assembly from 1987 to 1991. In 1989 he founded the People's Labour Party (*HEP*), an opposition party that was alert to the Kurdish question. He was convicted on three occasions of disseminating separatist propaganda. In 1991, when still a Member of Parliament, and as the *HEP*'s Secretary-General, he gave a speech deploring the Turkish authorities' failure to recognise the Kurdish people. The National Security Court found him guilty of disseminating separatist propaganda contrary to the Prevention of Terrorism Act and sentenced him to ten months' imprisonment and a fine of 83,333,333 Turkish liras (TRL). That decision was upheld by the Court of Cassation. In 1993 the applicant published an article in a weekly magazine in which he drew a parallel between the situation in Somalia and Bosnia-Herzegovina, where there was a United Nations' presence, and the situation in Kurdistan which he considered was equally worrying. He was convicted of disseminating separatist propaganda, the main allegation against him being that he had called part of Turkish territory "Kurdistan". The National Security Court sentenced him to one year four months' imprisonment and a fine of TRL 133,333,333 under the Prevention of Terrorism Act. The Court of Cassation dismissed his appeal. Lastly, the applicant was responsible for the publication of a pamphlet describing his party's political programme that dealt, among other things, with "a peaceful and fair solution to the Turkish problem" and referred to multiculturalism in Turkey and to the Kurdish minority's desire for self-determination, which, it was said, did not amount to separatism. He was again convicted by the National Security Court of disseminating separatist propaganda and sentenced to one year four months' imprisonment and a fine of TRL 133,333,333 under the Prevention of Terrorism Act. That decision was upheld by the Court of Cassation.
Law: Article 10 – The applicant's three convictions amounted to an interference with his freedom of expression. That interference was based on the Prevention of Terrorism Act and, in view of the unstable situation in the south east of the country, pursued the aims of protection of national security and territorial integrity, and the prevention of disorder or crime. The applicant's first conviction had been for the speech he made as Secretary-General of the *HEP* in which he asserted that the Government had denied the existence of the Kurdish people and that his party supported affording the Kurds the democratic rights that were rightfully theirs. The remarks had taken the form of a political speech, both as regards content and the terms employed. At the material time, the applicant was still an opposition Member of Parliament. Freedom of expression was particularly important to Members of Parliament, as they represented their electorate, voiced their electorate's concerns and defended their interests. Consequently, interference with the freedom of expression of an opposition Member of Parliament had to be very strictly reviewed. The applicant's speech had not constituted an incitement to violence, armed resistance or an uprising. Nor had the remarks been racist in content, since the issue had been simply the recognition of the rights of the Kurdish people. Lastly, the sentence had been severe. The applicant's conviction and sentence therefore appeared to have been disproportionate to the aims pursued. As regards the applicant's second conviction, for having disseminated separatist propaganda in a weekly publication, the interference had to be examined in the light of the essential role played by the press in a democracy. It was incumbent on the press to impart information and ideas on political issues, including those that divided public opinion. Members of the public also had a right to receive such information and ideas so that they would know their leaders' views and would be able to form an opinion on them. Regard being had to the difficulties in combating terrorism, it appeared that the applicant's article, written by him as an actor on the Turkish political stage, did not constitute an incitement to violence, armed resistance or an uprising. Moreover, his sentence had been harsh. In conclusion, the interference had been disproportionate to the aims

pursued. The applicant's final conviction had been for publishing a pamphlet containing a model programme for the *HEP*. The Turkish courts held that by distinguishing two nations, the Turks and the Kurds, the applicant had advocated the creation of minorities to the detriment of the unity of the Turkish nation and the integrity of the State. However, political parties, even political parties that were in the process of formation, were not to be called to account for seeking a public debate on the plight of a section of the State's population or for taking part in the politics of that State in order to seek solutions capable of satisfying all concerned in accordance with democratic rules. Nothing in the pamphlet could be regarded as being a call to violence, an uprising or any other form of rejection of democratic principles. The fact that a political project advocating self-determination for the Kurdish people was considered incompatible with the existing principles and structures of the Turkish State did not mean that it infringed democratic rules. It was of the essence of democracy to allow diverse political projects to be proposed and debated, even those that called into question the way a State was currently organised, provided that they did not harm democracy itself. The pamphlet had stressed that the action proposed by the *HEP* was democratic and had been couched in neutral language. Lastly, there was no trace in the pamphlet of any incitement to use violence or to flout democratic rules. The sentence imposed on the applicant had again been particularly severe. In conclusion, the applicant's conviction and sentence had been disproportionate to the legitimate aims pursued.
Conclusion: violation (unanimously).
Article 14 taken together with Article 10 – There was nothing to suggest that the restrictions on freedom of expression that had been found could be attributed to a difference in treatment based on the applicant's ethnic origin.
Conclusion: no violation (unanimously).
Article 41 – The Court awarded 2,639 German marks (DEM) for pecuniary damage, DEM 40,000 for non-pecuniary damage and DEM 15,000 for costs and expenses.

ARTICLE 11

FREEDOM OF ASSOCIATION
Complaint about State interference in religious affairs examined under Article 9 in the light of Article 11.

HASAN and CHAUSH - Bulgaria (N° 30985/96)
Judgment 26.10.2000 [Grand Chamber]
(See Article 9, above).

FREEDOM OF ASSOCIATION
Dissolution of political party of Islamic persuasion, on the ground that it constituted a centre of activities against secularism and thus undermined democracy: *admissible*.

REFAH PARTISI, NECMETTIN ERBAKAN, SEVKET KAZAN and AHMET TEKDAL - Turkey (N° 41340/98 and 41342-44/98)
Decision 3.10.2000 [Section III]

The first applicant, "Refah Partisi" (the Prosperity Party – "*RP*") was a pro-Islamic political party that was founded in 1983. It is represented by the second applicant, who at the material time was a Member of Parliament and the chairman of *RP*. The third and fourth applicants were at that time vice-chairmen of the party. After the parliamentary elections in 1995 the *RP* became the leading political party in Turkey and came to power in June 1996 by forming a coalition government with a centre-right party, Dogru Yol. In May 1997 the Principal Public Prosecutor at the Constitutional Court brought an action for the dissolution of the *RP* on the ground that it constituted a "centre" (*mihrak*) of activities, contrary to the principle of secularism. On 9 January 1998 the Constitutional Court set aside as unconstitutional a provision in the Law on Political Parties providing that a political party could not be regarded as a centre of activities against the fundamental principles of the Republic unless its members had previously been convicted in criminal proceedings. On 16 January 1998 the Constitutional Court, relying on the Law on Political Parties, dissolved the *RP* on the ground that it had become a "centre of activities against the principle of secularism" thereby undermining the democratic order, and declared that the party's assets had been transferred by operation of law to the Treasury. As an additional penalty, it declared that the three applicants, who were individuals, had forfeited their position as Members of Parliament and were prohibited from founding, being a member, leader or treasurer of any new political party for a period of five years. The judgment was published in the Official Gazette in February 1998.
Admissible under Articles 9, 10, 11, 14, 17 and 18 of the Convention, and Articles 1 and 3 of Protocol No. 1.
Inadmissible under Articles 6 and 7: With regard to the alleged denial of a fair trial and a public hearing, which raised the issue of the applicability of Article 6 to the constitutional proceedings in issue, it had to be noted that the proceedings before the Constitutional Court concerned a dispute over the *RP*'s right to pursue its political activity as a political party. It therefore constituted a perfect example of a political right which, as such, did not qualify for protection under Article 6(1) of the Convention. The ban on the applicant's becoming founders or leaders of a new party also constituted a restriction on the political rights of those concerned which could not come within Article 6(1), whether as a dispute over civil rights or as a criminal charge. While the dissolution of the *RP* had admittedly entailed the automatic transfer of its assets to the treasury such that a dispute could have arisen over a pecuniary right (and thus a civil right within the meaning of Article 6(1)), the Court found that the subject-matter of the dispute before the Constitutional Court had not been *RP*'s right to enjoy

its possessions as none of the parties had contested the transfer in the constitutional proceedings or in any other proceedings. Consequently, the relevant proceedings did not concern a dispute over the applicants' civil rights and obligations or a criminal charge against them within the meaning of Article 6(1): incompatible *ratione materiae*.
With regard to the complaint under Article 7, which prohibited the retrospective application of the criminal law, the Court noted that the dissolution of the *RP* and the effects of that dissolution on the political rights of the other applicants did not amount to criminal penalties. Consequently, that provision was not applicable in the case before the Court: incompatible *ratione materiae*.

FREEDOM OF ASSOCIATION
Individuals unable to bring action in labour courts due to non-membership of trade union: *inadmissible*.

KAJANEN and TUOMAALA - Finland (N° 36401/97)
Decision 18.10.2000 [Section IV]

The applicants, who are Court of Appeal judges, contended that they were entitled to the salary of a higher grade. Following the refusal of the Court of Appeal's secretary to upgrade their salary, the applicants lodged an appeal with the Supreme Administrative Court, which considered that the issue related to the interpretation of a collective bargaining contract and, therefore, that the court did not have jurisdiction to deal with it. The applicants filed a complaint against the State with the Labour Court. The Labour Court stated that civil servants bound by a collective bargaining contract on civil servants' salaries were allowed to take legal action before the Labour Court. However, the court found that the applicants could not do so as they did not belong to the negotiating trade union and, therefore, were not bound by the contract.
Inadmissible under 6(1): Employment disputes raised by employees in the public sector, participating directly in the exercise of powers conferred by public law and the performance of duties designed to safeguard the general interests of the State, fall outside the scope of applicability of Article 6 of the Convention. Accordingly, Article 6 is not applicable: incompatible *ratione materiae*.
Inadmissible under Article 11: This provision protects the right not to join or be a member of an association. However, the applicants were at no stage forced to join a trade union. Their non-membership of the trade union involved in the collective bargaining prevented them, for a certain period, from having their dispute examined by a court. However, a recent decision of the Supreme Administrative Court changed this situation. Even if the applicants could still claim to be victims, there is no appearance of a violation: manifestly ill-founded.

ARTICLE 13

EFFECTIVE REMEDY
Right to an effective remedy in respect of a complaint about the length of court proceedings: *violation*.

KUDŁA - Poland (N° 30210/96)
Judgment 26.10.2000 [Grand Chamber]

Facts: The applicant was detained on remand in August 1991. After numerous requests for release had been refused, the detention order was finally quashed in June 1992, on the basis of a psychiatric report which stated that the applicant showed persistent suicidal tendencies. The

applicant subsequently failed to attend a hearing in his case in February 1993 and, as he did not submit the medical certificate requested by the court within the specified time limit, an arrest warrant was issued. The applicant was arrested in connection with a traffic offence in October 1993 and placed in detention on remand. Numerous requests for release were refused over the next year and in January 1995 the applicant attempted to commit suicide. However, an application for release was refused by the Regional Court on the basis of a report by prison officers to the effect that the attempt was simply attention-seeking. Several further requests were rejected before the applicant was convicted in June 1995. The conviction was quashed in February 1996 and a retrial ordered. In May 1996 the detention order was quashed, subject to payment of bail of 10,000 zlotys. The applicant's appeals against the amount, in which he invoked the risk of suicide, were unsuccessful. He was finally released in October 1996 after bail had been lodged. He was again convicted in December 1998, the sentence imposed was reduced on appeal in October 1999 and a cassation appeal is pending before the Supreme Court.

Law: Article 3 – This provision cannot be interpreted as laying down a general obligation to release a detainee on health grounds or to place in a civil hospital in order to have particular treatment, but the State must nevertheless ensure that a detainee is held in conditions compatible with his dignity and that his health and well-being are adequately secured, in particular by the provision of appropriate medical care. In this case, the applicant regularly sought and obtained medical attention and there is nothing to show that the authorities can be held responsible for his attempted suicide. Neither was there any subsequent failure to provide psychiatric observation – indeed, regular assistance was given. Thus, while the detention may have exacerbated the applicant's feelings of distress and anguish, it has not been established that he was subjected to ill-treatment of a sufficiently severe level to come within the scope of Article 3.

Conclusion: no violation (unanimously).

Article 5(3) – The period of detention to be examined is made up of two terms, the first running from the date of Poland's recognition of the right of petition (1 May 1993) until the applicant's initial conviction in June 1995 and the second from the quashing of his conviction in February 1996 until his release in October 1996 (the period from the conviction until the quashing being excluded as falling under Article 5(1)(a)). The total period is thus 2 years 4 months and 3 days. It does not appear to be contested that the principal reason the detention was ordered was the applicant's failure to comply with the time limit for submitting a medical certificate, giving rise to the belief that there was a risk of him absconding. This reason could initially suffice to warrant his detention but with the passage of time it became less relevant, particularly as he had already spent almost a year in detention before being re-arrested. Only very compelling reasons would justify the length of the detention and no such reasons can be identified in this case. The reason relied on were thus not sufficient.

Conclusion: violation (unanimously).

Article 6(1) – The length of appeal or cassation proceedings should be taken into account in assessing the overall reasonableness, and in the absence of any evidence that the Supreme Court has given judgment, the proceedings have lasted over 9 years, including 7 years and 5 months from the date of Poland's recognition of the right of petition. This period cannot be regarded as reasonable.

Conclusion: violation (unanimously).

Article 13 – In certain previous cases, the Court has considered that it was not necessary to examine a complaint under Article 13 when a violation of Article 6 had been found, there being no legal interest in re-examining the same subject-matter under the less strict requirements of the former provision. However, there is no overlap when, as in this case, the violation of Article 6 concerns the length of proceedings, this being a separate issue from the question of the availability of an effective remedy to complain about such length. While the Court has in the past nevertheless declined to rule on an Article 13 complaint in such circumstances, this case-law should be re-examined in the light of the continuing accumulation of applications relating to the length of proceedings, and it is thus necessary to examine the Article 13 complaint separately. The subsidiary character of the Convention

machinery is articulated in Article 13 and Article 35(1) and the former gives direct expression to the States' obligation to protect human rights primarily within their own legal systems. While there is no prevailing pattern within Contracting States of remedies for excessive length of proceedings, there are examples which demonstrate that such remedies can be created and operate effectively. The correct interpretation of Article 13 is that it guarantees an effective remedy for an alleged breach of the right to have a court case determined within a reasonable time. In this particular case, the Government submitted that the aggregate of several remedies satisfied the requirements of Article 13 but did not indicate whether and how the applicant could obtain relief by having recourse to those measures. It was not suggested that they could have expedited the determination of the charges against him or provided him with adequate redress for the existing delays. Consequently, the measures referred to do not meet the standard of "effectiveness".
Conclusion: violation (16 votes to 1).
Article 41 – The Court found that the applicant had failed to demonstrate that the pecuniary damage he claimed had been caused by being held in detention for the relevant period. It awarded him 30,000 zlotys (PLN) in respect of non-pecuniary damage and also made an award in respect of costs.

EFFECTIVE REMEDY
Lack of effective remedy in respect of State interference in religious affairs: *violation*.

HASAN and CHAUSH - Bulgaria (N° 30985/96)
Judgment 26.10.2000 [Grand Chamber]
(See Article 9, above).

ARTICLE 14

BIRTH
Inheritance rights of illegitimate child – non-retroactive effect of legitimation: *violation*.

CAMP and BOURIMI - Netherlands (N° 28369/95)
Judgment 3.10.2000 [Section I]

Facts: The first applicant's partner and cohabitee, Mr Bourimi, died intestate in 1992 without having recognised the child she was carrying, the second applicant. The couple had intended to marry. However, Mr Bourimi's parents did not believe that the child was his and consequently considered themselves to be his heirs. Together with several relatives, they moved into the house which had belonged to him; the first applicant moved out. In 1994 the first applicant obtained letters of legitimation, as a result of which the second applicant took his father's surname. In the meantime, the first applicant had obtained an injunction ordering Mr Bourimi's parents to vacate the house; however, the Supreme Court quashed this decision in 1995, considering that the legitimation did not have retroactive effect from the time of Mr Bourimi's death, with the result that the second applicant could not be regarded as his heir and consequently had no inheritance rights. The parties subsequently reached an agreement whereby the applicants would vacate the house. Mr Bourimi's estate was distributed amongst his heirs, namely his parents and siblings, in February 2000.
Law: Article 8 – The absence of legally recognised family relationships between the second applicant and his father did not constitute an interference by the public authorities with the family life between the applicants, who have always lived together. Furthermore, even if the ties between the first applicant and Mr Bourimi's relatives are to be equated with family life, the

obstacles to the development of those ties were not attributable to any action or lack of action on the part of the authorities.
Conclusion: no violation (unanimously).
Article 14 in conjunction with Article 8 – The Court has previously accepted that matters of intestate succession fall within the scope of Article 8 and the fact that Mr Bourimi's death occurred before the birth of his son is no reason for adopting a different approach. The fact that the second applicant was unable to inherit, unlike children born in wedlock or recognised by their fathers, undoubtedly constitutes a difference in treatment between persons in similar situations, based on birth. Very weighty reasons need to be put forward before a difference in treatment on the ground of birth out of wedlock can be regarded as compatible with the Convention and similarly weighty reasons are required to justify the fact that in this case the second applicant was unable to inherit despite the letters of legitimation taking the place of recognition. There was no conscious decision by Mr Bourimi not to recognise the child, and indeed his marriage to the first applicant was only prevented by his untimely death. Although the protection of the rights of other heirs may constitute a legitimate aim, when it comes to the proportionality of the means the second applicant was not a descendant of whose existence the other heirs were unaware and there is no indication that the exigencies of the situation required the level of protection that was afforded to the other heirs to his detriment. The exclusion from his father's inheritance was thus disproportionate.
Conclusion: violation (unanimously).
Article 41 – To oblige the applicants to bring an action for tort against the State would prolong the total length of the proceedings and the Government have not established that such an action would be successful. Moreover, the question arises whether proceedings for tort or indeed any other proceedings would be capable of bringing about a result as close to *restitutio in integrum* as possible, given that the impossibility for the second applicant to obtain the status of heir would not be remedied. Finally, the Government have already declined to give the applicants the compensation they claimed in the context of friendly settlement negotiations. Consequently, the Court should examine the merits of the just satisfaction claims.
The second applicant suffered pecuniary damage, namely the equivalent of the value of his father's estate which he would have obtained had he had a legally recognised family relationship with him at the date of death. Since the estate was distributed in February 2000, he would have obtained the value at that time. Sums of money transmitted to Mr Bourimi's parents prior to distribution of the estate also qualify for compensation. The total award is therefore 560,844.75 guilders (NLG). The Court further accepted that, although the violation concerned the second applicant only, the first applicant also suffered stress, and awarded them 6,750 guilders in respect of non-pecuniary damage. It also made an award in respect of costs.

BIRTH
Legal discrimination between legitimate and illegitimate children regarding inheritance: *communicated*.

HAAS - Netherlands (N° 36983/97)
[Section I]
(See Article 8, above).

DISCRIMINATION (Article 8)
Discrimination between tenants of publicly owned flats and tenants of privately owned flats: *inadmissible*.

STRUNJAK and others - Croatia (N° 46934/99)
Decision 5.10.2000 [Section IV]

Before the independence of Croatia, the applicants had specially protected tenancies of privately owned flats which had not been subject to nationalisation. The applicants are still living in the same flats. The Specially Protected Tenancies (Sale to Occupier) Act of 1991 provided for the sale to the tenants, at a special rate, of publicly owned flats let under a specially protected tenancy; privately owned flats like the ones occupied by the applicants were not concerned by this Act. In 1996, the Leases Act regarding the conditions of leasing of privately owned flats came into force; it abolished the specially protected tenancy system. The applicants lodged a constitutional complaint against these Acts. They complained that they were deprived of specially protected tenancies. They also submitted that they had been subjected to discriminatory treatment as, unlike the tenants of publicly owned flats, they did not benefit from the sale at favourable prices of the privately owned flats which they occupied. The Constitutional Court declared some provisions of the Leases Act unconstitutional, but not those which were relevant to the applicants' contentions, and refused to examine the constitutionality of the Specially Protected Tenancies (Sale to Occupier) Act.
Inadmissible under Article 8: As regards the complaint relating to the possibility offered only to tenants of publicly owned flats under specially protected tenancies to buy the flats at low prices, the rights guaranteed under Article 8 do not include a right to buy certain property, namely a home, but rather a person's right to respect for his present home. As to the Leases Act, the protection offered by this Act to persons in the same position as the applicant was quite broad, in particular as regards evictions, as the owner was required to institute civil proceedings in order to obtain an eviction order. None of the applicants was at that time threatened with eviction and the outcome of potential proceedings could not depend on speculation. For Article 8 to come into play, the applicants should have established that such proceedings had been instituted, that an order of eviction had been issue and that all domestic remedies had been exhausted. There was no indication of a violation of the right to respect for home and family life *per se* in the present case: manifestly ill-founded.
Inadmissible under Article 14 combined with Article 8: The applicants were always in a position which was different from the persons who benefited from the Specially Protected Tenancies (Sale to Occupier) Act. The latter lived in publicly owned flats whilst the applicants occupied flats which had always been privately owned. In addition, owners have a legitimate right to have their ownership protected. If someone in the applicants' position were vested with a right to buy the flat they occupied, the owners would be under a compulsory obligation to sell. On the other hand, the tenants of publicly owned flats by purchasing the flat they live in do not encroach on the property rights of another individual, as the ownership of such flats is public. Therefore, the distinction between the two categories is not discriminatory as there was an objective and reasonable justification: manifestly ill-founded.

DISCRIMINATION (Article 1 of Protocol No. 1)
Military pension of retired officer of the Yugoslav People's army inferior to that of retired officers of the Croatian army: *inadmissible*.

JANKOVIĆ - Croatia (N° 43440/98)
Decision 12.10.2000 [Section IV]
(See Article 1 of Protocol No. 1, below).

ARTICLE 34

VICTIM
Annulment of disciplinary penalty imposed on teacher: *no violation*.

AKKOÇ - Turkey (N° 22947/93 and N° 22948/93)
Judgment 10.10.2000 [Section I]
(See Article 2, above).

VICTIM
Majority shareholder accepted as victim.

G.J. - Luxembourg (N° 21156/93)
Judgment 26.10.2000 [Section II]

Facts: In 1975 the applicant set up a limited liability company in which he held a 90% interest, the remaining 10% being held by his wife. He decided to put the company into liquidation in 1986 and left Luxembourg. The Commercial Court of first instance declared the company bankrupt in May 1987 and appointed a receiver. The liquidation was closed in May 1993.
Law: Government's preliminary objection (victim) – the liquidation proceedings concerned the limited liability company as such, and only in exceptional circumstances is it justified to disregard a company's legal personality when establishing the "person" directly affected by the act or omission. However, as the company was in liquidation and the complaint brought before the Court related to the activities of the receiver and the Commercial Court, it was not possible for the company itself to introduce an application under the Convention. The applicant, who held a substantial shareholding and was in effect carrying out his business through the company, has a direct personal interest in the subject-matter of the complaint and may therefore claim to be a victim of the alleged violation of the Convention affecting the company's rights.
Article 6(1) – The proceedings, which lasted 6 years, exceeded a "reasonable time".
Conclusion: violation (unanimously).
Article 41 – The Court considered that there was no causal link between the violation and the pecuniary loss claimed by the applicant. It awarded him 45,000 kroner (DKK) in respect of non-pecuniary damage and made an award in respect of costs and expenses.

VICTIM
Status of victim recognised in respect of only part of civil and criminal proceedings.

GEORGIOS STRAVORAVDIS - Greece (N° 45140/98)
Decision 12.10.00 [Section II]

The applicant's mother was injured in a road-traffic accident in March 1991. In July 1991 she sought provisional measures which resulted in her being awarded a certain sum in October 1991. In October 1992 she brought a new action in tort in the civil courts against the driver and his or her insurers. On 23 November 1993, the date fixed for trial following an initial adjournment, the lawyer acting for the applicant's mother informed the court that she had died. That brought the proceedings to an end. On 11 July 1995 the applicant, acting as her mother's sole heir, asked the court to reopen the proceedings. At a hearing in October 1995 the applicant sought an adjournment of that application so that the court could hear at the same time a fresh claim for damages which he had brought in December 1995. The hearing of the two joined actions took place in June 1996. In a decision of 30 October 1996 the court adjourned the examination of the merits of those actions so that an exhibit could be produced. On 5 December 1997 an agreement was made between the applicant and the insurance company following a proposal made by the applicant in March 1997. Under the agreement, in consideration for the payment of a sum by the insurers, the applicant waived any further civil claims and the right to be joined as a civil party in criminal proceedings against the driver. In the meantime the case file concerning the accident had been sent to the public prosecutor's office in June 1991. On 22 February 1994, while the proceedings were under way, the applicant had declared that he wished to be joined as a civil party in the proceedings against the driver. The investigation ended in May 1995 and the driver was committed for trial before the criminal court. In September 1995 the criminal court sentenced the driver to a term of imprisonment and ordered him to pay the small sum that had been claimed at the time by the applicant as compensation for his non-pecuniary damage. The driver appealed. The file was transferred to the public prosecutor's office at the court of appeal in May 1996. The hearing of the appeal was adjourned twice. Meanwhile, the applicant and the insurance company had reached the friendly settlement referred to above. In March 1998 the court of appeal gave its decision on the driver's prison sentence, and the applicant's waiver of his right to be joined as a civil party as a result of the friendly settlement was read out.
Inadmissible under Article 6(1): With regard to whether the applicant was a victim, the applicant could only claim to have been a victim in respect of the civil proceedings over the period from 11 July 1995, when he requested the reopening of the proceedings, until 5 December 1997, when the agreement was made with the insurance company. As to the criminal proceedings, the applicant had been joined as a civil party in February 1994 and had claimed damages. He had not at that stage requested the reopening of the civil proceedings. He had quantified his claims in September 1995 after applying for the civil proceedings to be reopened and, despite the virtually symbolic nature of the amount claimed in the criminal proceedings, had to be regarded as having had standing in those proceedings from 22 February 1994 to 5 December 1997, the date of the waiver. As to the merits the civil proceedings to be taken into consideration had lasted two years, four months and twenty-four days. However that could not be considered excessive in the circumstances of the case. In the criminal proceedings, the period to be taken into consideration had lasted three years, nine months and thirteen days. In the circumstances of the case, that period before two levels of jurisdiction had not exceeded a reasonable time: manifestly ill-founded.

VICTIM
Acceptance by applicants of compensation for the killing of their brother by police officers: *inadmissible*.

HAY - United Kingdom (N° 41894/98)
Decision 17.10.2000 [Section III]

The applicant's brother was shot dead outside the family home by police officers. The police had several months before expressed concern as to his mental health and he had been reported by neighbours after behaving irrationally whilst in possession of a weapon. On the day he was shot, the police had been called several times after he had acted dangerously with firearms in public. After having organised his surveillance, the police decided to have recourse to ten firearms officers who happened to be on a training exercise nearby instead of following the standard procedure. The exact circumstances in which he was shot by the police officers remaining uncertain, an investigation was opened into his death. The report pointed out irregularities in the procedure followed. Disciplinary proceedings against the responsible police officer cleared him of neglect duty. At the inquest proceedings, the applicants' brother was found to have been lawfully killed. The applicants, who commenced civil proceedings for negligence, settled their claims against the police on payment of £10,000 (GBP) plus legal costs. Since the incident, the police have introduced changes to their approach.
Inadmissible under Articles 2 and 13: The possibility of obtaining compensation for the death of a person will generally, and in normal circumstances, constitute an adequate and sufficient remedy for a substantive complaint of an unjustified use of lethal force by a State agent in violation of Article 2. Where a relative accepts compensation in settlement of civil claims and renounces further use of local remedies, therefore, he or she will generally no longer be able to claim to be a victim. The applicants in the instant case could have pursued their claims for negligence and obtained the domestic courts' findings as to the alleged inadequacies and failings of the police officers and their causal link with their brother's death. However, they chose to settle those proceedings without obtaining such a determination. It is not for the Court, in those circumstances, to undertake the role of a first instance tribunal of fact and law. There are no elements of abuse in the terms of the settlement accepted by the applicants that would require further examination and there is no indication that the Government attempted to avoid paying the compensation awarded. Nor is there any indication of an administrative practice and indeed the authorities have taken steps to improve training and control in respect of future incidents. Overall, in bringing civil proceedings the applicants used the local remedies available and in settling their claims in these proceedings and accepting and receiving compensation, they effectively renounced further use of these remedies. Consequently, they can no longer be considered victims: manifestly ill-founded.

HINDER THE RIGHT OF PETITION
Applicant questioned by police about application: *failure to comply with obligations*.

AKKOÇ - Turkey (N° 22947/93 and N° 22948/93)
Judgment 10.10.2000 [Section I]
(See Article 2, above).

ARTICLE 41

JUST SATISFACTION

IATRIDIS - Greece (N° 31107/96)
Judgment 19.10.2000 [Grand Chamber]
(See Appendix I).

ARTICLE 43

Article 43(2)

On 4 October 2000 the Panel of the Grand Chamber accepted a request for referral of the following case to the Grand Chamber:

K. and T. - Finland (N° 25702/94)
Judgment 27.4.2000 [Section IV]

The case concerns the taking of a child into care and refusal to terminate care, as well as restrictions on access to the child (see Information Note No. 17).

ARTICLE 44

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Note No. 20):

TSINGOUR - Greece (n° 40437/98)
Judgment 6.7.2000 [Section II]

G.H.H. and others - Turkey (N° 43258/98)
Judgment 11.7.2000 [Section I]

JABARI - Turkey (Nº 40035/98)
Judgment 11.7.2000 [Section IV]

EKINCI - Turkey (n° 25625/94)
Judgment 18.7.2000 [Section III]

S.M. - France (N° 41453/98)
Judgment 18.7.2000 [Section III]

ANTONETTO - Italy (N° 15918/89)
Judgment 20.7.2000 [Section II]

LUSTIG-PREAN and BECKETT - United Kingdom (N° 31417/96 and N° 32377/96)
SMITH and GRADY - United Kingdom (N° 33985/96 and N° 33986/96)
Judgments 25.7.2000 [Section III] - just satisfaction

KLEIN - Germany (N° 33379/96)
Judgment 27.7.2000 [Section IV]

DI NIRO - Italy (N° 43011/98)
MATTIELLO - Italy (N° 42993/98)
Judgments 27.7.2000 [Section II]

S.A. - Portugal (N° 36421/97)
Judgment 27.7.2000 [Section IV]

MORENA - Italy (N° 45066/98)
Judgment 27.7.2000 [Section IV]

MORETTI - Italy (N° 45067/98)
SARTORI - Italy (N° 45069/98)
NOVOTNY - Italy (N° 45072/98)
Judgments 27.7.2000 [Section IV]

A.D.T. - United Kingdom (N° 35765/97)
Judgment 31.7.2000 [Section III]

BARFUSS - Czech Republic (N° 35848/97)
Judgment 31.7.2000 [Section III]

Article 44(2)(c)

On 4 October 2000 the Panel of the Grand Chamber rejected requests for revision of the following judgments, which have consequently become final:

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

The case concerns the staggering of the granting of police assistance to enforce eviction order.

CESKY - Czech Republic (N° 33644/96)
Judgment 6.6.2000 [Section III]

The case concerns the length of detention on remand.

KHAN - United Kingdom (Nº 35394/97)
Judgment 12.5.2000 [Section III]

The case concerns the admissibility in criminal proceedings of evidence improperly obtained by a listening device installed by the police in a private house.

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

The case concerns the death of applicant's partner during police custody and the alleged lack of a proper investigation into the death.

ZEOLI and 34 other applicants - Italy (Nº 41814/98)
Judgment 8.2.2000 [Section I]

The case concerns the length of proceedings before the administrative courts.

On 18 October 2000 the Panel of the Grand Chamber rejected requests for revision of the following judgments, which have consequently become final:

VEZNEDAROGLU - Turkey (N˚ 32357/96)
Judgment 11.4.2000 [Section II]

The case concerns alleged ill-treatment in police custody and the effectiveness of the investigation.

S.A.GE.MA S.N.C. - Italy (N° 40184/98)
Judgment 27.4.2000 [Section II]

The case concerns the length of civil proceedings following the finding of a violation due to the length.

COEME and others - Belgium (Nº 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96)
Judgment 22.6.2000 [Section II]

The case concerns the application of a special procedure for Ministers before the Court of Cassation to others, and also the application of new law extending longer prescription period for less serious crimes to proceedings started before its entry into force.

MOREL - France (Nº 34130/97)
Judgment 6.6.2000 [Section III]

The case concerns the non-communication of *juge commissaire*'s report to the parties.

SERRA - France (N˚ 34206/96)
Judgment 13.6.2000 [Section III]

The case concerns the length of administrative proceedings.

C.P. and others - France (N° 36009/97)
Judgment 1.8.2000 [Section III]

The case concerns the length of criminal proceedings.

ARTICLE 57

RESERVATION
Validity of Austrian reservation concerning public hearings in administrative proceedings: *reservation invalid*.

EISENSTECKEN - Austria (N° 29477/95)
Judgment 3.10.2000 [Section III]

Facts: The applicant's obtained the approval of the local Real Property Transactions Authority for a contract whereby he acquired farmland on the death of the owner. However, an appeal was lodged by the Real Estate Transactions Officer. The applicant requested an oral hearing. The Regional Real Property Transactions Authority, after holding a hearing *in camera*, refused to approve the contract. The applicant complained unsuccessfully to the Constitutional Court.
Law: Austria's reservation – The relevant provision concerning publicity of hearings in the type of proceedings at issue was in force when Austria ratified the Convention and the provision regulates proceedings which fall within the ambit of Article 90 of the Constitution, to which the reservation refers. However, the reservation does not contain a brief statement of the law and a reservation which merely refers to a permissive, non-exhaustive, provision of the Constitution and does not refer to or mention the specific provisions excluding public hearings, does not afford to a sufficient degree a guarantee that it does not go beyond the provision expressly excluded. The reservation therefore does not satisfy the requirements of Article 57 and is invalid.
Article 6(1) – None of the hearings in the proceedings was held in public and it is irrelevant that the applicant did not request one, since under the relevant provision hearings are in any event not public. None of the exceptions provided in Article 6 is relevant and the approval of a contract does not appear to be a highly technical matter better dealt with in a written procedure. There were no exceptional circumstances justifying the absence of an oral hearing.
Article 41 – The Court dismissed the applicant's claim in respect of pecuniary damage, since it could not speculate on the outcome of the proceedings had a public hearing been held. It made an award in respect of costs.

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Effect of legislation extinguishing legal proceedings on lawyer's right to claim fees and costs: *violation*.

AMBRUOSI - Italy (N° 31227/96)
*Judgment 19.10.2000 [Section II]

Facts: The applicant acted as counsel for a number of pensioners in proceedings concerning reimbursement of taxes. A lawyer whose client has limited means may request that, in the event of a successful outcome, the costs to which the client would be entitled from the other party be paid directly to the lawyer, who thus obtains a right to claim directly from the other party, while retaining the right to claim the fees and costs from the client. The applicant requested a direct discharge of her fees and costs in certain cases and the court granted her request when giving a number of judgments in favour of her clients. However, a presidential decree concerning reimbursement of the taxes provided that all pending proceedings should be extinguished and that legal costs should be considered as offset between the parties. It also provided that judicial

decisions which had not become final – which included the judgments in favour of the applicant – would have no legal effect.
Law: Article 1 of Protocol No. 1 – (a) Cases in which the applicant had requested a direct discharge of her fees and costs: where a first instance judgment had been given and the court had awarded fees and costs directly to the applicant, she had "earned" the sum awarded, which therefore constituted a "possession"; where the proceedings were still pending, she had carried out a number acts on behalf of her clients and had a claim against them for her fees and costs, and this also constituted a "possession". Since the applicant's right to claim fees and costs from her clients persisted and she lost only the right to claim directly from the other party (the State), the fact that the judgments were deprived of their legal effect and that the legal costs were otherwise offset did not amount to a deprivation of possessions but rather to an interference with the right to peaceful enjoyment of possessions. Although the Government did not indicate what aim the decree pursued, it can be inferred that the aim was to protect the public purse and the interference was therefore in the public interest. The result of the interference was that the applicant would have had to recover her fees and costs from her clients, in disregard of the agreement she had with them not to do so in the event of a successful outcome. Furthermore, the recovery of fees and costs from individuals of limited means would risk being more difficult and lengthy than recovery from the State. The applicant's choice not to seek the payment of her fees and costs from her clients was not unreasonable or arbitrary and the decree imposed an excessive burden on her.
(b) Cases in which the applicant had not requested a direct discharge of her fees and costs, which were offset as a result of the decree: to the extent that the applicant had earned fees by carrying out work on behalf of her clients, she had a "possession" but nothing prevented her from claiming her fees from the clients. No direct relationship between her and the State was sought or established and consequently the termination of the proceedings did not interfere with her possessions.
Conclusion: violation (unanimously).
Article 41 – The applicant did not submit any claims for just satisfaction after the application had been declared admissible and in these circumstances the finding of a violation constitutes in itself sufficient just satisfaction.

PEACEFUL ENJOYMENT OF POSSESSIONS
Non-execution, due to lack of funds, of judgments ordering payment of a debt by a public authority: *communicated*.

POGASYI - Ukraine (N° 58932/00)
[Section IV]
(See Article 6(1) [civil], above).

PEACEFUL ENJOYMENT OF POSSESSIONS
Military pension for retired officer of the Yugoslav People's army lowered by Croatian authorities: *inadmissible*.

JANKOVIĆ - Croatia (N° 43440/98)
Decision 12.10.2000 [Section IV]

The applicant, who retired in 1987 from the Yugoslav People's Army, was paid a military pension representing 85% of his average wage until the dissolution of the Federal Republic of Yugoslavia in 1991. In 1992, the Croatian social security authorities assessed the pension to be vested with him at 63.22% of his previous pension. The applicant lodged successive appeals against the decision fixing the amount of his new pension without success. According to the Government, the pensions of former officers of the Yugoslav People's army were increased in 1993 to reach 73% of what they amounted to in December 1991. The

Government added that they had been increased the same year to take account of the increase in salaries and in 1997 to match the increase in living expenses. In 1993 the applicant filed a constitutional complaint which the Constitutional Court dismissed in 1999.
Inadmissible under Articles 1 of Protocol N°1 and 14: Article 1 of Protocol N° 1 cannot be interpreted as giving an individual a right to a pension of a particular amount. In the present case, the applicant's pension was reduced, but was not inferior to pensions of other categories of pensioners. The reduction of the former Yugoslav People's Army officers pensions by Croatian authorities was a means of integrating those pensions into the Croatian general pension system. States enjoy a wide margin of appreciation in regulating their social policy and the fact that the pensions attributed to retired officers of the Croatian Army were higher that those of officers of the former Yugoslav People's Army fell within this margin of appreciation and the State's freedom to grant them to the categories of citizens considered appropriate. The applicant lost part of his pension as a military official but retained all the rights attached to his ordinary pension under the general social insurance system. Consequently, his pecuniary rights relating to the payment of his pension remained unchanged. Therefore, his right to derive benefits from the social insurance scheme was not infringed in a manner contrary to Article 1 of Protocol N° 1, in particular as the loss of a certain percentage of his pension did not result in the essence of his pension rights being impaired. Divesting the applicant of a part of his pension did not amount to a discrimination contrary to Article 14: manifestly ill-founded.
Inadmissible under Article 6(1): The period to be taken into account, following the entry into force of the Convention in Croatia on 5 November 1997, amount to one year and four months. Although the obligation for domestic courts to deal with a case within a reasonable time applies also to Constitutional Courts, it cannot be construed in the same way as for ordinary courts. As a guardian of the Constitution, Constitutional Courts may take into consideration other elements than the chronological order in which cases have been entered on their list, such as the importance of a case in political and social terms. In addition to the reasonable length of court proceedings, the present Article lays emphasis on the general principle of the proper administration of justice. In the instant case, it was reasonable for the Constitutional Court to join, as it did, all cases concerning pension rights of former Yugoslav People's Army officers. The Government justified the delay by the enactment of several laws concerning the decrease of these pensions and the examination of the Yugoslav Military Pensions Act. Moreover, the case involved complex legal questions regarding the obligations of Croatia towards retired officers of the Yugoslav People's Army in the context of the dissolution of the former Yugoslavia after which no State succession agreement was reached. Overall, the delay does not appear substantial enough for the length of the constitutional proceedings to exceed a reasonable time: manifestly ill-founded.

PEACEFUL ENJOYMENT OF POSSESSIONS
Value of property estimated differently by authorities when granting compensation and when setting inheritance tax: *admissible*.

JOKELA - Finland (N° 28856/95)
Decision 5.10.2000 [Section IV]

The applicants are the heirs of Timo Jokela who died in 1992, leaving them a piece of land in inheritance. From 1977, part of this land was designated in the master plan as being for road traffic purposes. Constructions were permitted on the rest of the property. In 1990, the district authorities ordered expropriation of part of the land for the construction of an overpass. The request was referred to a land surveyor, holding a State office, and two lay persons for assessment of the value of the property to be expropriated, in order to fix an adequate compensation. The same year, other parts of the land were sold to a private company for FIM 121 per square metre. Timo Jokela, and after his death the applicants, contested the amount of compensation offered by the authorities. The value of the property at the material

time was estimated by the land surveyor and the lay persons at FIM 7,50 per square metre. The applicants lodged an appeal before the Land Court, arguing that the value of their property had been underestimated. They submitted written evidence, notably from the municipal authorities, according to which the value of their property ranged from FIM 21 to FIM 114. They also asked for witnesses to be heard on the matter. The Land Court awarded the applicants compensation for inconvenience and costs but dismissed the remainder of their appeal as regards the value of the land. No mention of the applicants' written evidence or request to have witnesses heard was made in the court decision. The Supreme Court refused them leave to appeal. Following Timo Jokela's death, inheritance taxes had to be paid by the applicants. The tax authorities set the current value of the property in issue at FIM 20 per square metre. The applicants' appeal was dismissed and they were refused leave to appeal.
Admissible under Articles 6(1) and 1 of Protocol N° 1.

PEACEFUL ENJOYMENT OF POSSESSIONS
Delay by administration in paying tax credits: *admissible*.

BUFFALO S.r.l. - Italy (Nº 38746/97)
Décision 26.10.2000 [Section II]

The applicant company, registered as being in voluntary liquidation at the companies register, held tax credits against the State. Owing to delays in their repayment, the applicant company was obliged to seek bank finance to tide it over. In addition, the delays hindered the liquidation of the company. The applicant company also alleges that the amount received for some of the tax credits that were repaid was less than the amount due. It adds that the taxpayer has no remedy to allow it to recover the difference between the amount paid and the amount due.
Inadmissible under Article 1 of Protocol No. 1 (complaint concerning the fact that some of the amounts reimbursed by the tax authorities had been less than the amounts claimed): The applicant company could have brought proceedings in the tax tribunals to obtain a ruling on the issue of its entitlement to reimbursement. It had failed to show that it had could not have relied on that remedy, since it had done no more than affirm that the limitation period for bringing such a claim was too short in some cases, owing to postal delays. By failing to challenge the payments in issue, the applicant company had failed to comply with its obligation to exhaust domestic remedies.
Admissible under Article 1 of Protocol No. 1 (complaint regarding delay in the reimbursement of the tax credits): The Government had not established that the applicant company had an available and effective remedy regarding the delays in the reimbursements, since favourable decisions by the tax commissioners did not become enforceable until no further right of appeal remained, that is to say until the case had been dealt with by three levels of jurisdiction.

ARTICLE 3 OF PROTOCOL No. 1

LEGISLATURE
Impossibility to accept candidacy for local elections: *inadmissible*

SALLERAS LLINARES - Spain (n° 52226/99)
Decision 12.10.2000 [Section IV]

The applicant represented a list of candidates for municipal elections. Owing to that fact that certain mandatory formalities had not been carried out, the electoral commission refused to declare the applicant's list eligible. The applicant's request for judicial review by the administrative courts and his *amparo* appeal to the Constitutional Court were dismissed.
Inadmissible under Article 3 of Protocol No. 1: Article 3 of Protocol No. 1 applied to the election of the "legislature". In Spain, it was the Parliament or *Cortes Generales* which held legislative power. The municipal authorities were not Members of Parliament and therefore were not part of the legislature. Thus, the provision relied on was not applicable to the proceedings for judicial review which were the subject-matter of the applicant's complaint: incompatible *ratione materiae*.

ARTICLE 2 OF PROTOCOL No. 4

Article 2(2) of Protocol No. 4

FREEDOM TO LEAVE THE COUNTRY
Prohibition on mother leaving husband's country with their children and taking them to her own country: *inadmissible*.

ROLDAN TEXEIRA and others - Italy (N° 40655/98)
Decision 26.10.2000 [Section II]

The first applicant, a Spanish national, was married to an Italian national by whom she had had two children (the other two applicants). The spouses were given leave to live apart while their application for a judicial separation was pending. The first applicant was given provisional parental responsibility subject to a prohibition on her removing the children from the jurisdiction. A contact order was made in favour of the father. Between April 1996 and July 1997 the first applicant made four applications to the judge for permission to take the children on holiday to Spain. In the first, she intimated that she was considering settling there with her children. The applications, which were opposed by the father, were dismissed by the courts on the ground that there was a real risk that the children would be removed from the jurisdiction permanently, which, according to the social-enquiry reports ordered by the courts, would not be in their interest. The applicant's appeal was declared inadmissible as no appeal lay against the impugned decision. The order temporarily prohibiting the first applicant from removing the children from the jurisdiction has since lapsed.
Inadmissible under Article 2 of Protocol No. 4: The prohibition in issue was not directed at the applicant personally but solely at preventing the removal of the children. It constituted an interference in the exercise of the applicants' rights under that provision. The measure was prescribed by the Civil Code and the Code of Civil Procedure and was necessary to protect the rights and freedoms of others, as it was intended to preserve the emotional relationship between the children and their father, and to maintain *ordre public* by seeking to ensure the proper administration of justice. Regard being had to the risk of the applicants' leaving the

jurisdiction permanently, the interference was proportionate to the aims pursued: manifestly ill-founded.

PROCEDURAL MATTERS

RULE 41 OF THE RULES OF COURT

PRIORITY
Refusal to allow natural father access to child born of an adulterous relationship and regarded as a child of the mother and her husband: *priority granted*.

LÜCK - Germany (N° 58364/00)
[Section IV]
(See Article 8, above).

List of other judgments delivered in October

Article 5

CHOJAK - Poland (N° 32220/96)
Judgment 12.10.2000 [Section IV]

The case concerns failure to bring a detainee before a judge and the length of detention on remand – struck out.

Article 6

G.H. - Austria (N° 31266/96)
*Judgment 3.10.2000 [Section III]

KANOUN - France (N° 35589/97)
*Judgment 3.10.2000 [Section III]

GIOMI - Italy (N° 53361/99)
*Judgment 5.10.2000 [Section II]

LAUNIKARI - Finland (N° 34120/96)
*Judgment 5.10.2000 [Section IV]

CAPUTO - Italy (N° 45074/98)
*Judgment 12.10.2000 [Section IV]

Aldo TRIPODI - Italy (N° 45078/98)
*Judgment 12.10.2000 [Section IV]

FORTUNATI - Italy (N° 45079/98)
*Judgment 12.10.2000 [Section IV]

ALTAMURA - Italy (N° 45074/98)
*Judgment 12.10.2000 [Section IV]

ZURZOLO - Italy (N° 45087/98)
*Judgment 12.10.2000 [Section IV]

MIOLA - Italy (N° 45098/98)
*Judgment 12.10.2000 [Section IV]

PASQUETTI - Italy (N° 45101/98)
*Judgment 12.10.2000 [Section IV]

TRAPANI - Italy (N° 45104/98)
*Judgment 12.10.2000 [Section IV]

D'ANGELO - Italy (N° 45108/98)
*Judgment 12.10.2000 [Section IV]

GIBERTINI - Italy (N° 45109/98)
*Judgment 12.10.2000 [Section IV]

GRAPPIO - Italy (N° 45110/98)
*Judgment 12.10.2000 [Section IV]

Nunzio CONTE - Italy (N° 32765/96)
*Judgment 17.10.2000 [Section IV]

O. - Italy (N° 44335/98)
*Judgment 17.10.2000 [Section I]

SILVERI - Italy (N° 44353/98)
*Judgment 17.10.2000 [Section I]

MAZZOTTI - Italy (N° 44354/98)
*Judgment 17.10.2000 [Section I]

PALAZZO - Italy (N° 44356/98)
*Judgment 17.10.2000 [Section I]

PALOMBO - Italy (N° 44358/98)
*Judgment 17.10.2000 [Section I]

LIPPERA ZANIBONI - Italy (N° 45055/98)
*Judgment 17.10.2000 [Section I]

STUDIO TECNICO AMU S.a.s. - Italy (N° 45056/98)
*Judgment 17.10.2000 [Section I]

BONO - Italy (N° 45059/98)
*Judgment 17.10.2000 [Section I]

X200 S.r.l. - Italy (N° 45060/98)
*Judgment 17.10.2000 [Section I]

S.S. - Italy (N° 45061/98)
*Judgment 17.10.2000 [Section I]

FICARA - Italy (N° 45062/98)
*Judgment 17.10.2000 [Section I]

MARI - Italy (N° 45063/98)
*Judgment 17.10.2000 [Section I]

VON BERGER - Italy (N° 45064/98)
*Judgment 17.10.2000 [Section I]

BÜKER - Turkey (N° 29921/96)
*Judgment 24.10.2000 [Section III]

CAMPS - France (N° 42401/98)
*Judgment 24.10.2000 [Section III]

CHAPUS - France (N° 46693/99)
*Judgment 24.10.2000 [Section III]

SOBCZYK - Poland (N° 25693/94 and N° 27387/95)
*Judgment 26.10.2000 [Section IV]

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

CARUSO - Italy (N° 46535/99)
Judgment 5.10.2000 [Section IV]

POLIZZI - Italy (N° 45073/98)
Judgment 12.10.2000 [Section IV]

MUSMECI - Italy (N° 44355/98)
Judgment 17.10.2000 [Section IV]

RETTURA - Italy (N° 45058/98)
Judgment 17.10.2000 [Section I]

KLAVDIANOS - Greece (N° 38841/97)
Judgment 17.10.2000 [Section III]

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

DE MOUCHERON and others - France (N° 37051/97)
*Judgment 17.10.2000 [Section III]

The case concerns the length of criminal proceedings which the applicants joined as civil parties – violation.

KARAKASIS - Greece (N° 38194/97)
*Judgment 17.10.2000 [Section III]

The case concerns the failure of a court to hear the applicant, following his acquittal, prior to taking a decision not to award him compensation for the time spent in detention on remand, and also the failure of the court to give reasons for its decision – violation

IKONOMITSIOS - Greece (N° 43615/98)
*Judgment 19.10.2000 [Section II]

ZARMAKOUPIS and SAKELLAROPOULOS - Greece (N° 44741/98)
*Judgment 19.10.2000 [Section II]

The cases concern the length of criminal proceedings – violation.

L.C. - Belgium (N° 30346/96)
Judgment 17.10.2000 [Section III]

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

McDAID and others - United Kingdom
(N° 34822/97, 34957/97, 34988/97, 35575/97, 35576/97 and 35578/97)
Judgment 10.10.2000 [Section III]

The case concerns the independence and impartiality of courts martial – agreement between parties.

C.H. - Austria (N° 27629/95)
Judgment 3.10.2000 [Section III]

The case concerns refusal of compensation for detention on remand, despite the applicant's acquittal, on the ground that suspicion had not been entirely dissipated (Article 6(2)) – friendly settlement

APPENDIX I

Case of Iatridis v. Greece (Article 41) - text of press release

The European Court of Human Rights (Grand Chamber) has awarded 21,791,578 drachmas (GRD) for pecuniary damage, GRD 5,000,000 for non-pecuniary damage and GRD 12,000,000 for costs and expenses in the case of Iatridis v. Greece. The judgment was delivered under Article 41 (just satisfaction) of the European Convention on Human Rights.
The Court held that the Greek Government was to pay the aforementioned sums in compensation for financial losses incurred as a result of the unlawful occupation of an open-air cinema run by the applicant. In the judgment on the merits which it delivered on 25 March 1999 the Court had found a violation of Article 1 of Protocol No. 1 (peaceful enjoyment of possessions) and Article 13 of the Convention (right to an effective remedy) and had not determined the question of just satisfaction.

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