CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 22
on the case-law of the Court
September 2000

Statistical information

		September	2000
I. Judgments delivered			
Grand Chamber		0	19
Section I		4	40(42)
Section II		6	205(209)
Section III		11(13)	123(129)
Section IV		4	55(65)
Total		**25(27)**	**442(464)**
II. Applications declared admissible			
Section I		13	155(303)
Section II		38	163
Section III		53(61)	165(187)
Section IV		9	115(121)
Total		**113(121)**	**598(774)**
III. Applications declared inadmissible			
Section I	- Chamber	7	74(88)
	- Committee	122	742
Section II	- Chamber	6	69(75)
	- Committee	203	931
Section III	- Chamber	19(26)	88(100)
	- Committee	201	1052(1111)
Section IV	- Chamber	11	67(71)
	- Committee	190	1385
Total		**759(766)**	**4408(4503)**
IV. Applications struck off			
Section I	- Chamber	2	5
	- Committee	0	9
Section II	- Chamber	4	34
	- Committee	3	10
Section III	- Chamber	4(26)	12(34)
	- Committee	3	23
Section IV	- Chamber	4	13
	- Committee	4	23
Total		**24(46)**	**129(151)**
Total number of decisions[1]		**896(933)**	**5135(5428)**
V. Applications communicated			
Section I		45(98)	216(278)
Section II		23(30)	254(264)
Section III		27(31)	280(285)
Section IV		38(39)	217(218)
Total number of applications communicated		**133(187)**	**967(1045)**

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

Judgments delivered in September 2000					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
Section I	2	1	1	0	4
Section II	4	2	0	0	6
Section III	8	3	0	0	11
Section IV	3	0	1	0	4
Total	**17**	**6**	**2**	**0**	**25**

Judgments delivered January - September 2000					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	17	1	0	1[1]	19
Section I	32	7	2	2[2]	43
Section II	49	153	0	0	202
Section III	100	17	4	2[1]	123
Section IV	38	13	3	1[1]	55
Total	**236**[3]	**191**	**9**	**6**	**442**

[1] Just satisfaction.
[2] One revision request and one lack of jurisdiction.
[3] Of the 219 judgments on merits delivered by Sections, 58 were final judgments.

ARTICLE 2

LIFE
Murder of applicant's son by prisoners on home leave*: admissible*.

MASTROMATTEO - Italy (N° 37703/97)
Decision 14.9.2000 [Section II]

The applicant's son was killed by three bank robbers who were making their getaway. It was later established that the three had final convictions for offences ranging from complicity in armed robbery to complicity in murder and were serving prison sentences for those offences. At the material time two members of the gang were on prison leave, while the third, the applicant's killer, had been on a regime of semi-imprisonment and had failed to return to prison at the end of forty-eight hours' leave. The judges responsible for supervising the execution of the prison sentences had granted the three persons concerned prison leave as, relying on reports by the prison authorities on their behaviour in prison, the judges considered that they did not represent a danger to society. However, no psychological report had been prepared on the prisoner on the semi-imprisonment regime, despite there being a statutory requirement for such a report before acceptance on that regime. Furthermore, the judges responsible for the execution of sentences had not made use of their power to request additional information from the police in order to establish whether the three had maintained contact with criminal gangs operating outside the prison. That information could have led to prison leave being refused. Lastly, although the grant of prison leave had been made subject to conditions, the police did not appear on this occasion to have exercised any supervision over the three persons concerned. The three offenders received long prison sentences for the offences.
Admissible under Article 2.

LIFE
Death following ill-treatment during arrest and police custody: *admissible*.

KÖKSAL - Netherlands (N° 31725/96)
Decision 19.9.2000 [Section I]

The applicants, Turkish nationals, are respectively the father and son of Hüseyin Köksal, who was arrested for drunken driving and died from a stroke the day following his arrest. He was arrested after a car accident which took place at around 2 a.m. The victim was unable to stand up when the police arrived and was supported by other persons. The applicants allege that, in the course of the arrest, the policemen deliberately banged his head on the ground while he was held down by force. After his arrest, the victim was placed in a cell without having been examined by a doctor beforehand and without undergoing any medical test to assess whether he was inebriated. The victim being still prostrate in his cell the following day, a doctor was finally called in the afternoon to examine him. It clearly appeared that he was not under the influence of alcohol at that time and, in view of his persisting critical state of health, he was transferred to hospital, where he died shortly after. A criminal investigation into his death was launched by the authorities. According to medical examinations, the victim had died as a result of a ruptured aneurysm; the bleeding could have been spontaneous or could have resulted from external violence. It could not be determined with absolute certainty whether the victim was drunk at the moment of the accident, although no trace of alcohol could be found in the blood samples taken from the victim prior to his death. An autopsy disclosed signs of violence, in particular on the victim's head. According to a subsequent report by a forensic pathologist, it was likely that the aneurysm had burst while the victim was driving the

car, but it could not be excluded that the use of external violence had worsened the bleeding. One of the policemen involved in his arrest and custody was charged with ill-treating the victim but was acquitted. His acquittal was confirmed by the Court of Appeal, which considered that the physical force used was legitimate for the purposes of the victim's arrest.
Admissible under Articles 2 and 3.

ARTICLE 3

INHUMAN TREATMENT
Disabled person detained in cell not adapted to her infirmity: *admissible*.

PRICE - United Kingdom (N° 33394/96)
Decision 12.9.2000 [Section III]

The applicant is a four-limb deficient thalidomide victim and suffers from kidney problems. During civil proceedings concerning recovery of a debt, she refused to answer questions put to her as regards her financial position and was consequently committed to prison for seven days for contempt of court. Pursuant to provisions concerning remission, she only had to serve half the sentence. As her case had been heard in the afternoon, she could not be transferred to prison and was kept overnight in a cell at a local police station. The cell was not specially adapted for disabled persons and was cold; she was unable to sleep and a doctor had to be called. He advised the custody officer that because of her disability the applicant needed to be in a much warmer cell. However, it was not possible to move her and she was wrapped in blankets instead. The following day, she was transferred to prison, where she was not placed in a normal cell but in the Health Care Centre. The doctor who examined her on her arrival at the prison noted, *inter alia*, that her bed was too high and the sink was inaccessible and that she would need assistance to go to the toilet. The Prison Governor authorised her transfer to a civilian hospital but this was not carried out. Her lack of fluid intake and her difficulty in going to the toilet resulted in urine retention and she had to be catheterised before her release. She claimed that she suffered health problems for ten weeks after her release due to the inadequate treatment in detention. She was granted legal aid but her lawyer told her that the prospects of success were limited given the difficulty of proving her allegations. In the light of this advice, the applicant's legal aid certificate was discharged.
Admissible under Article 3.

INHUMAN TREATMENT

Conditions of detention of person detained pending deportation: *inadmissible*.

ZHU - United Kingdom (N° 36790/97)
Decision 12.9.2000 [Section III]

In March 1995, the applicant, a citizen of The People's Republic of China, was stopped by immigration officers in possession of a forged Japanese passport. He was immediately placed in detention pursuant to the Immigration Act 1971. In September 1996, he was granted interim liberation. He complained about the conditions of his 18-month detention in prison: he alleged that he was locked in his cell for 18 to 19 hours a day and that on several occasions the prison officers forgot to let him out of his cell for meals; he also stated that he was assaulted by inmates and suffered verbal racial abuse. He further claimed that he was isolated as there was no other Mandarin Chinese speaker in the prison, except for a six-month period when another Mandarin Chinese speaker was detained; he had significant communication problems and alleged that no interpreter was available. After a suicide attempt, he was placed in a cell without blankets. The Government disputed various aspects of the applicant's contentions: they agreed that the applicant had no interpreter for six months, but maintained that thereafter he had access to one on a weekly basis; they added that the ligature-free "suicide watch" cell where he was placed after his suicide attempt was provided with a sleeping bag. A report of the authorities concerning, *inter alia*, the detention of persons awaiting deportation established that they were subjected to verbal abuse and intimidation in overcrowded prisons where they were detained together with convicted detainees.
Inadmissible under Article 3: The applicant, who was detained pending deportation, clearly had a difficult time in prison. It is undesirable for prisoners awaiting deportation to be held in the same location as convicted prisoners. However, the prison authorities made efforts to alleviate the applicant's situation. He was provided with an interpreter and special measures were taken after his suicide attempt to prevent any other attempt, thus taking due account of his suicidal tendencies. Moreover, the applicant did not complain about the authorities as such. Finally, it is not substantiated that the aggressive behaviour of the other inmates towards the applicant was sufficiently grave to render the conditions of his detention contrary to Article 3: manifestly ill-founded.

DEGRADING TREATMENT
Person in custody obliged to wear handcuffs when taking daily walk in town: *communicated*.

H.H.G. - Switzerland (N° 36833/97)
[Section IV]

The applicant, a salesman by profession, was suspected of having induced his company to purchase merchandise from a supplier which gave him money in return. The Investigating Office issued a warrant of arrest against him. He was subsequently remanded in custody; he was allowed to take daily walks in town but had to wear handcuffs. The applicant was interrogated by the Investigating Office in the presence of his lawyer. He filed a complaint regarding the conditions of his detention on remand, notably about the food and the inadequate medical assistance, and was heard by the Investigating Office on that matter. His complaint was dismissed. He subsequently lodged a public law appeal with the Federal Court. Relying on Article 5 of the Convention, he contended that the Investigating Office as an administrative authority which would intervene in the subsequent trial did not meet the requirements of Article 5(3) for ordering his detention, and that he had been refused access to the complete case-file in violation of Article 5(4). He reiterated his grievances concerning the conditions of his detention. His subsequent requests to consult his case-file were dismissed by the Federal Court. His request to be released was rejected by the Cantonal Court, but he was allowed to take his daily walks without handcuffs on. His public law appeal was dismissed but he was eventually released.

Communicated under Articles 3 and 5(3) and (4).

DEGRADING TREATMENT
Victim of rape cross-examined by accused during trial: *struck out (settlement between parties)*.

J.M. - United Kingdom (N° 41518/98)
Decision 28.9.2000 [Section IV]

The applicant was repeatedly raped by E., who was convicted and sentenced to life imprisonment. E., who had chosen to defend himself, cross-examined the applicant during six days in the course of the proceedings. For that purpose, he had been granted access to medical details and personal information concerning the applicant, which he used to question her not only on the rapes but also on her private life. The applicant was physically sick during the cross-examination and had to be admitted to hospital following the trial.
The applicant has agreed to settle her claims on the basis of an *ex gratia* payment and payment for legal costs. Moreover, legislation has been introduced in order to limit the circumstances in which a defendant may personally cross-examine a victim of rape. No agreement having been reached as regards the amount of reasonable legal costs to be paid, the Court awarded £8,000 (GBP) in respect of legal fees and expenses.

EXPULSION
Deportation of Chechen to Russia: *communicated*.

CHAKHABOV - Netherlands (N° 58964/00)
[Section I]

The applicant, a Russian national of Chechen origin, is to be deported to the Russian Federation. In 1992, he started being involved in the activities of the Chechen army. In 1994, he was accused of treason and immediately arrested by the Chechen military authorities. He managed to escape and remained in hiding in Chechnya until 1997, when he fled to the Netherlands. He unsuccessfully filed with the State Secretary of Justice a first application for asylum or a resident permit on humanitarian grounds. His appeal was rejected. He made a second application for asylum which was also turned down. His subsequent appeal was to no avail. In his appeal, the applicant relied on a statement made by the State Secretary of Justice, according to whom Chechens not holding a residence permit for another area in the Russian Federation than Chechnya should not be expelled until the situation of displaced Chechens in the Russian Federation had improved. This statement was deemed irrelevant in the applicant's case, on the ground that he had a criminal record in the Netherlands - he had been found guilty of a minor offence and shoplifting. According to the Circular on Aliens, no balance had thus to be made between the applicant's interests and the public interest through an assessment of his offences.
Communicated under Article 3.

EXPULSION
Expulsion to Iran: *admissible*.

KALANTARI - Germany (N° 51342/99)
Decision 28.9.2000 [Section IV]

The applicant, an Iranian national, fled Iran and entered Germany where he applied for the status of political refugee. The Federal Office for Refugees rejected his application. That rejection was upheld by the Administrative Court and then by the Administrative Court of Appeal. A new application made by the applicant was rejected by the Federal Office for Refugees and, on the ground that the applicant had failed to show that he would be at risk of political persecution if he returned to his country, the Administrative Court dismissed his application to have the expulsion order stayed. The Federal Constitutional Court did not allow the appeal. The trial on the merits is still pending in the Administrative Court, but since it has no suspensive effect, the applicant could be expelled to Iran at any moment. He fled to France, where he is probably still in hiding. In January 2000 the Fourth Section decided to apply Rule 39 of the Rules of Court and asked the parties for more information relating in particular to the persecution suffered by the applicant's family. The Government informed the Court that they were not in a position to furnish the information requested. The applicant's sister, however, provided further information and produced documents relating to the persecution suffered by her family. The Special Rapporteur on Torture at the Human Rights Commission of the United Nations sent the Court an extract from a public report which mentioned an appeal by the Special Rapporteur against the applicant's expulsion in August 1999 owing to the risk of the applicant being tortured in Iran.
Admissible under Article 3: in order to determine whether the exhaustion rule had been complied with, it was necessary to take into account the circumstances of the case. In the case before the Court, when dismissing the application for refugee status the German authorities had not mentioned the fate of the members of the applicant's family in Iran or the dangers he would run if he was sent back there, despite the fact that the applicant had from the very first hearing before the Federal Office of Refugees emphasised the persecution to which his sisters in Iran had been subjected and had had in particular lodged a certificate by an Islamic revolutionary court indicating that one of his sisters had been arrested and imprisoned. In addition, the German authorities had received evidence during the proceedings of the persecution suffered by his sisters and must have been aware of the appeals against the applicant's expulsion made by certain international organisations and associations, such as the United Nations Human Rights Commissioner. The evidence regarding the situation of the applicant's family in Iran coupled with his political activities during his exile should have enabled the authorities to assess the risks of torture which the applicant would run if he was expelled to Iran. It was for the authorities to seek further information if they considered it necessary. Furthermore, the applicant had already made a further application for political asylum – which was still pending on the merits – and a number of unsuccessful applications for a stay of execution of the expulsion order. Lastly, under the domestic legislation in force on aliens, a fresh application for political asylum had to be made in principle within three months of the applicant becoming aware of the existence of new evidence. In the case before the Court, that period had long since expired. In conclusion, the applicant could not be required to bring new proceedings concerning his application for asylum. Thus, the Government's objection that domestic remedies had not been exhausted was unfounded.

ARTICLE 5

Article 5(1)

LAWFUL DETENTION
Accused kept on remand, the Indictment Chamber having failed to commit him for trial in the Court of Assizes: *admissible*.

LAUMONT - France (N° 43626/98)
Decision 31.8.2000 [Section II]

The applicant was suspected of having taken part in an armed robbery. In January 1995 the investigating judge in charge of the case ordered his pre-trial detention and issued a warrant for that purpose. The detention was then extended three times for four-month periods. The final extension took effect on 19 September 1996. On 30 September 1996 the investigating judge ordered the transfer of the file to the public prosecutor's office at the court of appeal so that the indictment division could prepare the indictment against the applicant before the assize court. The effect of such a transfer is that the investigating judge no longer has jurisdiction over the case and cannot, therefore, hear bail applications. However, the Code of Criminal Procedure lays down that the initial order for pre-trial detention remains valid until the indictment division has delivered its decision. Consequently, the applicant remained in custody pending that decision. Under Article 214 of the Code of Criminal Procedure the indictment division had two months from the date of transfer of the file in which to rule, failing which the accused had to be released. On 27 November 1996 the indictment division ordered additional investigations. Under the case-law of the Court of Cassation, ordering additional investigations is equivalent to ruling for the purposes of Article 214 and means that the indictment division does not have to take a decision regarding pre-trial detention. As the final extension of pre-trial detention had expired on 19 January 1997 the applicant required the prison authorities to state the basis for his continued detention. In reply the prison authorities advised that he remained in detention pursuant to the investigating judge's order transferring the case to the indictment division on 30 September 1996 and that division's decision of 27 November 1996. Arguing that the indictment division had not made a ruling and that his detention was therefore no longer justified, the applicant sought his release. The indictment division dismissed that application. The Court of Cassation dismissed the applicant's appeal on the ground that the indictment division had requested an additional investigation within the period prescribed by Article 214 and that the initial warrant for detention would consequently remain valid until a decision had been taken on whether to indict him. In June 1998 the applicant was sentenced to ten years' imprisonment.
Admissible under Article 5(1).

Article 5(3)

JUDGE OR OTHER OFFICER EXERCISING JUDICIAL POWER
Investigating Office, an administrative authority, ordering arrest and likely to intervene in a subsequent trial: *communicated*.

H.H.G. - Switzerland (N° 36833/97)
[Section IV]
(See Article 3, above).

JUDGE OR OTHER OFFICER EXERCISING JUDICIAL POWER
Automatic refusal of bail: *admissible*.

S.B.C. - United Kingdom (N° 39360/98)
Decision 5.9.2000 [Section III]

In 1978, the applicant was convicted of manslaughter and sentenced to three years' imprisonment after having killed his wife's lover. In 1996, he was arrested on suspicion of having sexually abused his daughters and remanded in custody. He was charged with sexual offences. The Magistrates' Court decided that he should be kept in custody. He was indicted on three counts of rape, three counts of indecent assault and one count of indecency. The Magistrates' Court rejected his first application for bail on the ground that there was a risk that he might commit further offences or interfere with witnesses. He appeared again before the Magistrates' Court, which considered that he should remain in custody. A date was fixed for another bail application, the applicant having obtained the assurance of a surety from a person with whom he could reside, at a substantial distance from his home, during the trial. However, according to section 25 of the Criminal Justice and Public Order Act 1994, bail could not be granted to a person charged with or convicted of murder, attempted murder, manslaughter, rape or attempted rape if he or she had previously been convicted of any of these offences. In the case of a previous conviction of manslaughter or culpable homicide, the restriction applies if the person was sentenced to imprisonment for the previous conviction. The Magistrates' Court was made aware of the applicability of section 25 of the 1994 Act and the scheduled hearing for examining the bail application did not take place. The applicant was finally acquitted and released.
Admissible under Articles 5(3) and (5), and 13. [NB. The case raises the same issue as in Caballero v. the United Kingdom, judgment of 8 February 2000, in which the Government conceded a violation.]

Article 5(4)

PROCEDURAL GUARANTEES OF REVIEW
Access limited to only part of the case-file: *communicated*.

H.H.G. - Switzerland (N° 36833/97)
[Section IV]
(See Article 3, above).

SPEEDINESS OF REVIEW
Two year period between reviews of detention following recall to prison: *violation*.

OLDHAM - United Kingdom (N° 36273/97)
*Judgment 26.9.2000 [Section III]

Facts: The applicant, convicted of manslaughter in 1970, was sentenced to life imprisonment. He was released on licence for the third time in 1993. In 1996 the Secretary of State revoked the applicant's licence after his partner had been taken to hospital with injuries allegedly caused by the applicant. The Parole Board confirmed the applicant's recall to prison. The Discretionary Lifer Panel met in November 1996 and rejected the applicant's representations against his recall. The Secretary of State informed him that the next review was set for November 1998. The applicant subsequently completed courses in *inter alia* anger management and alcohol awareness within eight months. Following a hearing in December 1998, the Discretionary Lifer Panel recommended his release on licence.
Law: Article 5(4) – Where automatic review of the lawfulness of detention has been established, reviews much take place at reasonable intervals. It is not for the Court to rule as to the maximum period between reviews which should automatically apply to discretionary life prisoner – the system has a flexibility which must reflect the realities of the situation, namely, the differences in the personal circumstances of the prisoners under review. In that connection, discretionary lifers are not to be distinguished from persons detained on account of mental illness. The courses which the applicant underwent were concluded within eight months of his recall and no further courses were arranged during the following sixteen months before his next review. The period of two years was not justified, therefore, by considerations of rehabilitation and monitoring. Moreover, during that period the applicant had no possibility of applying for a review himself. In the circumstances, the two year delay was not reasonable and the question of the continuing lawfulness of his detention was not decided speedily.
Conclusion: violation (unanimously).
Article 41 – The Court considered that there was no causal link between the violation found and the pecuniary damage claimed by the applicant. It awarded him £1,000 (GBP) in respect of non-pecuniary damage and also made an award in respect of costs.

ARTICLE 6

APPLICABILITY
Decision of the *Cour de discipline budgétaire et financière* concerning a breach of the rules on public accounts which is subject to a fine: *Article 6 applicable*.

GUISSET - France (N° 33933/96)
Judgment 26.9.2000 [Section I]

Facts: Two loans binding on the French State were contracted in June 1980 and May 1981 in order to finance the construction of a large development including a school and a cultural centre in Abu Dhabi. The loans were signed by the applicant both in his capacity as Ambassador to the United Arab Emirates and on behalf of the French Embassy. However, he omitted to request prior authority to sign as he was statutorily required to do under public-accounting regulations. That irregularity was discovered by the Audit Court on a routine check. In a decision of 15 February 1984, which was not notified to the applicant, the Audit Court brought him before the Disciplinary Offences (Budget and Finance) Court. After 3 July 1986 the applicant, though continuing to receive his basic salary, was not given any postings or promotion. He was informed on 10 June 1987 that an investigation was pending into his affairs. On 17 April 1989 the Disciplinary Offences (Budget and Finance) Court ordered the applicant to pay a fine of 2,000 French francs for contravening the regulations governing the allocation of State revenue. On 4 December 1989 the applicant lodged an appeal with the *Conseil d'État*, which on 29 December 1993 overturned the judgment of the Disciplinary Offences (Budget and Finance) Court for lack of reasoning and remitted the case to that court. The decision of the *Conseil d'État* was forwarded to the Disciplinary Offences (Budget and Finance) Court on 24 January 1994 but it was not until 4 January 1995 that the President of the latter court informed the applicant that he could consult the case file. The Disciplinary Offences (Budget and Finance) Court delivered its judgment on 12 April 1995. It rejected the applicant's argument that there had been a violation of Article 6 § 1 of the Convention, holding that the fines imposed by it under the Law of 1948 providing for penalties for mismanagement of State assets and establishing the Disciplinary Offences (Budget and Finance) Court did not come within the scope of Article 6(1). On the merits, it held that although the applicant had infringed the rules governing the allocation of State revenue and was on that account liable to the statutory financial penalties, the circumstances of the case taken as a whole – notably, the urgency of the situation and the applicant's beneficial action in the face of the inertia of the central authorities – meant that he should escape a fine and be acquitted of the charge. Despite that final acquittal, the applicant was not offered any further posting and was compulsory retired in February 1997 with the rank and grade he had achieved in 1978. The applicant complained that hearings before the Disciplinary Offences (Budget and Finance) Court were not held in public and of the unreasonable length of the proceedings against him.
Law: Article 34 – Although in its judgment of 12 April 1995 the Disciplinary Offences (Budget and Finance) Court had acquitted the applicant, it had expressly stated in its reasons that he had infringed the regulations governing the allocation of State revenue and was therefore subject to the statutory penalties. The applicant was therefore considered guilty and liable to a fine. The fact that he was ultimately spared the penalty as a result of the special circumstances of the case could not be considered as amounting to reparation for the alleged violation. Consequently, regard being had both to the reasoning and the operative provisions of the judgment, the applicant remained a victim.
Article 6(1) – Article 6(1) was applicable as the Disciplinary Offences (Budget and Finance) Court had to be regarded as determining a criminal charge within the meaning of the Convention, as was illustrated by the *Conseil d'État*'s Lorenzi judgment of 30 October 1998.

As regards the applicant's right to have his case heard in public, it had to be noted, firstly, that the Government had not invoked any of the grounds set out in Article 6(1) to justify the proceedings being conducted in private and the lack of a public hearing before the Disciplinary Offences (Budget and Finance) Court and, secondly, the applicant had expressly requested a hearing in public. In addition, the Government had referred to the aforementioned decision of the *Conseil d'État*, which required the Disciplinary Offences (Budget and Finance) Court to hear cases that could result in fines being imposed under the law of 1948 in public. Consequently, in the case before it and in the absence of a public hearing, the Disciplinary Offences (Budget and Finance) Court had infringed the applicant's right to a fair hearing.
Conclusion: violation (6 votes to 1).
As regards the length of the proceedings, the period to be taken into consideration had begun on 10 June 1987, when the applicant was informed that an investigation into his affairs had been started. The proceedings had ended on 9 January 1996 when the judgment of 12 April 1995 was served on the applicant. The proceedings had therefore lasted eight years and almost four months. As regards the issue whether that period was reasonable, no explanation had been given for the delays attributable to the Government. It followed that the applicant's case had not been heard within a reasonable time.
Conclusion: violation (unanimously).
Article 41 – Since the applicant had not established a causal link between the alleged pecuniary damage and the violations found by the Court, he was not awarded any compensation on that account. However, he was awarded 100,000 French Francs as compensation for non-pecuniary damage and a certain sum for costs and expenses (5 votes to 2).

APPLICABILITY
Disciplinary body suspending horse trainer from races without holding any oral hearing: *communicated*.

ANTIKAINEN - Finland (N° 38742/97)
[Section IV]

The applicant, a professional racehorse trainer, had one of his horses tested positive at a doping-test. Consequently, the Central Organisation for Finnish Horse Racing and Breeding suspended the applicant and his horse from racing for a period of six months. The applicant's request to be heard before the organisation and to have an oral hearing held was rejected. The Race Court later dismissed his appeal without holding any oral hearing. He did not institute any proceedings before the ordinary courts. He complains that he did not have a fair and public hearing before a fair and impartial tribunal established by law.
Communicated under Article 6.

RIGHT TO A COURT
Quashing of final and binding judgment: *communicated*.

RYABYKH - Russia (N° 52854/99)
[Section II]

The applicant instituted civil proceedings against a local branch of the State Savings Bank, the State Savings Bank of Russia and the State for refusing to refund her the money which she had deposited in the bank. The District Court found in favour of the applicant and awarded her the sum of 133,963 roubles, to be paid out of the State Treasury. The judgment became final. Nonetheless, the president of the Regional Court later initiated supervisory review proceedings before the latter court against the final legally binding judgment, which the Regional Court quashed, rejecting the applicant's claims without hearing her. No ordinary appeal lay against the supervisory review decision.
Communicated under Article 6(1) and Article 1 of Protocol N° 1.

RIGHT TO A COURT
Failure of public authority to comply with court decision: *communicated*.

MANCHEVA - Bulgaria (N° 39609/98)
[Section IV]

Following an accident at work, the applicant initiated compensation proceedings against her employer, a State body, namely a branch of a District Social Care Centre. The District Court made an award in respect of non-pecuniary damages, which the Regional Court upheld. Despite a writ of execution issued by the District Court, the District Social Care Centre persistently refused to pay. Under Bulgarian civil law, no enforcement proceedings could be instituted against a State body such as the one concerned.
Communicated under Article 6(1) and Article 1 of Protocol N° 1.

ACCESS TO COURT
Refusal of a request for legal aid due to the absence of serious grounds of appeal: *no violation*.

GNAHORE - France (N° 40031/98)
*Judgment 19.9.2000 [Section III]

Facts: The applicant is the father of three children. After being alerted by a hospital service to which C., the youngest child, had been admitted as an outpatient, the public prosecutor's office made an order in January 1992 for C. to be placed in the care of the Child Welfare Service (*ASE*), as injuries which he presented could have been caused by abuse. The applicant was charged with assault and battery with intent on a minor aged less than fifteen by an ascendant. The children's judge ordered C.'s placement with the *ASE* and prohibited all contact. On 26 May 1993 the special chamber for minors at the court of appeal nonetheless recommended that contact between the applicant and his child should be encouraged, provided the applicant remained calm. The investigating judge made an order dismissing the case against the applicant on the ground that there was insufficient evidence. The applicant requested that C.'s placement be reviewed in the light of the dismissal of the charges. At regular intervals the children's judge upheld the order for C.'s placement and the suspension of the right to contact. An expert's report ordered on the issue of contact led the special chamber of the court of appeal to defer deciding that issue and to invite the applicant to undergo therapeutic treatment in the meantime. In October 1994, noting that the applicant had been uncooperative, the chamber upheld the child's placement and the suspension of contact. A further application for contact was dismissed at first instance but the court of appeal granted the applicant a right to one and a half hour's contact every fifteen days on neutral ground, pending the results of a further expert's report. In December 1996 the applicant

lodged a notice of appeal with the Court of Cassation against that decision with the registry of the court of appeal and in January 1997 applied to the legal-aid office of the Court of Cassation for legal aid. His application was rejected by the legal-aid office on the ground that although he had insufficient resources, he had no arguable ground of appeal against the impugned decision before the Court of Cassation. The applicant's appeal under section 23 of the Law of 10 July 1991 to the First President of the Court of Cassation was dismissed on the same ground. In May 1998 the First President of the Court of Cassation made an order declaring that the appeal had lapsed as the notice of appeal did not contain any valid ground of appeal and the applicant had not lodged a memorial setting out such a ground. The decisions concerning C.'s placement and the suspension of contact were renewed.

Law: Article 6(1) – By Article 1196 of the New Code of Civil Procedure ("NCCP") and as an exception to the requirements of Article 973 NCCP, the parties were exempted from the requirement of representation by a member of the *Conseil d'État* and Court of Cassation Bar in proceedings concerning children's welfare. The fact that the applicant had been refused legal aid therefore meant only that he had not been entitled to the assistance of such counsel free of charge. It did not *ipso facto* prevent his pursuing his appeal to the Court of Cassation. Furthermore, proceedings in which legal representation was not mandatory were governed by special rules (Articles 983-995 NCCP) and as a result were far simpler than proceedings in which legal representation was mandatory (Articles 973-995 NCCP). As regards the ground for the refusal of legal aid, namely the lack of an arguable case, it was expressly laid down in Law no. 91-647 of 10 July 1991 and undoubtedly inspired by the concern that public funds should finance legal aid only for appellants whose appeal had reasonable prospects of success. In addition, applicants enjoyed substantive guarantees under the system set up by the French legislature, which protected them from arbitrariness and was based both on the composition of the legal-aid office and the availability of a right of appeal against refusals of legal aid to the First President of the Court of Cassation.

Conclusion: no violation (5 votes to 2).

Article 8 – As regards the Government's preliminary objection, only appeals on points of law could be brought before the Court of Cassation. In the light of the reason given by the legal-aid office and the First President of the Court of Cassation for refusing the applicant's application for legal aid, the applicant could not be accused of failing to exhaust domestic remedies by not proceeding with the appeal after the order of 8 December 1997.

As to the merits, there was no doubt that the measures in issue, namely C.'s placement and the restrictions on contact between father and son, amounted to an interference with the applicant's right to respect for his family life. Those measures were in accordance with the law and had been taken in order to protect C.'s interests. The interference therefore pursued the legitimate aim of protecting the rights and freedoms of others. In order to ascertain whether there was a need for the measures in a democratic society, two periods had to be distinguished: the period before and the period after the order of 26 May 1993.

As to the measures taken before the order dismissing the charge, it was sufficient to note that the order for C's placement was made shortly after the applicant was charged with assault and battery with intent on his son and placed under judicial supervision. In the light of what was obviously the child's overriding interest to be protected from a parent suspected of such an offence, the measure could not be called into question on the basis of Article 8. That applied also to the suspension of the applicant's right to contact and to the restrictions subsequently imposed on that right during the period under consideration.

Conclusion: no violation (unanimously).

With regard to the continuation of the child's placement after the charge had been dismissed, the courts based their decisions on reasons – such as the father's inability to bring up the child – which appeared relevant and their decisions reflected a concern to act in the overriding interest of the child, a concern which had led the children's judge not only to follow the recommendations of the experts, but also, in particular, to meet the applicant. Consequently, regard being had to their margin of appreciation, the authorities had had reasonable cause to consider that it was necessary for the placement of the applicant's child to continue.

Conclusion: no violation (unanimously).

As regards the continued restrictions on contact between father and son, the Court noted that they had been separated for more than eight years during which period contact between them had been very sporadic. Indeed, it had even declined with time to the point where rebuilding the family unit would in all likelihood now prove too upsetting for the child. In other words, a situation that should only have been temporary had become a long-term one, thereby creating an obstacle to renewed contact between father and son. However, it had to be noted that the relevant authorities had made serious attempts to enable the family ties to be preserved and that the failure of the measures they had taken to that end was attributable solely to the applicant's behaviour. Admittedly, it might be felt that the authorities could – and could still – have taken other steps and adopted other measures to facilitate the renewal of contact between father and son. However, that factor could not suffice to lead to the conclusion that there had been an infringement of the rights guaranteed by Article 8, especially as the authorities were in principle better placed for assessing which measures should be taken, particularly because they were in direct contact with the background to the case and the people involved. The Court therefore had to conclude that the authorities had taken all the measures which could reasonably have been required of them to facilitate the family reunification.
Conclusion: no violation (5 votes to 2).

ACCESS TO COURT
Refusal to grant legal aid to a foreigner non-resident foreigner: *communicated*.

BOUDRAHAM - Spain (N° 49881/99)
IHASNIOUAN - Spain (N° 50755/99)
[Section II]

The applicants are Moroccan nationals and widows of Moroccan soldiers who had served in the Spanish army. The Spanish authorities had paid their husbands a retirement pension which was stopped on their husbands' death. The applicants sought a pension as the surviving spouse. This was refused on the ground that such pensions were reserved for the widows of soldiers killed in action, whereas their husbands had died of illnesses wholly unconnected with their service. The applicants challenged those decisions before the Madrid Higher Court of Justice. They were invited by that court to appoint legal representatives or, if they did not have the means to do so, to seek legal aid. They made an application for legal aid. The first applicant was informed by the court that aliens who were not resident in Spain were not entitled to legal aid, other than for asylum applications. The Madrid Bar turned down the second applicant's application citing the Legal Aid Act but without giving reasons for its decision. The Madrid Higher Court again invited the applicants to appoint legal representatives and, when they failed to do so, struck their applications out of the list.
Communicated under Article 6(1) taken alone and together with Article 14.

FAIR HEARING
Alleged interference by the legislative in court proceedings: *inadmissible*.

ORGANISATION NATIONALE DES SYNDICATS INFIRMIERS LIBERAUX (O.N.S.I.L.) [NATIONAL ORGANISATION OF TRADE UNIONS REPRESENTING SELF EMPLOYED NURSES] - France (N° 39971/98)
Decision 29.8.2000 [Section III]

The applicant is an organisation of trade unions representing self-employed nurses. After the *Conseil d'État* had quashed ministerial decrees approving two initial collective bargaining agreements applicable to self-employed nurses, a further agreement was reached and approved by a decree of 10 March 1996. The applicant organisation immediately made known its intention to seek an order quashing that decree. On 28 May 1996 Parliament adopted a statute validating the collective bargaining agreement concerned. Twenty-four hours later, on 21 June 1996, the applicant lodged an application with the *Conseil d'État* for an order quashing the decree. The *Conseil d'État* declared the application inadmissible as being devoid of purpose and dismissed the complaint of a violation of Article 6(1) of the Convention as being inapplicable. Relying on Article 6(1), the applicant alleged that the State had intervened in a decisive manner to influence proceedings to which it was a party in its own favour. The applicant also submitted that the statute that had been adopted had enabled the State to escape its obligations to give effect to a final decision.
Inadmissible under Article 6(1) – although the dispute could be regarded as coming within the scope of application of Article 6(1), it was unnecessary to decide that issue since the application was inadmissible for the following reasons. The legislature had intervened before the applicant had lodged its application with the *Conseil d'État*, at a time when the dispute, though likely, had not commenced and its outcome was uncertain. In any event, the legislature could have approved the collective bargaining agreement at the outset and no remedy would have been available to the applicant to challenge the statute. Accordingly, the Court could not accept that the statute had been adopted in order to pre-empt the litigation and to make its future outcome before the *Conseil d'État* inevitable. Nor could it accept that an infringement of the principle of equality of arms could result from measures "anticipating" proceedings that had yet to begin. Furthermore, Article 6 did not guarantee that final judgments in civil proceedings were immutable. In addition, it had not been established that the third agreement could be equated with the first two agreements, and affirming that the *Conseil d'État* would have quashed the decree of 10 April 1996 had it not been validated by the statute amounted to speculating on the decision that would have been taken: manifestly ill-founded.

PUBLIC HEARING
Lack of a public hearing before the *Cour de discipline budgétaire et financière* : *violation*.

GUISSET - France (N° 33933/96)
Judgment 26.9.2000 [Section I]
(See above).

REASONNABLE TIME
Length of proceedings before the *Cour de discipline budgétaire et financière* : *violation*.

GUISSET - France (N° 33933/96)
Judgment 26.9.2000 [Section I]
(See above).

REASONABLE TIME
Length of civil proceedings: *violation*.

WOJNOWICZ - Poland (N° 33082/96)
*Judgment 21.9.2000 [Section IV]

Facts: The application concerns the length of civil proceedings which began in 1987. In 1995 an appellate court divided the proceedings into two separate sets, both of which are still pending.
Law: Article 6(1) – The Court is not competent to examine the period prior to 1 May 1993, when Poland's recognition of the right of petition took effect, but it may take into account the stage reached in the proceedings at that date. In that respect, the Ministry of Justice had acknowledged as early as 1989 that the length had exceeded a reasonable time. The period to be examined is 7 years 4 months. The case was not of such complexity as to justify this length and the applicant bears no responsibility for the length. There were, however, periods of inactivity attributable to the judicial authorities, for which no convincing explanation has been given.
Conclusion: violation (unanimously).
Article 41 – The Court dismissed the applicant's claim in respect of pecuniary damage as speculative. It awarded him PLN 25,000 in respect of costs.

REASONABLE TIME
Length of civil proceedings: *violation*.

VAN VLIMMEREN and VAN ILVEERENBECK - Netherlands (N° 25989/94)
Judgment 26.9.2000 [Section I]

Facts: The applicants cultivated land which was regularly flooded after works had been carried out in connection with a land consolidation project. In August 1991 the applicants informed the Land Development Commission that they held it liable for the damage and in 1993 they brought proceedings for compensation. The Regional Court rejected their claims as inadmissible: departing from its previous case-law, it held that the question of liability could not be determined in such proceedings and that the applicants would have to wait until the list of financial settlements had been deposited. The applicants submitted their claim in November 1995 after the list had been deposited. After a hearing, the Regional Court found in January 1997 that the Land Development Commission was liable and experts were subsequently appointed to determine the extent of the damage. The proceedings are still pending.
Law: Article 6(1) – Even if proceedings are dealt with expeditiously once they get underway, a reasonable time may still have been exceeded if an individual was unable for a considerable time to put his claims before a tribunal without sufficiently weighty and pertinent reasons for that delay. It is not in dispute that the relevant period began in August 1991 and that the proceedings are still pending. When the applicants' claims were not examined in the initial proceedings, access to court became dependent on the list of financial settlements being deposited, an event beyond their control. In fact, their claims were first referred to a tribunal over five years after they had first held the Land Development Commission liable. Moreover, the nature of a land consolidation project did not prevent an earlier examination of the claims – in particular, any complexity lay in determining the extent of the damage rather than in the question of liability. While some delays may be attributed to the applicants, these are not of such a nature as to detract from the fact that the applicants had to wait until the end of 1996 before they were able to put their claims to a court. This situation is hard to reconcile with the need to render justice with the effectiveness and credibility required by the Convention.
Conclusion: violation (unanimously).
Article 41 – No memorial on the merits was submitted on behalf of the applicants and no claim for just satisfaction was submitted until a late stage. The time allowed appears sufficient and the claims must be dismissed as out of time.

APPLICABILITY
Special charge imposed for sending incorrect tax return: *admissible*.

JANOSEVIC - Sweden (N° 34619/97)
Decision 26.9.2000 [Section I]

In 1995, the applicant's company was subjected to a tax audit. The tax authorities having found irregularities in the applicant's tax return for 1994, additional taxes were imposed on him together with a special charge. In 1996, he requested the tax authorities to reconsider their decision on the ground that the discretionary assessment of the company's turnover for the year in question was erroneous. In 1999, the tax authorities having confirmed their position, he brought the matter before the County Administrative Court, where the case is still pending. In view of the considerable amount of additional taxes imposed on him, the applicant joined to his initial request for reconsideration a request for a stay of payment. The tax authorities asked him to provide a security as a prerequisite. He failed to do so and, consequently, his request for a stay of payment was rejected. His appeals were to no avail. In 1996, in spite of the pending proceedings for reconsideration, the tax authorities initiated enforcement proceedings to recover the additional taxes and special charge. The District Court declared the applicant bankrupt. His appeals remained unsuccessful but the bankruptcy was later written off on account of indigence.
Admissible under Article 6.

APPLICABILITY
Military disciplinary proceedings : *Article 6 not applicable*.

JOÃO JOSÉ BRANDÃO FERREIRA - Portugal (N° 41921/98)
Decision 28.9.2000 [Section IV]

Disciplinary proceedings were brought against the applicant, a wing commander in the air force, for being absent without leave and using an army vehicle for four days while on duty at the Portuguese Embassy in Guinea Bissau, where he had been posted as a military attaché. The disciplinary proceedings were ordered by the Chief of Staff of the Armed Forces who appointed an investigating officer to conduct the investigation. During the investigation the applicant requested that the investigating officer hear evidence from three witnesses. That request was turned down. The Chief of Staff accepted the submissions of the investigating officer and found that the applicant had infringed military disciplinary regulations and ordered five-days' detention. The Chief of Staff accepted in part an objection raised by the applicant of a breach of the principle of adversarial process and ordered the investigating officer to take evidence from the witnesses called by the applicant. The investigating officer heard the three witnesses without either the applicant or his representative being present and concluded that their depositions could not alter his previous findings. The chief of staff confirmed the sentence of five-days' detention which the applicant had served in the meantime. The Supreme Military Court dismissed the applicant's appeal holding, in particular, that the principle of adversarial process, which was inapplicable to the investigative stage, had not been infringed.
Inadmissible under Article 6(1) and (3) – As regards the legal nature of the measure in issue under domestic law, the offence alleged against the applicant was a disciplinary offence under Portuguese legislation. As to the nature of the penalty imposed on him, it appeared to come within the category of disciplinary penalties, whose aim is in general to ensure compliance by

members of particular groups, in this instance the military, with their own rules of conduct. Lastly, as regards the nature and severity of the measure, although the applicant had had to serve five-days' detention when the maximum penalty that could have been imposed was ten days, he had not been deprived of his liberty, since the wording of the military disciplinary regulations indicated that the applicant would not have been imprisoned for the period concerned but would have continued to perform his military duties almost as normal. The penalty imposed on the applicant was thus similar to the "light arrest" in issue in the Engel case in respect of which the Court held that Article 6 was inapplicable. In conclusion, the measure imposed on the applicant was not, by its nature or severity, sufficiently grave as to warrant its being qualified a "criminal" penalty for the purposes of Article 6(1). Consequently, the criminal branch of that provision did not apply. Furthermore, the applicant had not alleged that a civil right was in issue in the instant case: incompatible *ratione materiae*.

APPLICABILITY
Principle of multiplicity of sentences: *inadmissible*.

AYDIN - Turkey (N° 41954/98)
Decision 14.9.2000 [Section II]

In 1988, the applicant was found guilty of, *inter alia*, membership of the PKK and sentenced to sixteen years and eight months' imprisonment by the Martial Court. However, his conditional release was ordered. In 1993, he was found guilty of separatist acts and sentenced to life imprisonment by the State Security Court. He obtained the court's agreement that the life sentence should be served in accordance with the principle of multiplicity of sentences. The court sent its final decision to the public prosecutor for its execution to be ensured. The public prosecutor objected to the application of the principle of multiplicity of sentences and the State Security Court to which the case was subsequently transferred quashed the initial decision. According to Turkish law, a sentence is considered to have been executed when the sentenced person has been conditionally released. The court accordingly considered that the principle did not apply to the applicant, who had been conditionally released after his first sentence, so that only the last sentence remained to be executed.
Inadmissible under Article 6: The applicant's initial request concerned the manner in which the sentence was being implemented and not the length of it. Proceedings concerning the execution of a sentence are not covered by this provision and there is no right under the Convention to serve a prison sentence according to a particular sentencing system: incompatible *ratione materiae*.

FAIR HEARING
Self-incrimination – use at trial of statements made on pain of a sanction to inspectors investigating a company takeover: *violation*.

I.J.L., G.M.R. and A.K.P. - United Kingdom (N° 29522/95, 30056/96 and 30574/96)
*Judgment 19.9.2000 [Section III]

Facts: Following the takeover of Distillers by Guinness in 1986, Department of Trade and Industry inspectors were appointed to investigate alleged misconduct involving an unlawful share support operation aimed at inflating the price of Guinness shares. The investigation began in December 1986 and quickly uncovered evidence of criminal offences. The Director of Public Prosecutions (DPP) was informed, but it was decided to allow the inspectors to proceed with their investigation and pass the transcripts to the Crown Prosecution Service. The applicants were interviewed by the inspectors. In May 1987 the DPP asked the police to carry out a criminal investigation and the transcripts and documents from the inspectors' investigation were handed over to the police. The applicants were subsequently charged with various offences and tried along with Ernest Saunders (see Saunders v. the United Kingdom judgment of 17 December 1996). The third applicant challenged the admissibility in the criminal proceedings of the statements made to the inspectors, but the judge held that, while the inspectors could ask incriminating questions and the interviewee had a duty to answer them, there had been no element of oppression. A large part of the evidence against the applicants was that gathered by the inspectors, including their statements. Each of the applicants was convicted on several counts. Apart from making modifications to the sentences imposed, the Court of Appeal dismissed the applicants' appeals in 1991. However, in 1992 they became aware that material in the possession of the prosecution had not been disclosed and in 1994 the Home Secretary acceded to their request to refer the case to the Court of Appeal. The Court of Appeal, however, dismissed the case (apart from quashing a conviction on one count) in 1995. It rejected the applicants' complaint concerning the admissibility of their statements and also their allegation of improper collusion with the aim of using the inspectors to gather evidence for the prosecution. It also found that the non-disclosure of material, while a procedural irregularity, had not prejudice the applicants. Leave to appeal to the House of Lords was refused.
Law: Article 6(1) (use of the statements) – The Government conceded that the applicants' complaints concerning the use of their statements to the inspectors were materially indistinguishable from that of Mr Saunders, in whose case the Court had found a violation. As with Mr Saunders, a significant part of the prosecution case consisted of the transcripts of the interviews with the inspectors under statutory compulsion. There is thus no reason to reach a different conclusion in this case.
Conclusion: violation (unanimously).
Article 6(1) (alleged improper collusion) – The applicants' allegations of improper collusion between the Department of Trade and Industry and the DPP's office was carefully considered but ultimately rejected by the Court of Appeal on the fact, and due weight must be given to this finding. Neither the assessment of the evidence nor the establishment of the facts was manifestly unreasonable or arbitrary. While the Court of Appeal did not have regard to the self-incrimination issue, a legal requirement to give information to an administrative body does not necessarily infringe Article 6: whether it does so will depend on the use made of the information. The inspectors' functions were essentially investigative, their purpose being to ascertain and record facts which might subsequently be used as the basis for action by other authorities, and a requirement that such a preparatory investigation be subject to the guarantees of a judicial procedure would unduly hamper the effective regulation of complex financial and commercial activities. The central issue in the applicants' case is the use made of their statements and the claim that Article 6 guarantees should have attached already to the proceedings before the inspectors does not alter the conclusion that there was a violation in that respect. While the third applicant argues that he would never have been put on trial in the absence of the transcripts, the Court cannot speculate as to the other means that might have been deployed by the prosecution and, in any event, Article 6 does not guarantee any right not to be prosecuted but the right to a fair procedure in the determination of criminal charges, an issue which the Court has already considered.
Conclusion: no violation (unanimously).

Article 6(1) (non-disclosure by prosecution) – All the materials at issue were disclosed to the applicants prior to the start of the proceedings in the Court of Appeal, which extensively reviewed them and considered the possible prejudice which they might have had. The particular defect identified by the Court of Appeal was remedied by the subsequent and extensive review conducted in the reference proceedings. The Court of Appeal was able to consider the impact of the new material on the safety of the conviction in the light of detailed argument from the defence lawyers.
Conclusion: no violation (unanimously).
Article 6(1) (length of proceedings) – The period between the close of the Court of Appeal proceedings in 1991 and the decision of the Home Secretary to refer the cases back to the Court of Appeal was not in any way characterised by the determination of the charges against the applicants. That period should not, therefore, feature in the assessment of the relevant time-frame. Moreover, since the inspectors were not engaged in the determination of charges either, the starting point in relation to each applicant is the date on which he was charged (or, in the case of the third applicant, arrested). The period ended with the Court of Appeal's second judgment in 1995 and, excluding the period prior to the reference mentioned above, the proceedings lasted about four and a half years in total. The proceedings were of undoubted complexity; there was no period of delay attributable to the applicants, but neither was there any period of delay for which the authorities could be held responsible. The period of around three years and eight months between the dates on which the applicants were charged and the Court of Appeal's first judgment cannot be considered unreasonable and the period of around eleven months between the reference date and the Court of Appeals' second judgment cannot be considered excessive.
Conclusion: no violation (unanimously).
Article 6(2) – The applicants' arguments in this respect amount to a restatement of their arguments under Article 6(1) concerning the use made of their statements. Consequently, the complaint does not give rise to any separate issue.
Conclusion: no separate issue (unanimously).
Article 41 – The Court cannot speculate as to the question whether the outcome of the trial would have been different had use not been made of the transcripts. Consequently, no causal connection between the violation and any pecuniary loss has been established. As to a prospective claim for non-pecuniary damages, the finding of a violation constitutes sufficient just satisfaction. As to costs and expenses, the Court considered that only those reasonable in quantum and actually and necessarily incurred in order to seek redress of the sole violation found are recoverable, all other heads of claim being disallowed. It otherwise reserved the matter.

FAIR HEARING
Interpreter hostile to accused and absence of translation of documents used at trial: *communicated*.

UÇAK - United Kingdom (N° 44234/98)
[Section I]

The applicant, a Turkish national of Kurdish origin, was granted asylum in Switzerland. While he was travelling in the United Kingdom, the police searched his accommodation, where they found drugs. The applicant was detained by the police from the moment the search was carried out. He spoke no English and therefore could not understand the motives justifying his detention or his rights on detention. He was subsequently charged, in English, with possession of heroin. The police contacted the duty solicitor to assist the applicant. However, the solicitor was unable to give the applicant any legal advice as no interpreter was present when he visited him. A Turkish interpreter had been called by the police the same day but was only available later in the day. The duty solicitor left without having been informed by the police that the applicant was to be interviewed later on in the presence of an interpreter. Consequently, the police interview took place without the applicant's solicitor. The applicant was committed for trial and remanded in custody. While in detention, he was interrogated on three occasions in the presence of the interpreter who he claims became angry with him during one of the interrogations and called him a liar. The applicant having failed to obtain another interpreter, the same person interpreted at all further consultations with his two successive solicitors. As a result, the applicant was unable to participate fully and instruct his solicitors, as he felt unable to talk freely with them. None of the documents used at the trial was translated; the indictment was only translated when read out in court at the beginning of the trial. During the trial, the interpreter acted for both the prosecution and the applicant, and was paid by the former. The interpreter gave evidence for the prosecution concerning the accuracy of her interpretation at the interview which taken place without the applicant's solicitor. The applicant was eventually convicted and sentenced to 10 years' imprisonment. He obtained legal aid for an appeal. A new interpreter was found but the applicant could not understand her translations as she was not Turkish but Armenian. His appeal was dismissed.
Communicated under Article 6(1) and (3)(c).

FAIR HEARING
Presiding judge changed in the course of trial: *communicated*.

P.K. - Finland (N° 37442/97)
[Section IV]

The applicant was charged with aggravated fraud and debtor's dishonesty. He was tried by a District Court composed of a professional presiding judge and three lay members. The applicant and several witnesses were heard by the court. The presiding judge was replaced in the course of proceedings; the witnesses who had been heard by him were not called again to give evidence before the new judge. The applicant was found guilty, partly on the basis of evidence given by a witness who had been heard only by the first presiding judge. The applicant lodged an appeal with the Court of Appeal requesting, *inter alia*, an oral hearing. The Court of Appeal dismissed the appeal and increased the damages which he was to pay. His appeal to the Supreme Court was to no avail.
Communicated under Article 6(1).

FAIR HEARING
Conviction of offence prompted by the police in the course of an investigation: *communicated*.

VANYAN - Russia (N° 53203/99)
[Section II]

The applicant was convicted of unlawful procurement and supply of drugs. The police had instigated a "test buy" of drugs by giving money to a drug addict who was asked to contact her drug supplier. The drug addict had got in touch with the applicant and had given him the money so that he would obtain drugs for her. He had done so and was consequently arrested and convicted.
Communicated under Article 6.

REASONABLE TIME
Length of criminal proceedings – delay between original non-custodial sentence and custodial sentence ordered following reference by Attorney-General: *violation*.

HOWARTH - United Kingdom (N° 38081/97)
*Judgment 21.9.2000 [Section IV]

Facts: The applicant was interviewed by the Serious Fraud Office in March 1993 in connection with offences arising out of a company takeover. He was charged in July 1993 and his trial took place between October 1994 and February 1995. He was convicted on several counts and sentenced to 220 hours' of community service in March 1995. He lodged an appeal against his conviction and in April 1995 the Attorney-General referred the case to the Court of Appeal for a review of the sentence. The applicant's appeal was dismissed in March 1997. The following day the Court of Appeal heard the Attorney-General's reference and, holding that the sentence was unduly lenient, imposed a sentence of 20 months' imprisonment.
Law: Article 6(1) – The relevant period in assessing the length of the proceedings began when the applicant was interviewed in March 1993 and ended in March 1997, thus totalling a little over four years. The time between the first sentencing in March 1995 and the second in March 1997 is of particular concern. The combination of the appeal, a co-accused's appeal and the Attorney-General's reference rendered the case more complex than it might have been otherwise, and it was logical to deal with the appeals before the reference. However, by the time the first instance proceedings ended, the issues had been aired at the trial and the transcipts were ready and the Court of Appeal does not appear to have regarded the reference as giving rise to any particular difficulty. No convincing reasons have been supplied to justify the two years taken to deal with the appeal, and indeed no judicial activity took place between December 1995 and March 1997 other than in relation to legal aid.
Conclusion: violation (6 votes to 1).
Article 3 – There is no indication of treatment attaining the minimum level of severity required under this provision.
Conclusion: no violation (unanimous).
Article 41 – The Court found that there was an insufficient causal connection between the delay in sentencing and the pecuniary losses claimed by the applicant, which were due in essence to the custodial sentence imposed on him and his disqualification as a company director. It awarded the applicant £750 (GBP) in respect of non-pecuniary damage and £8,000 in respect of costs.

Article 6(2)

PRESUMPTION OF INNOCENCE

Enforcement proceedings instituted to levy additional taxes and special charge while proceedings for reconsideration of decision imposing them pending: *admissible*.

JANOSEVIC - Sweden (N° 34619/97)
Decision 26.9.2000 [Section I]
(See Article 6(1) [criminal], above).

Article 6(3)(c)

DEFENCE THROUGH LEGAL ASSISTANCE
Interview of accused by the police with interpreter but in absence of lawyer: *communicated*.

UÇAK - United Kingdom (N° 44234/98)
[Section I]
(See Article 6(1), above).

FREE LEGAL ASSISTANCE

Absence of free legal aid for foreigner without any means to allow him to lodge a cassation appeal: *violation*.

BIBA - Greece (N° 33170/96)
*Judgment 26.9.2000 [Section III]

Facts: The applicant, an Albanian national who had entered Greek territory unlawfully, was accused of homicide with intent, of robbery and of unlawfully entering Greece and was subsequently sentenced to life imprisonment. He was represented at first instance by a lawyer who defended him without payment. He appealed, but the first-instance judgment was upheld. His lawyer's fees on the appeal were paid by a prison visitor who was a member of a humanitarian organisation. As she was unable to pay the substantial costs that would have been incurred on an appeal on points of law, the applicant did not lodge an appeal with the Court of Cassation.
Law: Article 6(1) taken together with Article 6(3) – the applicant, an illegal immigrant with no settled employment, did not have the means to retain counsel before the Court of Cassation at the material time. He had received financial aid from a prison visitor, who was a member of a humanitarian organisation, for his appeal against the judgment of the trial court, but she was unable to give him any financial support for an appeal to the Court of Cassation. As regards the issue whether the interests of justice demanded that he should receive free legal aid, the seriousness of the offence of which he was accused and the heaviness of the sentence imposed were to be taken into account. Furthermore, the complexity of proceedings before the Court of Cassation, coupled with the fact that he was a foreign national and did not speak Greek, meant that it would have been impossible for him to prepare an appeal to the Court of Cassation without assistance. Lastly, Greek legislation did not provide for legal aid for appeals to the Court of Cassation.
Conclusion: violation (unanimously).
Article 41: The Court awarded 3,000,000 drachmas for pecuniary damage and 1,500,000 drachmas for costs and expenses.

ARTICLE 8

PRIVATE LIFE
Refusal to give evidence in divorce proceedings brought by a wife against her adulterous husband: *communicated*.

G.M. - Luxembourg (N° 48841/99)
Decision 19.9.2000 [Section II]

The applicant was summoned to give evidence in divorce proceedings. One of the questions which was put to her was whether she had had an adulterous relationship with the petitioner's husband. The applicant refused to answer and relied on Article 8 of the Convention. The judge who was questioning her informed her that she was liable to a civil fine for refusing to give evidence without reasonable cause. As the applicant still refused to answer the question she was ordered to pay 100,0000 Luxemburger Francs. The court of appeal upheld the order but reduced the amount to 25,000 Francs. The Court of Cassation overturned that decision and remitted the case to another bench of the court of appeal. Under Luxembourg law regarding appeals on points of law, the Court of Cassation should have examined the merits of the case itself, since the power to remit cases to a different bench of the same court did not apply to decisions of the court of appeal. When the Court of Cassation itself gives judgment on the merits, no further appeal lies. The court of appeal set aside the order imposing a civil fine on the ground that it had not been made in public as required by Article 6 of the Convention. As regards Article 8, it held that the deposition of the adulterous spouse's partner was crucial for establishing facts in issue in divorce proceedings and that the right to evidence should prevail over the right to respect for private life. It ordered the applicant to pay a fine of 25,000 Francs. The applicant did not appeal to the Court of Cassation against that judgment.
Inadmissible under Article 6 – since the fine initially imposed on the applicant had been set aside by the decision of the court of appeal on remission by the Court of Cassation, the applicant could no longer claim to be a victim within the meaning of Article 34 of the Convention.
Communicated under Article 8 and Article 35(1) (exhaustion of domestic remedies).

PRIVATE LIFE
Homosexuals prevented from giving blood : *communicated*.

TOSTO - Italy (N° 49821/99)
CRESCIMONE - Italy (N° 49824/99)
FARANDA - Italy (N° 51467/99)
[Section IV]

Each of the applicants wished to give blood. They were given a form which set out the circumstances in which donors could be precluded from giving blood owing to the risk of transmission of infectious diseases such as Aids or hepatitis. One of the grounds mentioned was having a homosexual relationship. The applicants, who were homosexuals, were therefore unable to give their blood.
Communicated under Articles 8 and 14.

FAMILY LIFE
Placement of child in care and imposition of restrictions on the father's right of access: *no violation*.

GNAHORE - France (N° 40031/98)
*Judgment 19.9.2000 [Section III]
(See Article 6(1), above).

FAMILY LIFE
Enforcement of access to children: *no violation*.

GLASER - United Kingdom (N° 32346/96)
*Judgment 19.9.2000 [Section III]

Facts: Following the applicant's separation, he had difficulty in obtaining access to his three children, due to his wife's opposition. They were subsequently divorced and in June 1993 a contact order was made. However, it was not complied with and the ex-wife and children then moved to Scotland, where they could not be traced. In October 1993 the High Court made the children wards of court. The court subsequently obtained the children's address, which it disclosed to the Official Solicitor (acting for the children) but not to the applicant. In June 1994 the High Court forwarded the contact order of June 1993 to the Court of Session in Scotland, which had power to enforce it. The applicant's ex-wife continued to oppose any access to the children. In September 1994 a report was submitted at the request of the Court of Session, concluding that it would not be in the children's interests for the contact order to be enforced. The applicant brought further proceedings in the High Court in an attempt to secure access and in June 1995 a contact order was made in amended terms. In 1996 his ex-wife brought proceedings seeking an order that there should be no contact and the 1995 order was rescinded on joint application (since the Scottish court had no jurisdiction to vary the contact order). In May 1997 an order was made by consent that the applicant should have contact as agreed with his ex-wife and consented to by the children. He has subsequently had indirect contact through third parties on a few occasions.
Law: Article 8 – The positive obligation on national authorities to take measures to facilitate contact between a non-custodial parent and children after divorce is not absolute and any obligation to apply coercion must be limited, since the interests of all concerned must be taken into account and in particular the best interests of the child. The key consideration is whether the authorities have taken all necessary steps to facilitate contact as can be reasonably demanded by the special circumstances of each case. The danger of procedural delay resulting in *de facto* determination of the issue and protection of the parent's interests in the decision-making process are other important factors. The principal obstacles to the applicant having access was his ex-wife's opposition, despite the order granting him specified rights. In these circumstances, the question is whether there was an accessible and coherent mechanism for the enforcement of his rights. In that respect, both the English and Scottish courts had a range of measures available and there was no fundamental defect in the structure for enforcing the applicant's rights in another part of the United Kingdom. Indeed, the registration of the contact order by the Court of Session within a matter of days demonstrates that the procedure is simple and effective. The decision-making process must inevitably involve a balancing of the respective interests, since coercive measures may in themselves present a risk of damage to the children concerned. Furthermore, with regard to the applicant's argument that the initiative in pursuing enforcement should lie with the domestic courts, it is the widespread practice in Council of Europe States for plaintiffs in civil proceedings to bear substantial responsibility for their conduct and direction, and indeed Article 8 requires parental participation in proceedings concerning children. However, the authorities are also responsible for the speed with which they act and compliance with the Convention. As far as the initial proceedings in England are concerned, the Court was not persuaded that the High Court had acted improperly or inappropriately in not taking coercive action or that there had been any failure by the authorities to protect the applicant's interests by leaving it to him to apply for orders to locate his ex-wife; the relatively short lapse of time in passing the exact address to the applicant, due to his ex-wife's opposition, does not disclose a lack of respect

for his rights. As to the applications to the Court of Session for enforcement, it was not unreasonable for the court to order a report on the children, since a year had passed since the original contact order, and it is not evident that the court was intending to redecide issues already adjudicated upon in England. The time taken to prepare the report does not disclose a lack of necessary expedition and the applicant's petition was granted despite the conclusions of the report. Responsibility for the fact that it had to be rescinded cannot be laid entirely on the Scottish court, which issued its order in the terms requested by the applicant. Moreover, the applicant could have applied for an order in identical terms to the English one. The High Court subsequently gave relevant and sufficient reasons for transferring jurisdiction to the Court of Session, namely efficiency and speed, and in the circumstances the applicant cannot complain of either the contact order made by the latter court or the time it took. Overall, while the applicant faced significant difficulties, these flowed from the unilateral actions of his ex-wife and the authorities did not fail in taking the reasonable steps available to them in locating the family or dealing with the applicant's requests for enforcement, nor was there a lack of expedition on their part. More coercive steps could not reasonably have been taken and in the very difficult situation the authorities struck a fair balance.
Conclusion: no violation (unanimously).
Article 6(1) (length of proceedings) – The total period involved was 3 years, 11 months and 13 days. The case presented considerable complexity and the courts examined the applicant's applications with reasonable expedition. In addition, the applicant's own conduct contributed to a degree to the length of the proceedings. In the circumstances, the overall length did not exceed a reasonable time.
(access to court, fair hearing) – As to the applicant's complaint about lack of legal aid, there is no right under the Convention to receive legal aid in civil proceedings and, while denial of legal aid may deprive a person of effective access to court, the applicant was in fact represented during a substantial part of the proceedings and the cost of obtaining representation is not by itself a relevant factor under Article 6(1). Moreover, it does not appear that when the applicant was without representation he was unable to put his claims forward effectively. As to his complaint of unfair conduct on the part of a particular judge, the proceedings at issue in fact resulted in the applicant obtaining extended contact rights and the alleged interventions by the judge, who had power to cut short irrelevant or over-lengthy submissions, cannot be regarded as rendering the proceedings unfair.
Conclusion: no violation (unanimously).
Article 9 – The applicant's complaints under this provision are unsubstantiated and there is no basis for finding that the courts took any step which infringed his freedom of religion or showed any lack of respect for his rights in that regard.
Conclusion: no violation (unanimously).

FAMILY LIFE
Special regime of detention limiting visits of family to prisoner belonging to criminal organisation: *no violation*.

MESSINA - Italy (Nº 25498/94)
*Judgment 28.9.2000 [Section II]

Facts: On a number of occasions between 1992 and 1998 the applicant was charged with and convicted of involvement in Mafia-type activities. In particular, he was wanted for the murder of a judge and had been sentenced to seventeen years' imprisonment. In 1993 the Minister of Justice issued a decree subjecting him to a special regime for reasons of public order and security, owing to his links with the Mafia. Under that regime, visits from prisoners' families were limited and, provided prior authorisation was obtained from the courts, their correspondence was monitored. The applicant challenged the decree but was unsuccessful. The governors of the prisons in which he was successively held obtained an authorisation to monitor his correspondence. Eight decrees were issued renewing the special regime for six monthly periods. On several occasions, some of the restrictions on visits from the family were lifted by the courts; however, they were systematically reinstated by successive decrees. The applicant appealed to the court responsible for the execution of sentences against all nine decrees, but to no avail. None of the appeals were heard within the statutory time-limit of ten days. Some of the restrictions, notably those concerning visits by members of the family, were nonetheless lifted in 1997. The applicant ceased to be subject to the special regime in 1998. Furthermore, several letters which the applicant had asked his wife to forward to the Commission were received by her marked "censored" by the prison authorities.
Law: Article 8 (family life) – The applicant was subject to a special prison regime, one of the features of which was a strict limit on the number of visits by members of the family and strict supervision of those visits. Those additional restrictions constituted an interference in the applicant's family life. They were in accordance with the law and pursued the legitimate aims of the prevention of disorder, public safety and the prevention of crime. The aim of the special prison regime was to prevent all contact between the prisoner and the criminal milieu from which he came. Before the special regime was brought in, prisoners from the Mafia continued to be influential within that criminal organisation despite being detained. In the light of the specific nature of such criminal organisations and of the importance of family relations in their operation, it was reasonable for the legislature to consider that such measures were necessary to attain the aforementioned legitimate aims. Between 1993 and 1998, the period during which the applicant was subject to the special regime, a warrant was outstanding for him for the murder of a judge, he was serving a seventeen-years' prison sentence and other proceedings were pending against him for being a member of a Mafia-type organisation. The imposition of the special regime therefore appeared to be justified throughout that period. Furthermore, the restrictions on visits from the family were not imposed throughout the period for which the applicant was subjected to the special regime. They were relaxed on a number of occasions, demonstrating the authorities' willingness to help the applicant to remain in contact with his close relatives and to strike a fair balance between the applicant's rights and the aims of the special regime. It followed that the restrictions on the right to respect for family life did not go beyond what was necessary in a democratic society to achieve the aims pursued.
Conclusion: no violation (unanimously).
Article 8 (correspondence) – The monitoring of the applicant's correspondence was authorised by court orders based on section 18 of Law no. 354 of 1975. That provision, which did not regulate the length of the censorship of prisoners' correspondence or the grounds for which such censorship could be imposed, was vague as to the extent of the relevant authorities' discretion in that sphere and the way in which it was to be exercised. In conclusion, since there were no subsequent provisions clarifying that provision, the interference could not be regarded as being in accordance with the law.
Conclusion: violation (unanimously).
Article 13 – Decrees by the Minister of Justice imposing a special regime could be challenged before the court responsible for the execution of sentences by lodging an application, which had no suspensive effect, within ten days after the date the decree was communicated to the prisoner concerned. The court then had ten days in which to decide the application. The Court

observed that the reason the courts had only ten days to decide was because of the grave effect the special regime had on the prisoner's rights and the limited period for which the impugned decree was valid. In the case before the Court, the systematic failure to comply with the ten-day time-limit had significantly reduced, and almost made nugatory, the impact of the court's review of the minister's decrees, since the applicant had been subjected to the restrictions for longer than necessary, owing to the delays in delivering the decisions. An application to the court responsible for the execution of sentences did not therefore constitute an effective remedy.
Conclusion: violation (unanimously).
Article 41 – The Court held that the finding of a violation was in itself sufficient just satisfaction for the non-pecuniary damage.

FAMILY LIFE
Father unable to have his paternity recognised after mother's death: *admissible*.

YOUSEF - Netherlands (N° 33711/96)
Decision 5.9.2000 [Section I]

In 1986, the applicant, an Egyptian national, arrived in the Netherlands where he met R., a Dutch national, with whom he had a child, S., the next year. He was appointed co-guardian of the child by the District Court, whilst the mother was guardian. The applicant moved in with R. and they lived together for a year before he went back to the Middle East until 1991. During that period, their contacts were limited to a few letters. R. contracted a terminal illness and, in 1993, she made a will in which she asked for the guardianship of S. to be transferred to her brother, H.R., after her death. In 1994, the applicant unsuccessfully instituted summary injunction proceedings before the Regional Court to obtain an order that R. give him permission to recognise S. In a supplementary will, R. expressed her wish that the applicant would not have access to their daughter once she had been placed in the family of her other brother, J.R., after her death. Following her death, the applicant asked the Registrar of births, deaths and marriages to draw up a deed of recognition of paternity and enter his name in the registry of births. The Registrar refused and the applicant lodged a request with the Regional Court, which dismissed the request, considering that it had not been established that there was family life within the meaning of Article 8 of the Convention. The Court of Appeal rejected the applicant's appeal, holding that the explicit refusal of R. to consent to the applicant's recognition of S. had not ceased with her death, as she had stated it in her will. The court found that the ties between the applicant on the one hand and R. and S. were too loose to be regarded as constituting family life. Even considering family life existed, the interests of the child had to be taken into account and these demanded that she grow up in the family where she had been placed after her mother's death. The applicant's appeal in cassation was rejected by the Supreme Court.
Admissible under Article 8.

CORRESPONDENCE
Systematic censorship of prisoner's correspondence by prison authorities: *violation*.

MESSINA - Italy (Nº 25498/94)

*Judgment 28.9.2000 [Section II]
(See above).

CORRESPONDENCE
Opening of prisoner's correspondence, including with the Commission, and delay in handing over: *settlement between parties*.

SLAVGORODSKI - Estonia (Nº 37043/97)
Judgment 12.9.2000 [Section I]

The applicant was convicted for murder and sentenced to imprisonment. During his detention, his correspondence was regularly opened by the prison authorities and its delivery was delayed. He referred in particular to letters received from the Ministry of the Interior, the public prosecutor's office, the President and international organisations, including the European Commission of Human Rights, which he had received opened.
The parties have reached a settlement in which the Government express regret for the opening of the correspondence with the Commission and offer to pay the applicant 67,567.60 Estonian crowns (50,000 crowns to cover any damage and costs and 17,567.60 crowns as an income tax of the applicant). The Government further state that the decision of the Court striking the case out will be sent to the President of Estonia, to the Legal Chancellor and to other relevant authorities.

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction of journalist for defamation of a prospective political candidate: *violation*.

LOPES GOMES DA SILVA - Portugal (N° 37698/97)
*Judgment 28.9.2000 [Section IV]

Facts: At the material time the applicant was the editor of the daily newspaper *Público,* which has a large circulation. In June 1993 *Público* published an article saying that the People's Party had asked Mr Silva Resende, a lawyer and journalist, to stand as a candidate in the Lisbon municipal elections. That information had also been disseminated by a Portuguese press agency. On the same page the applicant published both an editorial severely criticising the chosen candidate and, in order to illustrate the points made, a number of extracts from recent articles by Mr Silva Resende. Following publication of that editorial, Mr Silva Resende lodged a criminal complaint against the applicant – who was subsequently accused of criminal libel through the press – with the Lisbon prosecuting authorities, with an application to join the proceedings as *assistente* (an auxiliary of the public prosecutor's office). By a judgment of 15 May 1995 the Lisbon Criminal Court acquitted the applicant, but on appeal by Mr Silva Resende and the public prosecutor's office the Lisbon Court of Appeal set aside the impugned judgment in a decision of 29 November 1995 holding, *inter alia*, that expressions such as "grotesque", "rustic" and "coarse" were mere insults that went beyond the bounds of freedom of expression and could not be construed as relating solely to Mr Silva Resende's political views, since they also related to him as a person. Since the offence of press libel had been made out, the applicant was ordered to pay a fine, and to pay damages to Mr Silva Resende. The applicant's appeal to the Constitutional Court was dismissed.
Law: Article 10 – It was common ground that the applicant's conviction amounted to an interference in his freedom of expression, that the interference was prescribed by law and was aimed at the protection of the reputation or rights of others. As regards the necessity of that

interference in a democratic society, it was necessary to analyse the decisions of the Portuguese courts, and in particular the Lisbon Court of Appeal, in the light of all the evidence on the case file, including the publication concerned and the circumstances in which it was written. Among those circumstances was, firstly, the information – provided by both *Público* and a press agency – that the People's Party had asked Mr Silva Resende to stand as a candidate in the Lisbon municipal elections. The applicant had reacted to that news through his editorial column, expressing his views on the political views and ideology of Mr Silva Resende, while at the same time referring in general terms to the political policy pursued by the People's Party by asking him to stand. That situation clearly concerned a political debate on issues of general interest, a sphere in which restrictions on freedom of expression had to be construed strictly. While the expressions used by the applicant could be regarded as controversial, they did not amount to a personal and gratuitous attack, since the applicant gave an objective explanation for them. In any event, in that domain political invective was prone to become personal in tone. The applicant had therefore expressed an opinion which, had there been no factual basis, could have proved excessive but was not in the case before the Court because journalists were free to resort to a degree of provocation. In that connection, it was notable that the style used by Mr Silva Resende in his articles was itself incisive, provocative and not lacking in controversy. The applicant may have been influenced by that style in deciding on the form which his own editorial column would take. Furthermore, by reproducing a number of extracts from recent articles by Mr Silva Resende alongside his editorial, the applicant had complied with the rules of journalism. Lastly, contrary to what the Government had maintained, what was relevant was not the fact that the penalty imposed had been minor, but the applicant's conviction. Regard being had to the interest of a democratic society in ensuring and maintaining press freedom, that measure was not reasonably proportionate to the legitimate aim pursued. The Court therefore concluded, unanimously, that there had been a violation of Article 10.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant the sums claimed by him to cover the amounts he had been ordered to pay in their entirety. The finding of a violation in itself constituted just satisfaction for the non-pecuniary damage. Lastly, it was appropriate to award the applicant a sum on account of costs and expenses.

LICENSING OF BROADCASTING
Monopoly of Austrian Broadcasting Corporation on terrestrial television: *violation/no violation*.

TELE 1 PRIVATFERNSEH GmbH - Austria (N° 32240/96)
*Judgment 21.9.2000 [Section II]

Facts: In 1993 the applicant company's application for a licence to set up and operate a television transmitter in the Vienna area was refused because under the Constitutional Law of 10 July 1974 broadcasting had to be authorised by legislation. Such legislation had been enacted only in respect of the Austrian Broadcasting Corporation and regional radio broadcasting but not in respect of regional television. The applicant's appeal was dismissed by the relevant Ministry and its subsequent constitutional complaint was dismissed by the Constitutional Court. Following another judgment of the Constitutional Court, however, the transmission via cable of original programmes – active cable broadcasting – has been legal since 1 August 1996, just as passive cable broadcasting already was. The Cable and Satellite Broadcasting Act 1997 requires notification of cable broadcasting and subjects it to certain conditions and requires a licence for satellite broadcasting.
Law: Article 10 – The refusal of a licence constituted an interference with the applicant's freedom to impart information and ideas. The refusal had a basis in domestic law, namely the Constitutional Law and the case-law of the Constitutional Court. Furthermore, it pursued legitimate aims, bearing in mind that under the third sentence of paragraph 1 of Article 10

interferences may have aims which are legitimate even though they do not correspond to any of those set out in paragraph 2. As to the necessity of the interference, three periods have to be examined:
(i) from the time of the application for a licence and 1 August 1995 there was no legal basis for granting a licence to anyone other than the Austrian Broadcasting Corporation and in that respect the situation was no different from that in the Informationsverein Lentia and others v. Austria judgment (Series A no. 276), in which the Court found a violation of Article 10.
Conclusion: violation (unanimously).
(ii) after 1 August 1995 private broadcasters were able to transmit via cable without any conditions, while terrestrial broadcasting was still reserved for the Austrian Broadcasting Corporation, and since almost all households in Vienna receiving television have the possibility to connect to the cable network, this offers a viable alternative to private broadcasters; consequently, the interference resulting from the refusal of a licence for terrestrial broadcasting can no longer be regarded as disproportionate to the aims.
Conclusion: no violation (unanimously).
(iii) since the entry into force of the 1997 Act, cable broadcasting has to be notified and is subject to conditions, while satellite broadcasting requires a licence; however, the applicant has not notified any cable broadcasting or applied for a licence for satellite transmission and it is therefore not necessary for the Court to examine this period.
Article 41 – The claim for pecuniary damage is based on the assumption that a licence would have been granted and since this is speculative no compensation is payable under this head. The Court awarded the applicant 200,000 schillings (ATS) in respect of costs.

ARTICLE 14

DISCRIMINATION
Refusal to grant legal aid to a non-resident foreigner: *communicated*.

BOUDRAHAM - Spain (N° 49881/99)
IHASNIOUAN - Spain (N° 50755/99)
[Section II]
(See Article 6(1), above).

DISCRIMINATION
Constitutional provision restricting fundamental freedoms of a male descendant of the last king of Italy : *communicated*

Victor-Emmanuel de SAVOIE - Italy (N° 53360/99)
[Section II]

(See Article 3 of Protocol No. 4, below).

DISCRIMINATION (Article 8)
Homosexuals prohibited from giving blood : *communicated*.

TOSTO - Italy (N° 49821/99)
CRESCIMONE - Italy (N° 49824/99)
FARANDA - Italy (N° 51467/99)
[Section IV]
(See Article 8, above).

ARTICLE 34

VICTIM
Retention of status of victim followng acquittal, the reasons given indicating that the applicant was regarded as guilty.

GUISSET - France (N° 33933/96)
Judgment 26.9.2000 [Section I]
(See Article 6(1), above).

VICTIM
Applicant not a party to the proceedings of which he complains but only associated to the limited liability company involved in the proceedings: *partly inadmissible*.

F. SANTOS Lda. and MARIE JOSE FACHADAS - Portugal (N° 49020/99)
Decision 19.9.2000 [Section IV]

The first applicant is a limited liability company and the second applicant a shareholder in it. In 1990 the first applicant brought an action in damages against one of its shareholders in the Santiago do Caécem Court of First Instance. It sought reimbursement of amounts the defendant had allegedly received on behalf of the company but had not paid over to it. The proceedings are still pending.
Communicated under Article 6(1) as regards the first applicant's complaint.
Inadmissible under Article 6(1) as regards the second applicant's complaint, since she was not a party to the proceedings in issue which concerned only the first applicant. Accordingly, she could not complain about the length of proceedings to which she was not a party, despite the fact that she was a shareholder in the first applicant: incompatible *ratione materiae*.

ARTICLE 35

Article 35(1)

EXHAUSTION OF DOMESTIC REMEDIES
Candidate in elections complaining of a breach of his right to freedom of expression but having brought proceedings only in the context of the election: *inadmissible*.

MALARDE - France (N° 46813/99)
Decision 5.9.2000 [Section III]
(See Article 3 of Protocol No. 1, below).

EFFECTIVE DOMESTIC REMEDY (France)
Remedy provided by Art. 781-1 of the Code on the Organisation of the Courts concerning the length of detention on remand and the length of criminal proceedings: *admissible*.

ZANNOUTI - France (N° 42211/98)
Decision 26.9.2000 [Section III]

After a fire in a Paris "squat" that caused the death of three people, the applicant, who had been arrested in 1992, was charged in May 1993 with the wilful destruction of movable and immovable property by arson resulting in the death of several people and was held in pre-trial detention until Paris Assize Court found him guilty of the offences in October 1998 and sentenced him to fifteen-years' imprisonment. The applicant complained of the length of his pre-trial detention and of the criminal proceedings. The Government argued that he had failed to exhaust domestic remedies in that he had not availed himself of the remedy provided by Article L 781-1 of the Judicial Administration Code for both complaints.
Admissible under Articles 5(3) and 6 (1) – while the remedy provided by Article L 781-1 of the aforementioned Code had been used increasingly frequently over the previous few years, that had been particularly with reference to the reasonable-time requirement. In the instant case, the Government had also relied on it with regard to the length of the pre-trial detention without, however, furnishing any case-law showing the effectiveness of the remedy in that sphere. Furthermore, as regards the length of criminal proceedings, the judgments referred to by the Government in support of their preliminary objection had all been delivered after the application to the Court had been lodged. In addition, when the proceedings in issue had begun, in 1992, the case-law to which the Government referred had not yet been established. The period to be taken into consideration, which ran from 1992 to 1998, had to be assessed independently of any requirement regarding the use of the remedy relied on.

EXHAUSTION OF DOMESTIC REMEDIES
Effect on exhaustion of domestic remedies of Court of Cassation's decision to send a case for review before the Court of Appeal when it should have decided the case itself: *communicated*.

G.M. - Luxembourg (N° 48841/99)
Decision 19.09.2000 [Section II]
(See Article 8, above).

ARTICLE 41

JUST SATISFACTION
Late submission of claims for just satisfaction: *claims dismissed as out of time*.

VAN VLIMMEREN and VAN ILVEERENBECK - Netherlands (N° 25989/94)
Judgment 26.9.2000 [Section I]
(See Article 6(1), above).

ARTICLE 44

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Note No. 19):

AVERILL - United Kingdom (N° 36408/97)
Judgment 6.6.2000 [Section III]

MAGEE - United Kingdom (N° 28135/95)
Judgment 6.6.2000 [Section III]

OLIVEIRA MODESTO and others - Portugal (N° 34422/97)
Judgment 8.6.2000 [Section IV]

SABEUR BEN ALI - Malta (N° 35892/97)
Judgment 15.6.2000 [Section II]

FOXLEY - United Kingdom (N° 33274/96)
Judgment 20.6.2000 [Section III]

MAUER - Austria (no. 2) (N° 35401/97)
Judgment 20.6.2000 [Section III]

ARTICLE 57

INTERPRETATIVE DECLARATION
Validity of Italian declaration concerning article 3 (2) of Protocol n° 4: *communicated*.

Victor-Emmanuel de SAVOIE - Italy (N° 53360/99)
[Section II]
(See Article 3 of Protocol No. 4, below).

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Impoundment of aircraft leased by Turkish airline company from Yugoslav airline company during UN economic embargo against the Federal Republic of Yugoslavia: *communicated*.

BOSPHORUS HAVA YOLLARI TURIZM VE TICARET ANONIM SERKETI - Ireland (N° 45036/98)
[Section IV]

The applicant company, a Turkish airline company, leased two aircraft from a Yugoslav airline company. The applicant company delivered one of the aircraft to an Irish maintenance company for overhaul and maintenance work. The Minister for Transport ordered that the aircraft be impounded pursuant to a domestic regulation implementing an EC Council Regulation which followed a United Nations' Resolution providing for sanctions against the Federal Republic of Yugoslavia. Following judicial review proceedings initiated by the applicant, the High Court quashed the Minister's decision. On the Minister's appeal, the Supreme Court referred a question to the European Court of Justice to determine whether the Council Regulation applied to the circumstances. The European Court of Justice found that the Council Regulation was applicable and consequently the Supreme Court allowed the Minister's appeal. The lease having by then expired and the sanctions against the Federal Republic of Yugoslavia having in the meantime ceased, the aircraft was given back directly to the Yugoslav airline company.
Communicated under Article 1 of Protocol N° 1.

PEACEFUL ENJOYMENT OF POSSESSIONS
Restrictions imposed on entry to Croatia of Yugoslav national owning property there: *inadmissible*.

ILIĆ - Croatia (N° 42389/98)
Decision 19.9.2000 [Section IV]

In 1987, the applicant, a Yugoslav national living in Germany, bought a house in Croatia. After the dissolution of Yugoslavia in 1991, the applicant was treated as a foreign citizen in Croatia and her entry into and stay on Croatian territory became subject to restrictions. In 1993 she obtained permission for an extended stay which allowed her to remain in Croatia for over a year, after which she returned to Germany. In 1996, the Croatian authorities refused to grant her permanent residence. Her subsequent administrative and constitutional proceedings were unsuccessful.
Inadmissible under Article 6(1): Decisions regarding the entry, stay and deportation of an alien taken in a country of which he is not a national do not entail any determination of his civil rights or obligations or of any criminal charge against him within the meaning of this provision: incompatible *ratione materiae*.
Inadmissible under Article 1 of Protocol N° 1: Following the dissolution of Yugoslavia, what became subject to restrictions was the applicant's right to reside in Croatia; such restrictions were neither absolute nor permanent. The Convention does not guarantee as such any right to enter or reside in a Contracting State to persons who are not its nationals. Furthermore, this provision does not encompass the right for a foreign citizen who owns property in another country permanently to reside in that country in order to use his property. The applicant, who had stayed for more than a year in Croatia, returned to Germany and did not seek a new entry visa but a permanent residence title. It could not be speculated what the authorities would have answered to a further visa request. The applicant has therefore failed establish that the Croatian authorities denied her access to her property: manifestly ill-founded.

DEPRIVATION OF PROPERTY
Constitutional provision confiscating property of male descendant of the last king of Italy: *communicated*.

Victor-Emmanuel de SAVOIE - Italy (N° 53360/99)
[Section II]
(See Article 3 of Protocol No. 4, below).

DEPRIVATION OF PROPERTY
Quashing of judgment restoring savings placed in State Savings Bank: *communicated*.

RYABYKH - Russia (N° 52854/99)
[Section II]
(See Article 6, above).

CONTROL OF THE USE OF PROPERTY
Absence of compensation for loss in value of business resulting from legal prohibition on handguns: *inadmissible*.

ANDREWS - United Kingdom (N° 37657/97)
DENIMARK LIMITED and others - United Kingdom (N° 37660/97)
FINDLATER - United Kingdom (N° 38881/97)
LONDON ARMOURY LIMITED - United Kingdom (N° 37666/97)
HARVEY & SON LTD and others - United Kingdom (N° 37671/97)
A.G. WISE and others - United Kingdom (N° 37972/97)
POWDERKEG LTD and others - United Kingdom (N° 37977/97)
REEPHAM MOORE RIFLE & PISTOL RANGE - United Kingdom (N° 37981/97)
WARWICK RIFLE AND PISTOL CLUB - United Kingdom (N° 38909/97)
C.E.M. FIREARMS LIMITED - United Kingdom (N° 37674/97)
BRADFORD SHOOTING CENTRE - United Kingdom (N° 37677/97)
SLOUGH - United Kingdom (N° 37679/97)
KING and others - United Kingdom (N° 37682/97)
Decisions 26.9.2000 [Section III]

The applicants are all involved in the firearms business. The Firearms (Amendment) Act 1997 and the Firearms (Amendment) N° 2 Act 1997 (no submissions were made under this second amendment in the first three cases) were passed in response to a shooting in which a man entered a school and shot dead a teacher and several children in Scotland. The legislation makes it a criminal offence for a person to have in his possession, or to purchase, acquire, manufacture, sell or transfer handguns. The applicants complained of the depreciation of the value of their businesses resulting from the legal prohibition of handguns. They received no or inadequate compensation under the compensation scheme set by the authorities.
Inadmissible under Article 1 of Protocol N° 1: Goodwill may be an element in the valuation of a professional practice, but the future income itself is only a possession once it has been earned, or an enforceable claim to it exists. In the instant case, the applicants complained of a loss of future income in addition to the loss of goodwill and a diminution in value of their assets. The element relating to the diminution in value of the business assessed by reference to future income and which amounted to a claim for the loss of future income fell outside the scope of the present article. Moreover, there was no formal or *de facto* expropriation of any of the applicants' assets, and hence the interference concerning the loss of business resulting from the prohibition of handguns amounted to a control of the use of property rather than a deprivation of possessions. As to the impact of the 1997 Amendments Acts, even assuming that it had an adverse effect on the goodwill of their businesses, the applicants at all times operated within the framework of legislative control which became progressively more restrictive. Thus, the applicants had no legitimate expectations that the use of particular types of firearm, including handguns, would continue to be lawful. Besides, in view of their direct knowledge of their society and its needs and resources, the authorities should enjoy a wide

margin of appreciation in determining not only the necessity of the measure of control but also the types of loss resulting from the measure for which the compensation will be made. In the present case, the legislature determined that the grant of compensation representing the value of the firearms whose possession had been rendered unlawful, should in principle be confined to those who owned the firearms in question, whether as private individuals or as dealers, and should not extend to cover loss of goodwill or other losses sustained by businesses connected with the firearms industry which were to a greater or a lesser extent affected by the prohibition on the possession of handguns. In reaching this judgment, the authorities did not upset the fair balance between the demands of the general interest of the community and the requirements of the protection of the applicant's property rights by imposing on the applicants an individual and excessive burden: manifestly ill-founded.

ARTICLE 3 OF PROTOCOL No. 1

VOTE
Sailors prevented from voting when they are at sea : *communicated*.

ACCAME and 57 sailors - Italy (N° 47787/99)
Decision 7.9.2000 [Section II]

The first applicant presides over a committee which promotes the rights of seamen; the other fifty-seven applicants are all seamen. As being at sea means they are absent for long periods, they are unable to comply with their electoral obligations as under Italian law all voters wishing to vote, including voters residing overseas, must attend the polling stations in Italy. A bill aimed at establishing polling stations on board ships and allowing voters to vote by correspondence was put before Parliament but did not become law.
Communicated under Article 3 of Protocol No. 1.
Inadmissible as regards the first applicant and the committee over which he presided, as they could not claim to have been victims of the alleged violation.

VOTE
Constitutional provision declaring a male descendant of the last king of Italy ineligible and depriving him of voting rights: *communicated*.

Victor-Emmanuel de SAVOIE - Italy (N° 53360/99)
[Section II]
(See Article 3 of Protocol No. 4, below).

STAND FOR ELECTION
Constitutional provision declaring a descendant of the last king of Italy ineligible and depriving him of voting rights: *communicated*.

Victor-Emmanuel de SAVOIE - Italy (N° 53360/99)
[Section II]
(See Article 3 of Protocol No. 4, below).

LEGISLATURE
Candidate in elections to the Regional Council claiming not to have had sufficient time to express his views: *inadmissible*.

MALARDE - France (N° 46813/99)
Decision 5.9.2000 [Section III]

The applicant was the head of a list of candidates for election as members of the Brittany Regional Council in March 1998. His list obtained 1.82 % of the vote. Considering that the sole regional public television channel, France 3, had shown favouritism to the heads of the lists presented by the two main national parties by allocating them far more screen time than him, the applicant applied to the administrative court for an order setting aside the elections and for compensation from France 3 for the damage sustained by his list, which, as it had not obtained 5 % of the vote, had not been reimbursed any of its campaign expenses. The *Conseil d'État*, the court with jurisdiction for disputes concerning regional elections, dismissed that application on 30 December 1998 on the ground that although the channel had failed to comply with its statutory obligations as it had afforded the applicant less screen time than the candidates of the other two parties, nonetheless, in view of the difference in the number of votes received by the parties, that failure had not affected the validity of the results. The Higher Audiovisual Authority informed the applicant in March 1999 that it did not intend to impose any penalty on France 3.
Inadmissible under Article 3 of Protocol No. 1, taken alone or together with Article 14 – in France, the legislative function was exercised by Parliament and the powers of the regional councils were limited to regulating, through deliberations, the economic, social, health, cultural and scientific affairs of the region. Accordingly and in any event, Article 3 of Protocol No. 1, which only applies to the election of the legislative body, was inapplicable in the case before the Court. Consequently, Article 14 could not be relied on in conjunction with that provision either: incompatible *ratione materiae*.
Inadmissible under Article 10, taken alone or together with Article 14 – the proceedings brought by the applicant concerned elections. However, in order to exhaust domestic remedies with regard to the complaint under Article 10, taken alone or together with Article 14, the applicant should have issued proceedings in the administrative courts against France 3 on the ground that it had infringed his right to freedom of expression and had discriminated against him in the enjoyment of that right: non-exhaustion.

ARTICLE 3 OF PROTOCOL No. 4

ENTER OWN COUNTRY
Constitutional provision barring male descendant of the last king of Italy from entering and staying in the country: *communicated*

Victor-Emmanuel de SAVOIE - Italy (N° 53360/99)
[Section II]

The applicant, a male descendant of the last King of Italy, has been permanently prohibited from entering or staying in Italy pursuant to the XIII provision of the Italian Constitution since its entry into force in 1947. That provision also lays down that the Italian property of the male descendants of the former kings should be confiscated. Lastly, it declares that the members and descendants of the Victor Emmanuel of Savoy House cannot stand for election and that their electoral rights are forfeit. A number of bills were introduced in Parliament with a view to repealing the XIII provision, but none were enacted. On the ratification of Protocol No. 4, Italy made a declaration specifying that Article 3(2) of the Protocol would not operate to prevent application of the constitutional prohibition on members of the Victor Emmanuel of Savoy House.
Communicated under Article 3 (2) of Protocol No. 4, Articles 3, 6 and 8 and 14 of the Convention and Article 3 of Protocol No. 1.

PROCEDURAL MATTERS

RULE 39 OF THE RULES OF COURT

INTERIM MEASURES
Request for intervention in order to obtain liberation of person in pre-trial detention: *refusal to apply Rule 39*.

ABSANDZE - Georgia (N° 57861/00)
Decision 26.9.99 [Section III]

The applicant had exercised ministerial functions under the regime that had ended with the civil war in 1992. He subsequently went into exile in Russia where he was arrested in 1998 by the Russian police and charged with the murder of five Russian soldiers in Georgia. He was extradited to Georgia where he was imprisoned and subsequently charged with having organised an assassination attempt on the Georgian President in 1998. He is currently detained pending trial. On 15 September 2000 the applicant's representative requested the Court to intervene to secure his release on the ground that the conditions in which he was being detained were inhuman and degrading and that his health was rapidly deteriorating. She produced a number of medical reports in support of her applications.
Communicated for information (Rule 54 § 3(a)). The Court decided not to apply Rule 39.

APPENDIX

Other judgments delivered in September

GALGANI and DE MATTEIS - Italy (N° 39871/98)
Judgment 28.9.2000 [Section II]

De LISI - Italy (N° 40974/98)
*Judgment 28.9.2000 [Section II]

JOSEPH-GILBERT GARCIA - France (N° 41001/98)
*Judgment 26.9.2000 [Section III]

DAGORN - France (N° 42175/98)
*Judgment 26.9.2000 [Section III]

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

DONATI - France (N° 37989/97)
Judgment 26.9.2000 [Section III]

PERIÉ - France (N° 38701/97)
Judgment 26.9.2000 [Section III]

CAMILLA - France (N° 38840/97)
Judgment 26.9.2000 [Section III]

BRUNNO - Italy (N° 43053/98)
Judgment 28.9.2000 [Section II]

ROMANO - Italy (N° 43098/98)
Judgment 28.9.2000 [Section II]

These cases concern the length of civil or administrative proceedings (friendly settlement).

J.B. - France (N° 33634/96)
*Judgment 26.9.2000 [Section III]

The case concerns the length of criminal proceedings (violation).

YAKAN - Turkey (N° 43362/98)
Judgment 19.9.2000 [Section I]

The case concerns the length of criminal proceedings (struck out).

PELTONEN - Finland (N° 27323/95)
Judgment 19.9.2000 [Section IV]

The case concerns the non-disclosure of documents in connection with proceedings relating to a disability pension (struck out).

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