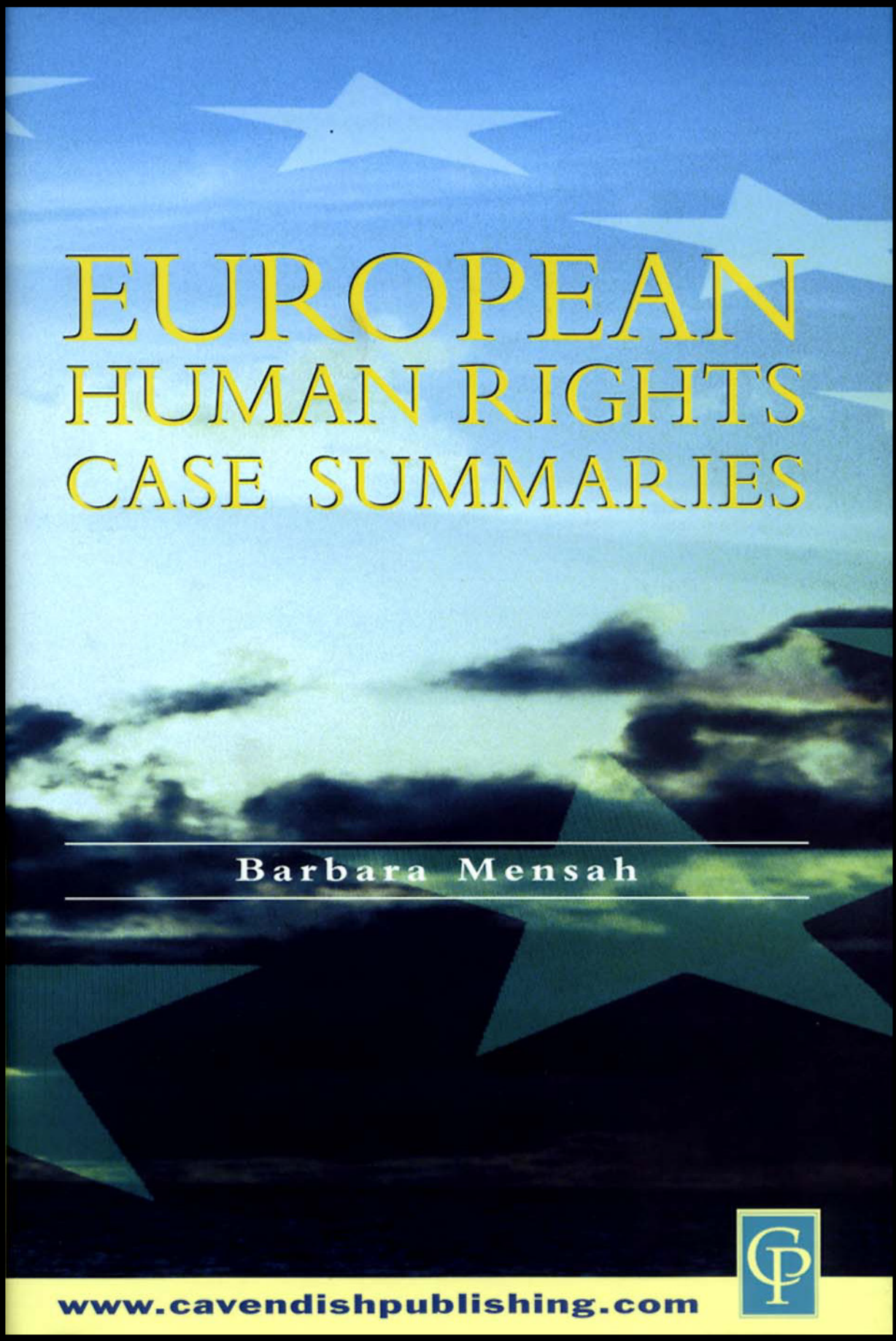
EUROPEAN
HUMAN RIGHTS
CASE SUMMARIES
Barbara Mensah
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EUROPEAN HUMAN RIGHTS CASE SUMMARIES 1960–2000

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Barrister

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FOREWORD

In the short period of its existence, the new and permanent European Court of Human Rights has already delivered more judgments than its predecessor delivered in the previous 38 years. This is at least in part a reflection of the dramatic increase in the number of applications with which the new Court has been confronted since it came into being.

This increase has brought with it new challenges, not the least of which is the difficulty it poses for practitioners and students alike in keeping abreast of the Court's rapidly developing case law.

It is because of the contribution which this book makes to facilitating this task that it is particularly to be welcomed. Prepared by Barbara Mensah, who as a barrister and former lecturer at the Inns of Court School of Law London has done much to foster knowledge of the Convention system within the United Kingdom, the clear, concise and accurate summaries of the facts, decision and reasoning in all judgments delivered between 1960 and 2000 will serve as an invaluable and practical guide to the jurisprudence of the Strasbourg Court, old and new. I warmly recommend the book.

Sir Nicolas Bratza
European Court of Human Rights
Strasbourg
July 2001

PREFACE

The aim of this book is to provide a complete reference source of the European Court of Human Rights judgments in a single volume. I have presented a summary of all the cases decided by the Court in the last 40 years. To ensure accuracy I have attempted as far as possible to provide verbatim accounts of the judgments. Included in the information on each case is a summary of the facts, the decision of the Commission (before November 1998), the names of the judges and their decisions as well as the details of the judges who dissented, the ratio, other cases referred to by the judges and where relevant the decision on costs and damages. Section II provides a chronological listing of the cases, each case is given a number based on the year of the decision on merits, followed by the position of the case in the court's list of decisions that year.

Section III provides a subject index which includes both Court judgments and Commission decisions on admissibility and reports. Under each subject heading I have tried to give an indication of the typical/most frequently raised Convention rights, eg, electoral rights usually raise issues under Protocol 1, Article 3, Articles 10 and 11; some of the same cases under that subject may also be listed under freedom of association and freedom of expression. The cases under each subject heading are listed chronologically (except length of proceedings cases which are listed by country, type of case and then chronologically). I hoped by this chronological listing to show the development of the Court's jurisprudence by subject – this has worked better for some subjects (eg, homosexuality) than for others (eg, armed forces where there may be many issues involved). The cases under Court judgments provide name of case, reference number (see Section II) and brief description of the case.

I have also included under each subject in Section III the reported Commission decisions on admissibility and reports. These are listed chronologically, showing the name of the case, the date of decision (reports are indicated as 'Rep' all other entries are Decisions on admissibility), the reference in the volumes of Decisions and Reports (indicated by volume number and page number) and a brief indication of the nature of the case. [For those unfamiliar with the Decisions and Reports series my subject index summaries can be interpreted as follows: Example 1, '*X v D* (30.9.1974) 1/73 (expulsion of Algerian)' relates to the case of *X v Germany*, a Commission decision on admissibility of 30 September 1974 reported in volume 1 of Decisions and Reports at page 73. Example 2, '*Müller v A* (Rep 1.10.1975) 3/25 (loss of pension rights)', is a Commission Report (generally following an admissibility decision) of 1 October 1975 at page 25 of volume 3. From volume 76, the cases are reported in two parts; Part A contains the original text and Part B the translated text, I have given the reference for the English text in all cases. Example 3, '*Boffa & 13 others v RSM* (15.1.1998) 92B/27 (law requiring compulsory vaccination of children against hepatitis B)' and Example 4, '*Aboikonie & Read v NL* (12.1.1998) 92A/23 (expulsion of Surinamese national with criminal convictions but wife and children resident in Netherlands)', the original text of *Aboikonie* is in English, in Part A, whereas *Boffa* has French original text and the English translation therefore appears in Part B.

Section IV provides a list of the countries of the Council of Europe (as at March 2001) and Section V contains the relevant Articles and Protocols of the European Convention on Human Rights. Section V sets out the composition of the Court from its inception to the present day. Over the years there has been the use of ad hoc judges for various reasons; I have included the ad hoc judges and the cases on which they sat. Out of concern for the size of this book, I have tried to abbreviate information where possible and sensible to do so. I have done so extensively in Section V on composition of the Court, and hope that I have not unduly inconvenienced researchers by that.

I am very grateful to Leila Agyeman, formerly of the Immigration Appellate Service Research Department, had it not been for her amazing patience on the Court's website and methodical work this book would have missed more than the dozen deadlines I promised the publishers.

I am also very grateful to the following who contributed to summaries: James Robinson, Barrister, former Senior Lecturer at the Inns of Court School of Law; Alexis Slatter, Barrister; Koli Mukhopadhyay, Lawyer, London; Tom Davidson, Senior Lecturer, University of London; Nathalia Berkowitz, Senior Legal and Research Officer, Immigration Appellate Authority; Rexford Darko, Lawyer; Ben Urdang, Barrister; Jeffrey Yates, Lawyer USA; Dean Kershaw, Barrister.

At stages, despite their own very heavy study commitments, various very enthusiastic 2000/2001 Inns of Court School of Law students undertook research for me and helped in other ways. I am very grateful to them. They are James Burton, Nick De Marco, Sahima Qamar, Sarbjit Singh Bakhshi and Emmanuel Vincent.

Barbara Mensah
Lincoln's Inn
July 2001

CONTENTS

LIST OF ABBREVIATIONS

A Article.

Comm Commission (prior to the coming into force of Protocol 11 and the new court, there was a two tier system of Commission and part-time Court).

FS Friendly Settlement (if a friendly settlement is agreed between the parties, the Court will strike the case out of the list giving only a brief statement of the facts and the solution reached, new Article 39).

G Grand Chamber (under the new Article 27, the Court sits in committees of 3 judges, Chambers of seven judges and in a Grand Chamber of 17 judges).

JS Just satisfaction (Article 41 (previously Article 50) states that, where there has been a violation and the State only allows partial reparation to be made, the Court shall, if necessary, give just satisfaction to the injured party).

NA Not applicable.

NE Not examined.

NV Non violation.

P Protocol (followed by a number, for example, P4A3 represents Protocol 4, Article 3. P without a number would refer to Portugal, see below).

para Paragraph.

Prelim Preliminary issue.

Rep Report.

s Section.

SO Struck out (the Court may strike an application out of the list if it concludes that the applicant does not intend to pursue his application, or the matter has been resolved or for any other reason it is not justified to continue the application, Article 37).

V Violation

EHRR European Human Rights Reports

Abbreviations relating to judgments

c concurring opinion

d dissenting opinion

jc joint concurring opinion

jd joint dissenting opinion

jpc	joint partly concurring opinion
jpd	joint partly dissenting opinion
pc	partly concurring opinion
pd	partly dissenting opinion
so	separate opinion

LIST OF COUNTRY ABBREVIATIONS

Albania	AL
Andorra	AND
Armenia	AM
Austria	A
Azerbaijan	AZ
Belgium	B
Bulgaria	BG
Croatia	HR
Cyprus	CY
Czech Republic	CZ
Denmark	DK
Estonia	EST
Finland	SF/FIN
France	F
Georgia	GE
Germany	D
Greece	GR
Hungary	H
Iceland	ISL
Ireland	IRL
Italy	I
Latvia	LV
Liechtenstein	FL
Lithuania	LT
Luxembourg	L
Malta	M
Moldova	MD
Netherlands	NL
Norway	N
Poland	PL
Portugal	P
Romania	RO
Russia	RUS
San Marino	RSM
Slovakia	SK
Slovenia	SLO
Spain	E
Sweden	S
Switzerland	CH
(The Former Yugoslav Republic of) Macedonia	TFYR Macedonia
Turkey	TR
Ukraine	U
United Kingdom	UK

LIST OF MONEY ABBREVIATIONS

Albanian lekë	ALL
Austrian schilling (schillings and groschen)	ATS
Belgian franc	BEF
Bulgarian lev (leva and stotinki)	BGL
Croatian kuna	KN
Cyprus pound (pounds and cents)	CYP
Czech koruna (korunas and haléru)	CZK
Danish krone (krone and øre)	DKK
Estonian Kroon (kroon and sents)	EEK
Finnish marks (markka and penniä)	FIM
French franc (francs and centimes)	FF
German mark (deutschemark and pfennig)	DM
Greek drachmas	GRD
Hungarian forint	HF
Icelandic króna	ISK
Irish pound/punt (pounds and pence)	IRP
Italian lira	ITL
Latvian Lats (lati and santimi)	LVL
Lithuanian litas (litas and centu)	LTL
Luxembourg franc	LUF
Maltese lira (lire and cents)	MTL
Netherlands guilder (guilders and cents)	NLG
Norwegian krone (kroner and øre)	NOK
Polish zloty (zlotys and groszy)	PLN
Portuguese escudo (escudos and centavos)	PTE
Romanian lei	ROL
Russian rouble (roubles and kopecks)	RR
Slovakian koruna (korunas and haliers)	SKK
Slovenian tolar (tolars and stotins)	SIT
Spanish pesetas	ESP
Swedish krona/crowns (kronor and öre)	SEK
Swiss franc (francs and centimes)	CHF
UK pound (pounds and pence)	GBD
Macedonian denar	TFYROMD
Turkish lire	TRL
United States dollars	USD

SECTION I

CASE SUMMARIES

A

A v France (1994) 17 EHRR 462 93/49

[Application lodged 15.2.1989; Commission report 2.9.1992; Court Judgment 23.11.1993]

The applicant was charged on 23 July 1981 with five other persons, including Mr G, with attempted murder, infringement of the arms and ammunition legislation and infringement of the law regarding protection and control of nuclear substances. Information came from Mr G, an informant, who approached the Chief Superintendent of police and volunteered to make a phone call to the applicant to discuss the crime with her. The Chief Superintendent accepted the informant's offer but did not at the time inform his superiors. On 7 March 1991 the court found no case to answer against the applicant. The applicant complained that there had been an infringement of her private life.

Comm found by majority (9–2) V 8.

Court unanimously rejected the Government's preliminary objection and found V 8.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr L-E Pettiti, Mr B Walsh, Mr R Macdonald, Mr C Russo, Mr J De Meyer, Mr JM Morenilla, Sir John Freeland.

An appeal to the Court of Cassation was one of the remedies that should in principle be exhausted in order to comply with A 26. Even supposing that it was probably bound to fail in this specific case, the filing of the appeal was thus not a futile step. It consequently had the effect at the very least of postponing the beginning of the six-month period. The objection that the application was out of time was therefore dismissed. The applicant laid a complaint, together with an application to join the resulting criminal proceedings as a civil party, alleging invasion of privacy and breach of the confidentiality of telephone communications and pursued the said proceedings to their conclusion. She could not be criticised for not having had recourse to legal remedies which would have been directed essentially to the same end and would in any case not have offered better chances of success. Accordingly, the objection alleging failure to exhaust domestic remedies was also dismissed.

The telephone conversation did not lose its private character solely because its content concerned or might concern the public interest. The recording complained of depended on the informant and the Chief Superintendent working together; the former conceived and put into effect the plan to make the recording, by going to see the Chief Superintendent and then telephoning the applicant. The Superintendent was an official of a 'public authority'. He made a crucial contribution to executing the scheme by making available for a short time his office, his telephone and his tape recorder. Although he did not inform his superiors of his actions and had not sought the prior authorisation of an investigating judge, he was acting in the performance of his duties as a high-ranking police officer. The public authorities were involved to such an extent that the State's responsibility under the Convention was engaged. In any event the recording represented an interference in respect of which the applicant was entitled to the protection of the French legal system. The interference undoubtedly concerned the applicant's right to respect for her 'correspondence'. In these circumstances it was not necessary to consider whether it also affected her 'private life'. The interference had not been 'in accordance with the law', the contested recording had no basis in domestic law and was therefore in breach of A 8. It was therefore unnecessary to consider the other requirements of para 2 of A 8.

Finding of violation constituted sufficient just satisfaction for any non-pecuniary damage. Costs and expenses (FF 50,000) awarded.

Cited: BUF (25.3.1992), Crémieux v F (25.2.1993), Kruslin v F (24.4.1990).

A v United Kingdom (1999) 27 EHRR 611 98/80

[Application lodged 15.7.1994; Commission report 18.9.1997; Court Judgment 23.9.1998]

The applicant, born in 1984 and his brother were placed on the local child protection register because of 'known physical abuse'. The cohabitant of the boys' mother was given a police caution

after he admitted hitting A with a cane. Both boys were removed from the child protection register in November 1991. The cohabitant subsequently married the applicant's mother and became his stepfather. The stepfather was charged with assault occasioning actual bodily harm and tried in February 1994. He accepted having caned the boy on a number of occasions, but argued that this had been necessary and reasonable since A was a difficult boy who did not respond to parental or school discipline. The jury found by a majority verdict that the applicant's stepfather was not guilty of assault occasioning actual bodily harm. The applicant complained that the State had failed to protect him from ill-treatment by his step-father, that he had been denied a remedy for his complaints and that the domestic law on assault discriminated against children.

Comm found unanimously V 3, by majority (16–1) not necessary to examine 8, unanimously NV 13 and not necessary to examine 14+3 and 14+8.

Court found unanimously V 3, not necessary to examine 8, 13, 14.

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr C Russo, Mrs E Palm, Sir John Freeland, Mr P Kûris, Mr J Casadevall, Mr P Van Dijk, Mr V Toumanov.

Both the Commission and the Government accepted that there had been a violation of A 3. The Court recalled that ill-treatment must attain a minimum level of severity if it was to fall within the scope of A 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim. The applicant, who was nine years old at the time of the assault, was found by the consultant pediatrician who examined him to have been beaten with a garden cane which had been applied with considerable force on more than one occasion. That treatment reached the level of severity prohibited by A 3. States are required to take measures to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals. Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity. English law allowed as a defence to a charge of assault on a child that the treatment in question amounted to 'reasonable chastisement'. The law did not provide adequate protection to the applicant against treatment or punishment contrary to A 3. The failure to provide adequate protection constituted a violation of A 3. In the circumstances it was not necessary to examine whether the inadequacy of the legal protection provided to A against the ill-treatment that he suffered also breached his right to respect for private life under A 8.

As the applicant accepted the Commission's finding of no violation of A 13 and did not pursue his complaint under A 14 it was not necessary for the Court to consider those complaints.

Non-pecuniary damage (GBP 10,000), costs and expenses (GBP 20,000 less FF 35,264) awarded.

Cited: Costello-Roberts v UK (25.3.1993), Coyne v UK (24.9.1997), Findlay v UK (25.2.1997), HLR v F (29.4.1997), Stubbings and Others v UK (22.10.1996), X and Y v NL (26.3.1995).

A and Others v Denmark (1996) 22 EHRR 458 96/3

[Application lodged 27.8.1992; Commission report 24.5.1995; Court Judgment 8.2.1996]

The 10 applicants were HIV victims or relatives of deceased victims of the virus who were infected with HIV during the time they were receiving blood transfusions at Danish hospitals. They sought compensation from the State and complained about the length of the proceedings.

Comm found unanimously V 6(1) for first 8 applicants and NV 6(1) for last 2 applicants.

Court found by majority (6–3) V 6(1) for first 8 applicants, unanimously NV 6(1) for last 2 applicants.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Mr A Spielmann, Mr J De Meyer, Mr I Foighel, Mr JM Morenilla, Mr D Gotchev, Mr B Repik.

The proceedings involved the determination of the applicants' 'civil rights' and A 6(1) applied. The mere fact that the applicants belonged to a category of members on whose behalf the Danish

Association of Haemophiliacs had acted on 14 December 1987 was not sufficient to justify the conclusion that they were affected by the duration of the proceedings from that date onwards. It was only from the dates when the Association identified the applicants as individual plaintiffs that they could claim to be victims within the meaning of A 25. Accordingly, the periods to be taken into consideration were different for the different applicants: The periods to be taken into account had lasted approximately six years and two months, five years and three months, three years, five years and 10 months and four years and 11 months. The reasonableness of the length of proceedings had to be assessed in the light of the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicants and that of the relevant authorities. Although the case raised factual and legal questions of some complexity, that alone could not justify the length of the proceedings. The applicants were to a significant extent responsible for the protracted nature of the proceedings: they had not requested the High Court to speed up the proceedings, they had requested or consented to a large number of adjournments taken more than two years to agree on the appointment of experts and provided no convincing explanation for why they waited a long time before submitting claims for damages. The proceedings were not inquisitorial but were subject to the principle that it was for the parties to take the initiative with regard to their progress. The Court recognised that in those circumstances, the competent authorities were faced with a difficult task in trying to accommodate the various interests of the applicants. However, those features did not excuse them from ensuring compliance with the requirement of reasonable time. What was at stake in the proceedings was of crucial importance for the applicants in view of the incurable disease from which they were suffering and their reduced life expectancy. Accordingly, regarding the first eight applicants, the competent administrative and judicial authorities were under a positive obligation under A 6(1) to act with the exceptional diligence required by the Court's case-law in disputes of this nature. The High Court granted all the requests for adjournments, hardly ever using its powers to require the parties to specify their claims, clarify their arguments, adduce relevant evidence or decide on who should be appointed as experts. There were also delays from the Supreme Court. In those circumstances, even having regard to the delays caused by the applicants, the competent authorities had not acted with the exceptional diligence required. No duty of exceptional diligence applied with regard to the last two applicants (father and son died and had submitted later claims) who were not victims of a violation of A 6(1).

Damages (DKK 100,000 to each applicant) and legal fees (DKK 234,938).

Cited: Capuano v I (25.6.1987), Guincho v P (10.7.1984), Kamasinski v A (19.12.1989), Karakaya v F (26.8.1994), Scopelliti v I (23.11.1993), Stanford v UK (23.2.1994), Vallée v F (26.4.1994), X v F (31.3.1992).

AB v Italy 00/60

[Application lodged 1.3.1997; Court Judgment 8.2.2000]

Mr AB complained of the length of administrative proceedings.

Court found by majority (6–1) V 6(1).

Judges: Mrs E Palm, President, Mr B Conforti, Mr J Casadevall, Mr L Ferrari Bravo (d), Mr C Bîrsan, Mr B Zupancic, Mrs W Thomassen.

The period to be taken into consideration began on 24 July 1992 and ended on 2 February 1998. It had lasted more than five years, six months at one level of jurisdiction.

Non-pecuniary damage (ITL 10,000,000), costs and expenses (ITL 1,000,000).

Cited: Bottazzi v I (28.7.1999).

ADT v United Kingdom 00/198

[Application lodged 25.3.1997; Court Judgment 31.7.2000]

On 1 April 1996 police officers conducted a search under warrant of the home of the applicant, a practising homosexual, and seized various items including photographs and video tapes. The

applicant was arrested and during interview admitted that some of the video tapes found would contain footage of him and up to four other adult men engaging in acts of oral sex and mutual masturbation in the applicant's home. He was charged with gross indecency between men contrary to s 13 of the Sexual Offences Act 1956. He was convicted, and on 20 November 1996 he was sentenced and conditionally discharged for two years. An order was made for the confiscation and destruction of the seized material. He complained that his conviction constituted a violation of his right to respect for his private life under A 8.

Court found unanimously V 8, not necessary to examine 14.

Judges: Mr J-P Costa, President, Mr W Fuhrmann, Mr L Loucaides, Mr P Kûris, Sir Nicolas Bratza, Mrs HS Greve, Mr K Traja.

The mere existence of legislation prohibiting male homosexual conduct in private may continuously and directly affect a person's private life. The applicant was aware that his conduct was in breach of the criminal law, and he was thus continuously and directly affected by the legislation and he was also directly affected in that a criminal prosecution was brought against him which resulted in his conviction. There was no evidence that there was any actual likelihood of the contents of the tapes being made public, deliberately or inadvertently. The applicant having gone to some lengths not to reveal his sexual orientation and having repeated his desire for anonymity before the Court, it was unlikely that he would knowingly be involved in making them public. The applicant was a victim of an interference with his right to respect for his private life both as regards the existence of legislation and as regards the conviction. The interference was in accordance with the law and its aims, of protecting morals and protecting the rights and freedoms of others, were legitimate. The sexual activities involved more than two men, and the applicant was convicted for gross indecency as more than two men had been present. While, at some point, sexual activities could be carried out in such a manner that State interference might be justified, the facts of the present case did not indicate such circumstances. The applicant was involved in sexual activities with a restricted number of friends in circumstances in which it was most unlikely that others would become aware of what was going on. Although the activities were recorded on video tape, the applicant was prosecuted for the activities themselves, and not for the recording, or for any risk of it entering the public domain. The activities were therefore genuinely private. Given the narrow margin of appreciation afforded to the national authorities in the case, the absence of any public health considerations and the purely private nature of the behaviour in the present case, the reasons submitted for the maintenance in force of legislation criminalising homosexual acts between men in private, and a fortiori the prosecution and conviction in the present case, were not sufficient to justify the legislation and the prosecution. There had therefore been a violation of A 8.

Having found a violation of A 8, it was not necessary to also examine the case under A 14.

Damages (GBP 20,929.05), costs and expenses (GBP 12,391.83).

Cited: Dudgeon v UK (22.10.1981), Laskey, Jaggard and Brown v UK (19.2.1997), Modinos v CY (22.4.1993), Norris v IRL (26.10.1988).

AM v Italy 99/100

[Application lodged 19.6.1997; Court Judgment 14.12.1999]

The applicant was charged with indecently assaulting a minor and committing obscene acts in a public place. The minor, an American, had been staying at a hotel where the applicant worked as caretaker. The Italian authorities sought judicial assistance from the American authorities. Statements were taken from the minor, his parents and doctor which were sent to the Italian courts. The Italian authorities requested that there be no lawyer present during the questioning of the witnesses. The statements were read at the applicant's trial, he was convicted and sentenced to 2 years' imprisonment suspended.

Court unanimously found V 6(1), 6(3)(d).

Judges: Mr CL Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska.

The applicant had not been able to cross-examine or have cross-examined the witnesses at either the investigation stage or at trial. He had not had the opportunity to challenge the witness statements on the basis of which he had been convicted and accordingly his rights had been restricted in a manner incompatible with A 6.

Damages (ITL 50,000,000), costs and expenses (ITL 4,847,900) awarded.

AO v Italy 00/153

[Application lodged 25.5.1993; Court Judgment 30.5.2000]

On 10 October 1986 the applicant served a notice to quit on the tenant of an apartment he owned. On 10 April 1987, the magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 30 September 1988. A bailiff made nine attempts to recover possession but was unsuccessful as, under the statutory provisions providing for the suspension or staggering of the evictions, the applicant was not entitled to police assistance. In November 1995 the applicant recovered possession of his flat. He complained about the prolonged impossibility of recovering possession of his apartment, owing to the implementation of emergency legislative provisions on residential property leases.

Court unanimously dismissed the Government's preliminary objection, found V P1A1.

Judges: Mr CL Rozakis, President, Mr AB Baka, Mr B Conforti, Mr G Bonello, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska, Mr E Levits.

The Court had already dismissed the same objection of non-exhaustion in the Immobiliare Saffi case (that challenging the refusal of police assistance in the administrative courts was not an effective remedy), the Government had not submitted any new argument in support of their objection and the Court saw no reason to depart from its previous finding.

The interference with the applicant's property rights amounted to control of the use of property which had a legitimate aim in the general interest. In principle, the Italian system of staggering of the enforcement of court orders was not in itself open to criticism, having regard in particular to the margin of appreciation permitted. However, such a system carried with it the risk of imposing on landlords an excessive burden in terms of their ability to dispose of their property and had to accordingly provide certain procedural safeguards so as to ensure that the operation of the system and its impact on a landlord's property rights were neither arbitrary nor unforeseeable. For several years, the applicant was left in a state of uncertainty as to when he would be able to repossess his apartment. He could not apply to either the judge dealing with the enforcement proceedings or the administrative court, which would not have been able to set aside the prefect's decision to give priority to any pending urgent cases, as that decision was an entirely legitimate one. He had no prospects of obtaining compensation through the Italian courts for his protracted wait. Although the tenant was elderly and sick and therefore deserved special protection, that circumstance could not in itself justify the lengthy restriction of the applicant's use of his apartment. An excessive burden was imposed on the applicant and accordingly the balance that had to be struck between the protection of the right of property and the requirements of the general interest was upset to the applicant's detriment. Consequently, there had been a violation of P1A1.

Pecuniary damage (ITL 50,000,000), non-pecuniary damage (ITL 6,000,000), legal costs (ITL 6,789,823).

Cited: Chassagnou and Others v F (29.4.1999), Immobiliare Saffi v I (28.7.1999), Scollo v I (28.9.1995), Spadea and Scalabrino v I (28.9.1995).

AP v Italy 99/44

[Application lodged 30.6.1993, Commission report 10.3.1998, Court Judgment 28.7.1999]

The applicant complained about the length of civil proceedings in a case concerning services provided under a business contract.

Court unanimously found V 6(1).

Mrs E Palm, President, Mr A Pastor Ridruejo, Mr L Ferrari Bravo, Mr G Bonello, Mr R Türmen (pd), Mr J-P Costa, Mrs F Tulkens, Mrs V Stráznická, Mr P Lorenzen, Mr W Fuhrmann, Mr M Fischbach, Mr V Butkevych, Mr J Casadevall, Mrs HS Greve, Mr A Baka, Mr R Maruste, Mrs S Botoucharova.

The period to be taken into account began on 19 February 1990 and ended on 28 November 1995, over five years, nine months. The reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case. Contracting States had a duty to organise their judicial systems in such a way that they could meet the requirements of A 6. There had been 65 judgments in which violations of A 6(1) in respect of reasonable time had been found against Italy since 1987 (Capuano) and over 1,400 reports of the Commission resulting in breaches against Italy for the same reason. The frequency of the violations indicated an accumulation of identical breaches which could not be considered to be isolated incidents. The breaches presented a continuing situation which denied applicants a domestic remedy. A period of over five years, nine months in the present case was not reasonable.

Damages (ITL 15,000,000), costs and expenses (ITL 8,000,000) awarded.

Cited: Capuano v I (25.6.1987), Katte Klitsche de la Grange v I (27.10.1994), Salesi v I (26.2.1993).

AP, MP and TP v Switzerland (1998) 26 EHRR 541 97/47

[Application lodged 13.3.1992; Commission report 18.4.1996; Court Judgment 29.8.1997]

The applicants were the widow and sons of the late Mr P. An inspection of his books by the tax authorities after his death showed that he had appropriated and failed to declare back payments due to his company, thus evading both cantonal and federal taxes. Proceedings were initiated against the applicants for recovery of the unpaid taxes and fines were imposed on them for tax evasion. The applicants maintained innocence of the tax offences committed by Mr P.

Comm found by majority (20–8) V 6(1) and (17–11) NV 6(2).

Court found by majority (7–2) V 6(2), not necessary to examine 6(1) or 6(3).

Judges: Mr R Bernhardt (jd), President, Mr L-E Pettiti, Mr C Russo, Mr J De Meyer (c), Mr I Foighel, Mr AB Baka (jd), Mr L Wildhaber, Mr J Makarczyk, Mr D Gotchev.

The concept of 'criminal charge' within A 6 is an autonomous one. There were three criteria to be taken into account when it was being decided whether a person was 'charged with a criminal offence' for the purposes of A 6. These are the classification of the offence under national law, the nature of the offence and the nature and degree of severity of the penalty that the person concerned risked incurring. As regards the nature and severity of the penalty, the fines were not inconsiderable: in setting these figures, the authorities took the applicants' cooperative attitude into account; the fines might in fact have been four times as large. As regards the nature of the offence, the tax legislation laid down certain requirements, to which it attached penalties in the event of non-compliance. The penalties in the present case were not intended as pecuniary compensation for damage but were essentially punitive and deterrent in nature. As regards the classification of the proceedings under national law, the Court attached weight to the finding of the highest court in the land, the Federal Court, in its judgment in the present case, that the fine in question was 'penal' in character and depended on the 'guilt' of the offending taxpayer. A 6 was therefore applicable. Compliance with A 6(2) therefore had to be considered. Tax debts, like other debts incurred by the deceased, should be paid out of the estate. Imposing criminal sanctions on the living in respect of acts apparently committed by a deceased person was, however, a different matter. Whether or not the late Mr P was actually guilty, the applicants were subjected to a penal sanction for tax evasion allegedly committed by him. It was a fundamental rule of criminal law that criminal liability did not survive the person who had committed the criminal act. That was recognised by the general criminal law of Switzerland. Such a rule was also required by the presumption of innocence enshrined in A 6(2). Inheritance of the guilt of the dead was not compatible with the standards of criminal justice in a society governed by the rule of law. There

had accordingly been a violation of A 6(2). In view of that conclusion it was not necessary to consider A 6(1).

Costs and expenses (7,000 CHF) awarded.

Cited: Bendenoun v F (24.2.1994), Öztürk v D (21.2.1984).

AV and AB v Italy 00/119

[Application lodged 28.4.1997; Court Judgment 5.4.2000]

The applicant complained about the length of civil proceedings which had lasted eight years, three months.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mr AB Baka.

The period to be taken into consideration began on 21 November 1989 and ended on 9 March 1998, it had lasted more than eight years, three months.

Non-pecuniary damage (ITL 20,000,000 for each of the applicants) awarded.

Cited: Bottazzi v I (28.7.1999).

Abbate v Italy 00/17

[Application lodged 18.11.1997; Court Judgment 25.1.2000]

Mr Giuseppe Abbate complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 13 February 1989 and ended on 19 December 1997. It had lasted more than 8 years and 10 months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 28,000,000), costs and expenses (ITL 4,000,000).

Cited: Bottazzi v I (28.7.1999).

Abdoella v The Netherlands (1995) 20 EHRR 585 92/69

[Application lodged 9.2.1987; Commission report 14.10.1991; Court Judgment 25.11.1992]

Mr Abdoel Aliem Khan Abdoella was taken into police custody and charged with incitement to murder, he was detained on remand and subsequently convicted and sentenced to imprisonment. He complained about the length of the proceedings.

Comm found unanimously V 6(1).

Court unanimously rejected Government's preliminary objection and found V 6(1).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr L-E Pettiti, Mr B Walsh, Mr R Macdonald, Mr N Valticos, Mr SK Martens, Mr I Foighel, Mr L Wildhaber.

The preliminary objection of non-exhaustion was not raised before the Court until the hearing. Since the Government had failed to file a statement setting out the objection not later than the time when they informed the President of their intention not to file a memorial, as laid down in Rule 48(1) of the Rules of Court, it had to be rejected as out of time.

The period to be taken into account began on 18 January 1983, the date of the applicant's arrest, and ended on 19 May 1987, the date on which the Supreme Court rejected his appeal. It thus lasted for 4 years, 4 months and one day. The reasonableness of the length of proceedings is to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the

circumstances of the case. The case, although not particularly complex, was a serious one. In view of the fact that five court examinations were involved, the period as such was not unreasonable. The Government offered no explanation for the lapses of time involving the sending of documents to the Supreme Court. A 6(1) imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet its requirements. What was at stake for the applicant had to be taken into account in assessing the reasonableness of the length of proceedings. Where a person is kept in detention pending the determination of a criminal charge against him, the fact of his detention is a factor to be considered in assessing whether the requirement of a decision on the merits within a reasonable time has been met. The protracted periods of inactivity by the Supreme Court were unacceptable, especially where, as in the present case, the accused was detained. There has accordingly been a violation of A 6(1).

Judgment constituted sufficient just satisfaction for any non-pecuniary damage. Costs and expenses (NLG 10,901.88 less FF 8,825) awarded.

Cited: Brozicek v I (19.12.1989), Guzzardi v I (6.11.1980), H v UK (8.7.1987), Helmers v S (29.10.1991), Herczegfalvy v A (24.9.1992), Open Door and Dublin Well Woman v IRL (29.10.1992), Tomasi v F (27.8.1992), X v F (31.3.1992).

Abdulaziz, Cabales and Balkandali v United Kingdom (1985) 7 EHRR 471 85/7

[Applications lodged 11.12.1980 and 10.8.1981; Commission report 12.5.1983; Court Judgment 28.5.1985]

Mrs Nargis Abdulaziz, Mrs Arcely Cabales and Mrs Sohair Balkandali were lawfully and permanently settled in the United Kingdom. In accordance with the immigration rules in force at the time, their husbands were refused permission to remain with or join them in the UK. The applicants maintained that, on this account, they had been victims of a practice of discrimination on the grounds of sex, race and also, in the case of Mrs Balkandali, birth, and that there had been violations of A 3 and of A 8 taken alone or in conjunction with A 14. They further alleged that, contrary to A 13 no effective domestic remedy existed for their claims.

Comm found unanimously V 14+8 on the ground of sexual discrimination, by majority (9–3) NV 14+8 on the ground of racial discrimination application by majority (11–1) V 14+8 regarding discrimination on the ground of birth against Mrs Balkandali, by majority (11–1) V 13 and not necessary to examine 3, 8.

Court found unanimously NV 8, V 8+14 regarding discrimination on the ground of sex, NV 8+14 regarding other claims, NV 3, V 13 regarding discrimination on the ground of sex.

Judges: Mr G Wiarda, President, Mr R Ryssdal, Mr J Cremona, Mr Thór Vilhjálmsson, Mr W Ganshof van der Meersch, Mr D Evrigenis, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr C Russo, Mr Bernhardt, Mr J Gersing.

By guaranteeing the right to respect for family life A 8 presupposed the existence of a 'family'. Family included the relationship that arose from a lawful and genuine marriage even if a family life had not yet been fully established. 'Family life', in the case of a married couple, normally comprised cohabitation. Each of the applicants had to a sufficient degree entered upon 'family life' for the purposes of A 8. Although the essential object of A 8 was to protect the individual against arbitrary interference by the public authorities, there may in addition be positive obligations inherent in an effective 'respect' for family life. However, especially as far as those positive obligations were concerned, the notion of 'respect' was not clear-cut: having regard to the diversity of the practices followed and the situations obtaining in the Contracting States, the notion's requirements varied considerably from case to case. Accordingly, this was an area in which the Contracting Parties enjoyed a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resources of the community and of individuals. The extent of a State's obligation to admit to its territory relatives of settled immigrants varied according to the particular circumstances of the persons involved. A State had the right to control the entry of non-nationals into its territory. The duty imposed by A 8 could not be considered as extending to a general obligation on the part of a State to respect the choice by married couples of the country of their matrimonial residence and to accept the non-

national spouses for settlement in that country. In the present case, the applicants had not shown that there were obstacles to establishing family life in their own or their husbands' home countries or that there were special reasons why that could not be expected of them. There was therefore no 'lack of respect' for family life and, hence, no breach of A 8 taken alone.

A14 complemented the other substantive provisions of the Convention and the Protocols; it had no independent existence since it had effect solely in relation to 'the enjoyment of the rights and freedoms' safeguarded by those provisions. States enjoyed a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justified a different treatment in law. Under the 1980 Immigration Rules it was easier for a man settled in the United Kingdom than for a woman so settled to obtain permission for his or her non-national spouse to enter or remain in the country for settlement. The 1980 Rules had the aim of protecting the domestic labour market. A 14 was concerned with the avoidance of discrimination in the enjoyment of the Convention rights and includes in general cases where a person or group is treated, without proper justification, less favourably than another, even though the more favourable treatment is not called for by the Convention. As regards the alleged discrimination on the ground of race, whilst a Contracting State could not implement 'policies of a purely racist nature', to give preferential treatment to its nationals or to persons from countries with which it had the closest links did not constitute 'racial discrimination'. The effect in practice of the United Kingdom rules did not mean that they were abhorrent on the grounds of racial discrimination, there being no evidence of an actual difference of treatment on grounds of race. The 1980 Rules, which were applicable in general to all 'non-patrials' wanting to enter and settle in the United Kingdom, did not contain regulations differentiating between persons or groups on the ground of their race or ethnic origin. The Court concluded from the foregoing that the 1980 Rules made no distinction on the ground of race and were therefore not discriminatory on that account. There are in general persuasive social reasons for giving special treatment to those whose link with a country stems from birth within it. The difference of treatment must therefore be regarded as having had an objective and reasonable justification and, in particular, its results have not been shown to transgress the principle of proportionality. That conclusion was not altered by the fact that the immigration rules were subsequently amended on this point. Therefore Mrs Balkandali was not the victim of discrimination on the ground of birth. The difference of treatment complained of did not denote any contempt or lack of respect for the personality of the applicants, it was not designed to, and did not, humiliate or debase but was intended solely to achieve the aims referred to above. It could not therefore be regarded as 'degrading' and accordingly no violation of A 3. The discrimination on the ground of sex of which the applicants were victims was the result of norms that were incompatible with the Convention. As the UK had not incorporated the Convention into its domestic law, there could be no 'effective remedy' as required by A 13. Recourse to the available channels of complaint (the immigration appeals system, representations to the Home Secretary, application for judicial review) could have been effective only if the complainant alleged that the discrimination resulted from a misapplication of the 1980 Rules. No such allegation was made nor was it suggested that that discrimination contravened domestic law. The Court accordingly concluded that there had been a violation of A 13.

Costs and expenses awarded.

Cited: Airey v IRL (9.10.1979), Albert and Le Compte v B (10.2.1983), 'Belgian Linguistic' case (9.2.1967), Campbell and Fell v UK (28.6.1984), Marckx v B (13.6.1979), National Union of Belgian Police v B (27.10.1975), Rasmussen v DK (28.11.1984), Silver and Others v UK (25.3.1983), Young, James and Webster v UK (13.8.1981).

Abenavoli v Italy 97/54

[Application lodged 3.6.1993; Commission report 28.11.1995; Court Judgment 2.9.1997]

Mr Francesco Abenavoli, a teacher, applied to the Calabria Regional Administrative Court for judicial review of two reductions in salary, for the months of February and May 1981, imposed on him by the schools' inspectorate and reimbursement of the sums unpaid, after adjustment for

inflation and the addition of interest at the statutory rate. On 9 March 1982 he asked for a date to be fixed for the hearing, on 13 June 1988 and 7 April 1992 he applied for the case to be set down for an urgent hearing. He complained about the length of proceedings, which were still pending.

Comm found by majority (24–5) V 6.

Court by majority (7–2) found V 6(1).

Judges: Mr R Bernhardt (d), President, Mr C Russo, Mr N Valticos, Mr R Pekkanen (c), Mr AB Baka (d), Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr P Kûris, Mr E Levits.

The Court held that the applicant asserted a purely economic right legally derived from his work as a teacher, accordingly, A 6(1) applied. The period to be taken into consideration began on 19 February 1982, the date of the application to the Administrative Court, and had not yet ended. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and that of the relevant authorities. Despite the applicant's three applications and although fifteen years had already elapsed since the case was submitted to it, the Administrative Court had still not fixed a date for the first hearing. Such a lengthy period failed to satisfy the 'reasonable time' requirement laid down in A 6(1).

Non pecuniary damage (ITL 10 million), costs and expenses (ITL 2 million) awarded.

Cited: Ceteroni v I (15.11.1996), Hussain v UK (21.2.1996), Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993), Scollo v I (28.9.1995).

Academy Trading Ltd and Others v Greece 00/115

[Application lodged 30.11.1995; Commission report 9.7.1998; Court Judgment 4.4.2000]

The applicants were six shipping companies, Academy Trading Ltd, Intercontinental Maritime Ltd, Aaron Maritime Ltd, Evie Navigation Co Ltd, TC Trading Company Ltd and Andros Trading Ltd. In January 1982 they brought an action for damages against Citibank and three Greek members of its senior management before the Athens First Instance Civil Court in respect of the grant of a large loan for which they had acted as guarantors. As a result of a shipping crisis they were unable to meet the repayment instalments. On 20 November 1987 the First Instance Civil Court dismissed the applicants' action as being ill-founded. They appealed to the Athens Court of Appeal, which allowed their appeal finding that the bank had acted unethically. The bank appealed to the Court of Cassation threatening to withdraw from the Greek market altogether if the Court of Cassation upheld the judgment of the Court of Appeal. On 29 May 1991, the First Chamber of the Court of Cassation overturned the judgment of the Court of Appeal and referred the case to the Fourth Chamber for further examination. That chamber deliberated on 14 February 1992 and held a hearing on 11 December 1992. On 30 June 1993, one of the judges participating in that hearing retired and under Greek law this meant that the case had to be re-examined by a different composition. However, no actions were taken at that stage, which led the applicants to believe that the decision had already been taken before the retirement of the judge and that they had to await the delivery of the judgment. On 20 May 1994 the new hearing was held. The Fourth Chamber was composed of five judges. The first had participated in the deliberations of 14 February 1992 and the second in both previous compositions as rapporteur. The other three members heard the case for the first time. One of them, a junior judge, was designated as the new rapporteur. On 30 June 1995, the Court of Cassation dismissed the appeal, lodged by the applicants; the judge who was initially the rapporteur dissented. The applicants complained that they had not had a fair hearing before an impartial tribunal, and that their case had not been heard within a reasonable time.

Comm found by majority (24–6) NV 6(1) as regards the fairness of the proceedings before an impartial tribunal, unanimously V 6(1) as regards the length of the proceedings.

Court found by majority (4–3) NV 6(1) as regards the fairness of the proceedings before an impartial tribunal, unanimously V 6(1) as regards the length of the proceedings.

Judges: Mrs E Palm, President, Mr J Casadevall (pd), Mr L Ferrari Bravo, Mr B Zupancic (jpd), Mrs W Thomassen, Mr T Pantiru (jpd), Mr G Stavropoulos, ad hoc judge.

There were two aspects to the requirement of impartiality in A 6(1). First, the tribunal had to be subjectively impartial; personal impartiality was presumed unless there was evidence to the contrary. Secondly, the tribunal had to also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect. No evidence was produced in the present case which might suggest bias on the part of the judges of the Court of Cassation. While the delay in deciding that the case had to be reheard, the intervention in the proceedings of the former President of the Fourth Chamber and the change of rapporteur at the last hearing inevitably raised some questions in the mind of the applicants' representatives, they did not provide a legitimate reason to doubt the impartiality of the Court of Cassation under the objective test. The applicants failed to show that any of those matters involved any illegality or amounted to a radical or unusual departure from the normal internal practice of the Court of Cassation. In particular, the Court was satisfied that the Government's answers to the specific matters raised by the applicants provided a plausible explanation for the procedures followed. The fact that the daughters of two judges were working for a Greek businessman who was allegedly a friend of Citibank's head did not provide grounds for calling into question the impartiality of the Fourth Chamber. Accordingly, the applicants' apprehension about the impartiality of the Court of Cassation and the fairness of the proceedings before it could not be justified, the allegation concerning the partiality of the Court of Cassation was unsubstantiated. Consequently, there had been no violation of A 6(1) as regards the fairness of the proceedings before an impartial tribunal.

The proceedings lasted from 21 January 1982 to 30 June 1995. The period to be taken into consideration began on 20 November 1985, when the recognition by Greece of the right of individual petition took effect; however, in assessing the reasonableness of the time that elapsed after that date, account had to be taken of the state of proceedings at that time. Therefore, the period to be examined lasted 9 years, 7 months and 10 days. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. The subject matter of the case was complex. The applicants were not responsible for prolonging the proceedings. The various periods of inactivity attributable to the State failed to satisfy the reasonable time requirement. Having regard also to the total duration of the proceedings, there had been a violation of A 6(1) as regards the length of the proceedings.

Finding of a violation constituted sufficient just satisfaction (majority 4–3). Costs and expenses (unanimously GRD 3,000,000).

Cited: Cazenave de la Roche v F (9.6.1998), Fey v A (24.2.1993), Foti and Others v I (10.12.1982).

Acquaviva v France 95/45

[Application lodged 16.12.1991; Commission report 4.7.1994; Court Judgment 21.11.1995]

The applicants complained about the length of civil proceedings concerning the death of their son, a Corsican militant nationalist on the run, who had been killed by farmers during an attack on their farm.

Comm found by majority (23–1) V 6(1).

Court unanimously NV 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr A Spielmann, Mr SK Martens, Mr AN Loizou, Mr AB Baka, Mr K Jungwiert.

Regarding the question of whether there was a 'dispute' over a 'right' which could be said to be recognised under domestic law, the dispute had to be genuine and serious; it could relate not only to the existence of a right but also to its scope and the manner of its exercise; and, finally, the outcome of the proceedings had to be directly decisive for the right in question. The applicants' application temporarily denied them access to the civil courts for the purpose of seeking

compensation for any damage sustained. By choosing the avenue of criminal procedure, the applicants set in motion judicial criminal proceedings with a view to securing a conviction which was a prior condition for obtaining compensation and retained the right to submit a claim for damages up to and during the trial. The finding of self-defence, which excluded any criminal or civil liability, deprived the applicants of any right to sue for compensation. The outcome of the proceedings was, therefore, for the purposes of A 6 (1), directly decisive for establishing their right to compensation. A 6 (1) was applicable. The proceedings before the Court of Cassation (where appeal declared inadmissible) had to be taken into account. The relevant period therefore ran from 11 December 1987 to 14 April 1992, that is 4 years and 4 months. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case and with reference to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the parties and of the competent authorities. The case was not particularly difficult, although the political climate reigning in Corsica at the material time could not be underestimated. Fearful witnesses and transfer of jurisdiction from the Bastia court to the Versailles Court of Appeal had resulted in delays. The applicants had contributed to prolonging the proceedings. There had been some delay in organising a reconstruction. Although State authorities had to act with diligence taking special account of the interests and rights of the defence, they could not disregard the political context where, as in this instance, it had an impact on the course of the investigation. A situation of that kind may justify delays in proceedings, as A 6(1) was intended above all to secure the interests of the defence and those of the proper administration of justice. In the light of the particular circumstances of the case and the situation in Corsica at the time, the investigation proceedings, taken as a whole, did not exceed a reasonable time. There had therefore been no violation of A 6(1).

Cited: Barthold v D (25.3.1985), 'Belgian Linguistic' case v B (9.2.1967), H v F (24.10.1989), Kerojärvi SF (19.7.1995), Monnet v F (27.10.1993), Tomasi v F (27.8.1992), Vernillo v F (20.2.1991), Zander v S (25.11.1993).

Adamo v Italy 00/20

[Application lodged 8.11.1997; Court Judgment 25.1.2000]

Mr Nino Andrea Adamo complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 17 June 1987 and ended on 6 March 1997. It had lasted more than 9 years 8 months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 24,000,000), costs and expenses (ITL 3,803,352).

Cited: Bottazzi v I (28.7.1999).

Adiletta and Others v Italy (1992) 14 EHRR 586 91/22

[Applications lodged 11 and 12.3.1988; Commission report 5.12.1989; Court Judgment 19.2.1991]

Mrs Anna and Mrs Maria Adiletta and Mr Aniello Agovino, Post Office employees, received notification on 23 June 1974 of proceedings against them for signing pension receipts in the space reserved for recipients and for failing to comply with the relevant proxy regulations. The cases against them were dismissed on 16 September 1987 by the District Court who found that no offence had been committed. The judgment was finalised on 23 November 1987. The applicants complained about the length of the proceedings.

Comm found unanimously V 6(1).

Court held unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Sir Vincent Evans, Mr C Russo, Mr J De Meyer, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla.

The Court held that the reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case. The present case was of some complexity, the applicants had caused delays by asking for several adjournments but a lapse of 13 years and 5 months could not be regarded as reasonable. There had been long periods of inactivity. There had been a 5 year delay between the placing of the case in the hands of the investigating judge and the questioning of the accused and witnesses for which there had been no explanation and there had been a delay of 1 year and 9 months before committal for trial.

Non-pecuniary damage (ITL 15 million to each applicant), costs and expenses (ITL 4 million).

Cited: Obermeier v A (28.6.1990).

Adolf v Austria (1982) 4 EHRR 313 82/2

[Application lodged 7.6.1978; Commission report 8.10.1980; Court Judgment 26.3.1982]

Mr Gustav Adolf was an accountant and financial consultant. On 15 July 1977, an 85-year-old woman, acting through a lawyer, reported to the Innsbruck public prosecutor's office that three days earlier, during a quarrel, the applicant had thrown at another person a bunch of keys which had then struck her (the complainant). The applicant was questioned. After receipt of a medical report the District Court closed the proceedings. The applicant requested the District Court either to acquit him after trial or to terminate the proceedings pursuant to the Code of Criminal Procedure. His request was refused, as was his appeal to the Supreme Court. He complained that the District Court's decision had contained findings both on the facts of the alleged offence and on his guilt contrary to A 6(2), that his request for the hearing of witnesses in his favour had been denied and that the District Court took its decision without holding a trial hearing and without proper inquiry into the evidence.

Commission by majority (9–6, with one abstention) found V 6(2), (12–3, with one abstention) NV 6(1), 6(3).

Court by majority (4–3) NV 6.

Judges: Mr G Wiarda, President, Mr J Cremona (jd), Mr L Liesch (jd), Mr F Matscher (c), Mr L-E Pettiti (jd), Mr B Walsh, Sir Vincent Evans.

The expression 'criminal charge' had an autonomous meaning in the context of the Convention. The legislation of the State concerned was certainly relevant, but it provided no more than a starting point. The applicant's situation under the domestic legal rules in force has to be examined in the light of the object and purpose of A 6, namely the protection of the rights of the defence. The public prosecutor's office had instructed the federal police to investigate 'whether or not a punishable act had been committed', the District Court entered the case in the register under the heading 'punishable act' and referred to s 83 of the Penal Code, which dealt with the infliction of bodily harm, the decision on the costs of the doctor's opinion mentioned 'the criminal proceedings and described the applicant as 'accused'. The Court considered that there was a combination of factors demonstrating that at the relevant time there was a 'criminal charge' against the applicant within the meaning of the Convention. The termination of proceedings took effect on 24 November 1977, but was not notified to the applicant, and was set out in a reasoned written version dated 10 January 1978. There was a single procedural act effected in several stages. Recourse to the Penal Code could not affect the existence, or retroactively alter the nature, of the procedures conducted prior to the court order terminating proceedings. Non-punishable or unpunished criminal offences did exist and A 6 did not distinguish between them and other criminal offences; it applied whenever a person was 'charged' with any criminal offence. On the facts the applicant was subject to a criminal charge, A 6 was therefore applicable. As to whether the Penal Code was compatible with the Convention, the Court's task was not to review in abstracto the provision of domestic law challenged by the applicant but to review the manner in which that

provision was applied to him. The reasoning of the District Court was capable of suggesting that the applicant had inflicted bodily harm on the complainant and that he was at fault in doing so, no mention was made that the applicant had denied throwing any keys and had denounced the complaint as being knowingly false. The reasoning in the decision was capable of being understood as meaning that the applicant was guilty of a criminal offence, albeit one that did not merit punishment. The judgment of the Supreme Court held that a decision taken in pursuance of s 42 of the Penal Code did not involve anything in the nature of a verdict of guilt. The Court recognised that the District Court's reasoned decision had to be read with the judgment of the Supreme Court and in the light of it. That judgment cleared Mr Adolf of any finding of guilt and thus the presumption of his innocence was no longer called into question. Because of the nature of s 42 of the Penal Code, it was not necessary for the District Court to proceed with any hearing in the case or examination of evidence. There had accordingly been no breach of A 6.

Cited: Artico v I (13.5.1980), Deweer v B, Engel and Others v NL (8.6.1976), Guzzardi v I (6.11.1980), König v D (28.6.1978).

Aerts v Belgium (2000) 29 EHRR 50 98/58

[Application lodged 8.8.1994; Commission report 20.1.1997; Court Judgment 30.7.1998]

Mr Michel Aerts was arrested on 14 November 1992 for an assault in which he attacked his ex-wife with a hammer. He was placed in detention on a ward in the psychiatric wing of Lantin Prison pending his transfer to the Paifve Social Protection Centre following a court order. The applicant applied for an injunction ordering his immediate transfer and submitted that the conditions of his detention constituted inhuman and degrading treatment. On 10 May 1993 the President of the Court of First Instance ruled that the applicant's continued detention was unlawful and constituted a trespass to the person which should be terminated as quickly as possible. The State appealed successfully to the Liège Court of Appeal. On 24 November 1993 he was released following assessment that his mental state appeared to have improved sufficiently. On 13 January 1994 the applicant applied for legal aid in order to appeal on points of law, his application was refused.

Comm found by majority (29–2) V 5(1), (17–14) V 3 and unanimously NV 5(4) and 6.

Court unanimously rejected the Government's preliminary objections, unanimously found V 5(1), NV 5(4), V 6(1), by majority (7–2) NV 3.

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr J De Meyer, Mr I Foighel (pd), Mr R Pekkanen (jpd), Mr JM Morenilla, Mr B Repik, Mr P Jambrek (jpd), Mr U Lôhmus.

Preliminary objection of lack of victim was rejected; the applicant could claim to be the 'victim' because the fact that he had been detained so long in detention in the psychiatric wing of Lantin Prison had affected him directly. Regarding the objection that the application was out of time, the decision of the legal aid authorities preventing the applicant from taking his case to the Court of Cassation, put an end to the action he had brought and made it impossible for any subsequent compensation claim to succeed. It constituted the final decision from which the six-month time-limit laid down by A 26 began to run. The objection could not therefore be upheld.

Although the Liège Court of First Instance found that the applicant had committed acts of violence, it ordered his detention on the ground that at the material time and when he appeared in court he had been severely mentally disturbed, to the point where he was incapable of controlling his actions. As he was not criminally responsible, there could be no 'conviction' within the meaning of A 5(1)(a). In order to comply with A 5(1), the detention had to take place 'in accordance with a procedure prescribed by law' and be 'lawful'. There had to be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention. In principle, the 'detention' of a person as a mental health patient would only be 'lawful' for the purposes of A 5(1)(e) if effected in a hospital, clinic or other appropriate institution. The applicant had been detained provisionally in the psychiatric wing of the prison pending designation of an

appropriate institution by the Mental Health Board. Although the Mental Health Board designated the Paifve Social Protection Centre as the place of detention on 22 March, as there were no spare places there the applicant continued to be detained at Lantin for seven months, his transfer not being effected until 27 October 1993. Reports showed clearly that the Lantin psychiatric wing could not be regarded as an institution appropriate for the detention of persons of unsound mind, the latter not receiving either regular medical attention or a therapeutic environment. The proper relationship between the aim of the detention and the conditions in which it took place was deficient. There had been a breach of A 5(1).

Available domestic remedies had to afford the possibility of reviewing compliance with the conditions to be satisfied if the detention of a person of unsound mind was to be regarded as 'lawful' for the purposes of A5(1)(e). The applicant had been able to apply to the judge responsible for urgent applications, who held that his continued detention at Lantin was unlawful; that decision had been set aside on appeal. However, the judgment did not mean that in general an application for an injunction was an unsuitable means of securing enjoyment of A 5(4) rights. There had accordingly been no breach of that provision.

The Court considered that the present case did not involve 'determination of a criminal charge' although the outcome of the proceedings was decisive for civil rights. The question of the applicant's transfer to Paifve was not the only matter in issue in the case before the Belgian courts, which concerned in substance the lawfulness of the deprivation of liberty. But the right to liberty, which was thus at stake, was a civil right. In requesting the Court of Cassation to rule that the courts did have jurisdiction to review the compatibility of his detention at Lantin with Belgian law and the Convention, the applicant was seeking a judicial declaration that the courts had jurisdiction not only to order his transfer to a Social Protection Centre but also to award him compensation for unlawful imprisonment. The applicant did not have sufficient means to pay a lawyer. It was not for the Legal Aid Board to assess the proposed appeal's prospects of success; it was for the Court of Cassation to determine the issue. By refusing the application on the ground that the appeal did not at that time appear to be well-founded, the Legal Aid Board denied the applicant's right to a tribunal. There had accordingly been a breach of A 6(1).

Regarding the treatment in the psychiatric wing, the general conditions in the psychiatric wing of Lantin Prison were unsatisfactory and not conducive to the effective treatment of the inmates. However, there was no proof of a deterioration of the applicant's mental health and it had not been conclusively established that the applicant suffered treatment that could be classified as inhuman or degrading. Accordingly no breach of A 3.

Non-pecuniary damage (BEF 50,000), costs and expenses (BEF 400,000 less FF 10,166) awarded.

Cited: Ashingdane v UK (28.5.1985), Bizzotto v GR (15.11.1996), Vilvarajah and Others v UK (30.10.1991), Winterwerp v NL (24.10.1979), X v UK (5.11.1981).

Agga v Greece 00/8

[Application lodged 5.8.1997; Court Judgment 25.1.2000]

Mr Mehmet Agga was a candidate in the parliamentary elections of 18 June 1989. On 9 June 1989 Mr TOB complained to the police that the applicant had promised him a sum of money in exchange for his support in the elections. Criminal proceedings were instituted against the applicant for attempting to bribe a voter. On 26 July 1989 the prosecutor summoned the applicant to appear before the first instance criminal court. The applicant was tried on 5 March 1991. He was found guilty and received a suspended sentence of four months' imprisonment. The applicant and the public prosecutor appealed. The appeals were finally heard on 4 March 1996 and in a decision delivered on the same day, the court of appeal upheld the applicant's conviction and sentence. The applicant's appeal to the Court of Cassation was rejected on 18 February 1997. He complained of the length of the criminal proceedings.

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr C Rozakis, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska, Mr AB Baka.

The relevant period began at the latest on 26 July 1989, when the public prosecutor of Xanthi informed the applicant of the proceedings against him. It ended on 18 February 1997 when the applicant's appeal in cassation was rejected. It therefore lasted 7 years, 6 months and 22 days. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case. The case was not complex. The applicant's illness resulted in delays of six months. As a result of the failure of prosecution witnesses to appear and industrial action by the clerks of the court, the State was responsible for the resultant delays of approximately one year. There was in addition a period of inactivity of approximately 3 years and 10 months between the date when the case-file was transferred to the public prosecutor of the court of appeal and the first adjournment of the appeal hearing. The Government did not provide any information with regard to the strike by the lawyers. Even assuming that such a strike took place and that the State was not responsible for the delays resulting, the Government did not allege that it resulted in particular hearings being adjourned. Moreover, delays related to the backlog of cases resulting from such a strike came within the State's responsibility. The same applied to the 14-month delay resulting from the adjournments of the appeal hearing, which were due to industrial action by the clerks of the court and the failure of prosecution witnesses to appear. A 6(1) imposed on the Contracting States the obligation to organise their legal systems in such a way that their courts could meet each of the requirements of that provision, including the obligation to decide cases within a reasonable time. In the present case there were excessive delays that were attributable to the national authorities. Consequently, there had been a violation of A 6(1) as the reasonable time requirement had not been respected.

Non-pecuniary damage (GRD 2,000,000), costs and expenses (GRD 300,000).

Cited: Pafitis and Others v GR (26.2.1998), Pélissier and Sassi v F (25.3.1999), Philis v GR (No 2) (27.6.1997).

AGOSI v United Kingdom (1986) 9 EHRR 1 86/11

[Application lodged 17.9.1980; Commission report 11.10.1984; Court Judgment 24.10.1986]

The applicant German company sold gold Krugerrands to X and Y who attempted to smuggle them into the UK. The cheque which X and Y had proffered in payment was dishonoured and the contract of sale had stipulated that property in the coins did not pass until full payment had been made. X and Y were prosecuted for attempting to smuggle the coins into the UK and after the trial the coins were declared forfeit by the court. The applicant company complained that the forfeiture of the coins was a breach of P1A1.

Comm found by a majority (9–2) V P1A1.

Court found by majority (5–2) NV P1A1; NA 6.

Judges: Mr G Wiarda, President, Mr R Ryssdal, Mr Thór Vilhjálmsson (d), Mr F Matscher, Mr J Pinheiro Farinha, Mr L-E Pettiti (d), Sir Vincent Evans.

The Court considered, on the facts of the case, that there had been an interference with the applicant's right to peaceful enjoyment of their possessions but that there were administrative procedures sanctioned by law and that, in the circumstances, the scope of judicial review under English law was sufficient to satisfy the requirements of the second paragraph of P1A1. The fact that the applicant company, for reasons of its own, chose not to seek judicial review of the administrative decision and hence did not receive full advantage of the safeguards available to owners asserting their innocence and lack of negligence did not invalidate that conclusion. Accordingly, no breach of P1A1.

The proceedings did not concern the determination of a criminal charge against the applicant company. The applicant did not invoke A 6 in relation to its civil rights and obligations.

Cited: Handyside v UK (7.12.1976); James v UK (21.2.1986); Lithgow v UK (8.6.1986); Marckx v B (13.6.1979); Öztürk v D, Silver v UK; Sporrong & Lönnroth v S (23.9.1982), X v UK (5.11.1981).

Agrotexim and Others v Greece (1996) 21 EHRR 250 95/40

[Application lodged 29.11.1988; Commission report 10.3.1994; Court Judgment 24.10.1995]

The six applicant companies were shareholders in Fix Brewery. In order to overcome its financial difficulties, Fix Brewery had decided to transfer and develop two sites as an office and shopping complex. A building permit was obtained. The Athens Municipal Council by planning order designated the sites as areas to be developed into a youth centre and a public park. The applicants complained that the Municipality of Athens had unlawfully interfered with their right to the peaceful enjoyment of their possessions (P1A1) and that it was not possible for them under Greek law, as shareholders, to take proceedings in a court and to secure legal protection of their rights (A 6 and 13).

Comm found by majority (13–2) V P1A1, (11–4) NV 6 and (9–6) NV 13.

Court found by majority (8–1) that it could not take cognisance of the merits of the case.

Judges: Mr R Ryssdal, President, Mr L-E Pettiti, Mr B Walsh (d), Mr R Macdonald, Mr N Valticos, Mr SK Martens, Mr F Bigi, Mr L Wildhaber, Mr K Jungwiert.

The Court noted that the applicant companies did not complain of a violation of the rights vested in them as shareholders of Fix Brewery, such as the right to attend the general meeting and to vote. Their complaint was based exclusively on the proposition that the alleged violation of the Brewery's right to the peaceful enjoyment of its possessions had adversely affected their own financial interests because of the resulting fall in the value of their shares. They considered that the financial losses sustained by the company and the latter's rights were to be regarded as their own, and that they were therefore victims, albeit indirectly, of the alleged violation. In sum, they sought to have the company's corporate veil pierced in their favour. It was a perfectly normal occurrence in the life of a limited company for there to be differences of opinion among its shareholders or between its shareholders and its board of directors as to the reality of an infringement of the right to the peaceful enjoyment of the company's possessions or concerning the most appropriate way of reacting to such an infringement. Such differences of opinion could, however, be more serious where the company was in the process of liquidation because the realisation of its assets and the discharging of its liabilities were intended primarily to meet the claims of the creditors of a company whose survival was rendered impossible by its financial situation, and only as a secondary aim to satisfy the claims of the shareholders, among whom any remaining assets are divided up. The piercing of the 'corporate veil' or the disregarding of a company's legal personality would be justified only in exceptional circumstances, in particular where it was clearly established that it was impossible for the company to apply to the Convention institutions through the organs set up under its articles of incorporation or, in the event of liquidation, through its liquidators. When the applicant companies lodged their application with the Commission in 1988, Fix Brewery, although in the process of liquidation, had not ceased to exist as a legal person. It was represented at that time by its two liquidators, who had legal capacity to defend its rights and therefore to apply to the Convention institutions, if they considered it appropriate. There was no evidence to suggest that at the material time it would have been impossible as a matter of fact or law for the liquidators to do so. The Athens Court of Appeal appointed two liquidators, one representing the interests of the main creditor and the other those of the company. There were no grounds for doubting that the task of these liquidators was, like a trustee in bankruptcy, to liquidate the company's assets in the interests both of the creditors and the shareholders, or that, de facto and de jure, they were free to carry out that task as they saw fit. There was evidence to show that the liquidators took all the measures that they considered to be in the interests of the

insolvent company's assets. The Athens Court of Appeal found that the liquidators had performed their duties in a particularly diligent manner. It had not been clearly established that at the time when the application was lodged with the Commission it was not possible for Fix Brewery to apply through its liquidators to the Convention institutions in respect of the alleged violation of P1A1. It followed that the latter companies could be regarded as being entitled to apply to the Convention institutions. In view of that conclusion it was unnecessary to examine the other objections raised by the Government under P1A1.

Neither A 6 nor A 13 implied that under the national law of the Contracting States shareholders in a limited company should have the right to bring an action seeking an injunction or damages in respect of an act or omission that was prejudicial to 'their' company. The compass of the case before the Court was delimited by the Commission's decision on admissibility. It could not be ruled out that it may be possible for an applicant to plead before the Court that a different construction should be placed on a complaint declared admissible by the Commission than that adopted by the latter; however, the applicant companies had not shown that to be the case and the Court therefore lacked jurisdiction to take cognisance of the complaint.

Cited: Helmers v S (29.10.1991), Kefalas and Others v GR (8.6.1995).

Ahmed v Austria (1997) 24 EHRR 278 96/63

[Application lodged 13.12.1994; Commission report 5.7.1995; Court Judgment 17.12.1996]

Mr Sharif Hussein Ahmed was a Somali citizen living in Austria, having been granted refugee status in 1992. Subsequently he was convicted of attempted robbery and sentenced to two and half years' imprisonment. The Austrian authorities ordered that he should lose his refugee status and right to remain in Austria. They further claimed that the applicant was not entitled to refugee status since he could not fear ill-treatment in Somalia from the government as no central Somalian Government existed. The applicant claimed that if expelled to Somalia his life would be at risk as a member of the Hawwiye clan. He claimed his expulsion to Somalia would expose him to treatment prohibited by A 3.

Comm found unanimously V 3 if applicant deported to Somalia, 5 and 13 inadmissible.

Court unanimously found V 3.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr C Russo, Mr A Spielmann, Mr L Wildhaber, Mr D Gotchev, Mr K Jungwiert, Mr P Kûris.

Contracting States had a right to control the entry, residence and expulsion of aliens onto their territory. However, A 3 prohibited expulsion to a country where there were substantial grounds for believing that there was a real risk that the person would be subjected to treatment contrary to A 3. A 3 prohibits torture, inhuman or degrading treatment or punishment in absolute terms, irrespective of the victim's conduct, however dangerous or undesirable. There could be no exceptions or derogations from A 3, not even in expulsion cases. Thus A 3 had a wider application than A 33 of the 1951 Refugee Convention. The date for considering the risk to the applicant in an expulsion case was the date of the Court's consideration of the matter, not the date when the Contracting State had made the decision, although the historical situation might shed light on the present situation. There was no indication that the risks to the applicant if returned to Somalia had changed since 1992 when he was granted refugee status. The potential treatment in breach of A 3 might not be by State agents. The applicant could not be expelled to Somalia regardless of his criminal convictions.

Judgment constituted sufficient just satisfaction for any non-pecuniary damage. Costs and expenses (ATS 150,000).

Cited: Beldjoudi v F (26.3.1992), Chahal v UK (15.11.1996), Cruz Varas v S (20.3.1991), Ireland v UK (18.1.1978), Masson & Van Zon v NL (28.9.1995), Soering v UK (7.7.1989), Tomasi v F (27.8.1992), Vijayanathan & Pusparajah v F (27.8.1992), Vilvarajah and Others v UK (30.10.1991).

Ahmed and Others v UK (2000) 29 EHRR 1 98/70

[Application lodged 21.9.1993; Commission report 29.5.1997; Court Judgment 2.9.1998]

Mr Mobin Ahmed, Mr Dennis Perrin, Mr Ray Bentley and Mr David John Brough were employed in different capacities by various local authorities. Their complaints related to the enactment and implementation of legislative measures designed to limit the involvement of certain categories of local government officials, such as themselves, in political activities. They complained that the legislative measures operated to their detriment in a way that denied them their rights to freedom of expression (A 10) and of assembly (A 11) and their rights to participate fully in the electoral process (P1A1).

Comm found by majority (13–4) V 10, not necessary to consider 11, unanimously NV P1A3.

Court found by majority (6–3) NV 10 and 11, unanimously NV P1A3.

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr A Spielmann (jd), Mr J De Meyer (c), Mr R Pekkanen (jd), Sir John Freeland, Mr D Gotchev, Mr P Kûris, Mr P Van Dijk (jd).

There had been an interference with the applicant's rights. The Court held that the interferences were 'prescribed by law' and pursued the legitimate aim to protect the rights of others, council members and the electorate alike, to effective political democracy at the local level. Further, there was a pressing social need for action in this area, to strengthen the tradition of senior officers' political neutrality. In looking at the interference complained of in the light of the case as a whole, the Court determined that it was proportionate to the legitimate aim pursued and that the reasons adduced by the national authorities to justify it were relevant and sufficient. Having regard to the need that the legislation sought to address and to the margin of appreciation which the respondent State enjoyed in this area, the restrictions imposed on the applicants could not be said to be a disproportionate interference with their rights under A 10 of the Convention.

The Court's conclusions as to the forseeability of the impugned measures, the legitimacy of the aim pursued by them and their necessity, held true for the purposes of A 11(2). The relevant legislation was limited in the scope of its restrictions, which did not restrict the applicants' right to join any political party of their choosing.

The aim of the legislation to secure political impartiality was legitimate for the purposes of restricting the exercise of the applicants' subjective right to stand for election. Further, the restrictions did not limit the very essence of the applicants' rights under this Article having regard to the fact that they only operated for as long as the applicants occupied politically restricted posts and that any of the applicants wishing to run for elected office were at liberty to resign from their post.

Cited: United Communist Party of Turkey and Others v TR (30.1.1998), Vogt v D (26.9.1995).

Ahmet Sadik v Greece (1997) 24 EHRR 323 96/46

[Application lodged 11.7.1991; Commission report 4.4.1995; Court Judgment 15.11.1996]

Mr Sadik Ahmet Sadik, a Greek national of the Muslim faith, a doctor, publisher of a weekly newspaper Güven ('Trust') and a member of the Greek Parliament, was the sole candidate of the political party Güven representing part of the Muslim population of Western Thrace. He published statements in the newspaper Güven and was subsequently charged with deceiving the electors in order to induce them to change the way they intended to vote, provoking and inciting the citizens to sow discord among themselves by his descriptions of the 'Turkish Muslim minority'. He was subsequently found guilty of disturbing the peace. Following appeal he was sentenced to 15 months' imprisonment and fine. After his release in 1990 he was elected to parliament. He died in a road accident on 24 July 1995.

Comm found unanimously V 10.

Court unanimously rejected Government's preliminary objection regarding standing of heirs, by majority (6–3) accepted Government's preliminary objection of non-exhaustion.

Judges: Mr R Ryssdal, President, Mr N Valticos (c), Mr SK Martens (jpd), Mr I Foighel (jpd), Mr JM Morenilla (pd), Sir John Freeland, Mr AB Baka, Mr B Repik, Mr K Jungwiert.

The applicant's widow and children had a legitimate moral interest in obtaining a ruling that his conviction infringed the right to freedom. In addition the applicant was sentenced to fifteen months' imprisonment, commutable to a fine of 1,000 Greek drachmas per day of detention, which sum he paid. His heirs therefore also had a pecuniary interest under A 50.

The supervision machinery set up by the Convention was subsidiary to the national human rights protection systems. That principle is reflected in A 26. A 26 had to be applied with some degree of flexibility and without excessive formalism but complaints intended to be made subsequently at Strasbourg should have been made to the domestic courts, at least in substance and in compliance with the formal requirements and time limits laid down in the domestic system. The Court noted that the Convention formed an integral part of the Greek legal system, where it took precedence over every contrary provision of the law; A 10 of the Convention was directly applicable. The applicant did not rely on A 10, or on arguments to the same or like effect based on domestic law, in the courts dealing with his case. Accordingly, as domestic remedies were not exhausted, the merits of the case could not be considered.

Cited: Akdivar and Others v TR (16.9.1996), Cardot v F (19.3.1991), Castells v E (23.4.1992), Guzzardi v I (6.11.1980), Van Oosterwijck v B (6.11.1980), De Wilde, Ooms and Versyp v B (18.6.1971).

Ahmut v The Netherlands (1997) 24 EHRR 62 96/58

[Application lodged 23.2.1993; Commission report 17.5.1995; Court Judgment 28.11.1996]

Salah Ahmut was born in 1945 and had been a Netherlands national since 22 February 1990, although he had retained his original Moroccan nationality. He married Ms F A in 1967 and they had 5 children. His youngest son, Souffiane, was born on 27 November 1980 in Morocco and had Moroccan nationality. The marriage was dissolved and the children remained with their mother after the applicant moved to The Netherlands in September 1986. Ms F A died as a result of a traffic accident on 27 March 1987. The applicant married a Netherlands national in 1986 from whom he was divorced in 1990, he then married a Moroccan national in The Netherlands in 1991. Souffiane arrived in The Netherlands on 26 March 1990 in the company of his sister. They applied for residence permits to reside with their father. Their applications were refused. The applicant's subsequent appeals were dismissed.

Comm found by majority (9–4) V 8.

Court found by majority (5–4) NV 8.

Judges: Mr R Bernhardt, President, Mr F Matscher, Mr R Macdonald, Mr N Valticos (d), Mr SK Martens (jd), Mr AN Loizou, Mr JM Morenilla (jd), Mr U Lôhmus (jd), Mr E Levits.

It followed from the concept of family on which A 8 was based that a child born of a marital union was *ipso iure* part of that relationship; hence, from the moment of the child's birth and by the very fact of it, there existed between him and his parents a bond amounting to 'family life'. The existence of 'family life' between the applicants was established. The essential object of A 8 was to protect the individual against arbitrary action by public authorities. There may in addition be positive obligations inherent in effective 'respect' for family life. However, the boundaries between the State's positive and negative obligations under this provision did not lend themselves to precise definition. Regard had to be had to the fair balance that had to be struck between the competing interests of the individual and of the community as a whole and in both contexts the State enjoyed a certain margin of appreciation. The applicable principles had been stated by the Court in previous judgments as: (a) the extent of a State's obligation to admit to its territory relatives of settled immigrants will vary according to the particular circumstances of the persons involved and the general interest; (b) as a matter of well-established international law and subject to its treaty obligations, a State has the right to control the entry of non-nationals into its territory; (c) where immigration is concerned, A 8 cannot be considered to impose on a State a general

obligation to respect immigrants' choice of the country of their matrimonial residence and to authorise family reunion in its territory. The Court considered the facts of the case, the applicant's residence and ties in The Netherlands, the family in Morocco who could care for the son, the family, linguistic and cultural ties of the latter to Morocco and the period of time the latter had spent in The Netherlands. A 8 did not guarantee a right to choose the most suitable place to develop family life. In the circumstances, the respondent State could not be said to have failed to strike a fair balance between the applicants' interests on the one hand and its own interest in controlling immigration on the other. Accordingly no violation of A 8 could be found on the facts of the present case.

Cited: Berrehab v NL (21.6.1988), Gul v CH (19.2.1996).

Aiello v Italy 99/110

[Application lodged 5.11.1997; Judgment 14.12.1999]

Mr Carmine Aiello complained about the length of civil proceedings which had lasted 5 years 8 months.

Court unanimously found V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mrs M Tsatsa-Nikolovska, Mr A Baka.

The proceedings had commenced on 13 September 1991 and ended on 2 June 1997, a period of 5 years 8 months. The Court recalled that it had found in judgments on 28 July 1999 that in Italy there was an accumulation of breaches of the reasonable time requirement. That accumulation aggravated the violation of A 6. Length of 5 years 8 months could not be considered reasonable.

Damages (ITL 10 million), costs and expenses (ITL 3 million).

Cited: Bottazzi v I (28.7.1999).

Air Canada v United Kingdom (1995) 20 EHRR 150 95/14

[Application lodged 2.5.1991; Commission report 30.11.1993; Court Judgment 5.5.1995]

On the morning of 1 May 1987 officers of the Commissioners of Customs and Excise seized an aircraft owned and operated by the applicant company worth over GBP 60 million which had landed in London. On discharge of its cargo the aircraft had been found to contain 331 kilograms of cannabis resin valued at about GBP 800,000. The Commissioners delivered the aircraft back to the applicant company on payment of a penalty of GBP 50,000. The applicant company commenced a claim disputing that the aircraft was liable to forfeiture. The Commissioners therefore brought condemnation proceedings before the court to confirm, *inter alia*, that the aircraft was liable to forfeiture at the time of seizure. The applicant company complained that the seizure of its aircraft and its subsequent return on conditions violated its right to peaceful enjoyment of its possessions as guaranteed by P1A1 and that the proceedings involved did not comply with the requirements of A 6(1).

Comm found by majority (9–5) NV P1A1 and (6–8) NV 6.

Court found by majority (5–4) NV P1A1, NV 6(1).

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr F Matscher, Mr B Walsh (d), Mr C Russo (jd), Mr A Spielmann, Mr SK Martens (jd), Mr R Pekkanen (d), Sir John Freeland.

It was not in dispute between the parties that the matters complained of constituted an interference with the peaceful enjoyment of the applicant's possessions. However, there was disagreement as to whether there had been a deprivation of property under the first paragraph (P1A1) or a control of use under the second paragraph. P1A1 guaranteed the right of property and comprised three distinct rules. The first was of a general nature laying down the principle of peaceful enjoyment of property. The second covered deprivation of possessions and made it subject to certain conditions. The third recognised that the Contracting States were entitled to

control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. However, the three rules were not 'distinct' in the sense of being unconnected: the second and third rules were concerned with enjoyment of property and therefore had to be construed in the light of the general principle enunciated in the first rule. The seizure of the aircraft amounted to a temporary restriction on its use and did not involve a transfer of ownership, in addition the decision of the Court of Appeal to condemn the property as forfeited did not have the effect of depriving Air Canada of ownership since the sum required for the release of the aircraft had been paid. It was clear from the scheme of the legislation that the release of the aircraft subject to the payment of a sum of money was, in effect, a measure taken in furtherance of a policy of seeking to prevent carriers from bringing, *inter alia*, prohibited drugs into the UK. As such, it amounted to a control of the use of property. The second paragraph of P1A1 was therefore applicable. The second paragraph (P1A1) had to be construed in the light of the principle laid down in the Article's first sentence. An interference had to achieve a 'fair balance' between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. There had to be, therefore, a reasonable relationship of proportionality between the means employed and the aim pursued. It was clear from the decision of the Court of Appeal that both the seizure of the aircraft and the requirement of payment, in the absence of any finding of fault or negligence on the part of the applicant, were in conformity with the relevant provisions of the Customs and Excise Management Act 1979. While the width of the powers of forfeiture conferred on the Commissioners was striking, the seizure of the applicant's aircraft and its release subject to payment were exceptional measures which were resorted to in order to bring about an improvement in the company's security procedures. The measures taken conformed to the general interest in combating international drug trafficking. The applicant complained that it had been given no reasons by the Commissioners. The Court noted that it would have been open to Air Canada to institute judicial review proceedings to challenge the failure of the Commissioners to provide reasons for the seizure of the aircraft or indeed to contend that the acts of the Commissioners constituted an abuse of their authority. Although not an appeal on the merits of the case, available and effective remedy could have been provided in respect of the exercise of discretion by the Commissioners. Although the provision of reasons from the outset would have contributed to clarifying the situation, the applicant could not have been in any real doubt as to the reasons for the Commissioners' decision having regard to the numerous incidents concerning the various security lapses and irregularities which had occurred in the past as well as the warning letter from the Commissioners which had been sent, *inter alia*, to Air Canada pointing out that forfeiture of an aircraft was a possibility. The scope of judicial review under English law was sufficient to satisfy the requirements of the second paragraph of P1A1. In particular, it was open to the domestic courts to hold that the exercise of discretion by the Commissioners was unlawful on the grounds that it was tainted with illegality, irrationality or procedural impropriety. Taking into account the large quantity of cannabis that was found in the container, its street value as well as the value of the aircraft that had been seized, the Court did not consider the requirement to pay GBP 50,000 to be disproportionate to the aim pursued, namely the prevention of the importation of prohibited drugs into the United Kingdom. Bearing in mind the above, as well as the State's margin of appreciation in this area, in the circumstances of the present case, a fair balance was achieved. There had thus been no violation of P1A1.

The absence of a criminal charge or a provision which was 'criminal' in nature and the lack of involvement of the criminal courts taken together with the fact that there was no threat of any criminal proceedings in the event of non-compliance, were sufficient factors on which to conclude that the matters complained of did not involve 'the determination of a criminal charge'. It had not been disputed by the parties that the present case concerned a dispute relating to the applicant company's civil rights. Regarding the seizure, the relevant provisions of UK law required the Commissioners to take proceedings for forfeiture once the seizure of the aircraft had been challenged. Such proceedings were in fact brought and, with the agreement of the parties, were limited to the determination of specified questions of law. In such circumstances, the requirement

of access to court inherent in A 6(1) was satisfied. Furthermore, it was also open to the applicant to bring judicial review proceedings contesting the decision of the Commissioners to require payment as a condition for the return of the aircraft. However, for whatever reason, such proceedings were not in fact instituted. Against that background, the Court did not consider it appropriate to examine in the abstract whether the scope of judicial review, as applied by the English courts, would be capable of satisfying A 6(1). Accordingly, there had been no violation of A 6(1).

Cited: AGOSI v UK (24.10.1986), Deweer v B (27.2.1980), Editions Périscope v F (26.3.1992), Gasus Dosier- und Födertechnik GmbH v NL (23.2.1995).

Airey v Ireland (1979) 2 EHRR 305 79/3

[Application lodged 14.6.1973; Commission report 9.3.1978; Court Judgment 9.10.1989 (merits) 6.2.1981 (A 50)]

Mrs Johanna Airey, a married woman of modest means, complained that she was unable to afford the services of a lawyer to obtain a decree of judicial separation in the High Court from her abusive husband as there was no Legal Aid for such civil proceedings available in Ireland. She complained that she had been effectively deprived of a remedy.

Comm found unanimously V 6(1), unnecessary to examine 8, 13, 14.

Court unanimously rejected the Government's preliminary pleas of lack of foundation, non-exhaustion of remedies, found by majority (5–2) V 6(1) and (4–3) not necessary to examine 6+14, 13, (4–3) V 8.

Judges (merits): Mr G Wiarda, President, Mr P O'Donoghue (d), Mr Thór Vilhjálmsson (d), Mr W Ganshof Van Der Meersch, Mr D Evrigenis (d), Mr L Liesch, Mr F Gölcüklü.

(Judges (just satisfaction): Mr G Wiarda, President, Mr Thór Vilhjálmsson, Mr W Ganshof Van Der Meersch, Mr D Evrigenis, Mr L Liesch, Mr F Gölcüklü, Mr B Walsh.

There was no doubt that the outcome of separation proceedings was 'decisive for private rights and obligations' and so for 'civil rights and obligations' within the meaning of A 6(1). A 6 was therefore applicable in the present case. It comprised a right for the applicant to have access to the High Court in order to petition for judicial separation. The Convention was intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. That was particularly so of the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial. The applicant would be at a disadvantage if her husband were represented by a lawyer and she were not. Quite apart from that eventuality, it is not realistic to suppose that, in litigation of this nature, the applicant could effectively conduct her own case, despite the assistance which the judge afforded to parties acting in person. Furthermore, litigation of that kind, in addition to involving complicated points of law, necessitated proof of adultery, unnatural practices or, as in the present case, cruelty; to establish the facts, expert evidence may have to be tendered and witnesses may have to be found, called and examined. Additionally, marital disputes often entailed an emotional involvement that was scarcely compatible with the degree of objectivity required by advocacy in court. For these reasons, it was most improbable that a person in the applicant's position could effectively present her own case. Accordingly, the possibility to appear in person before the High Court did not provide the applicant with an effective right of access. Fulfilment of a duty under the Convention on occasion necessitates some positive action on the part of the State; in such circumstances, the State could not simply remain passive. Whilst the Convention sets forth what were essentially civil and political rights, many of them had implications of a social or economic nature. In certain eventualities, the possibility of appearing before a court in person, even without a lawyer's assistance, would meet the requirements of A 6(1). Whilst A 6(1) guaranteed litigants an effective right of access to the courts for the determination of their 'civil rights and obligations', it left to the State a free choice of the means to be used towards that end. The institution of a legal aid scheme constituted one of those means, but there are others such as, for example, a simplification of procedure. That was not to imply that the State must provide free legal aid for every dispute relating to a 'civil right'. The

Convention contained no provision on legal aid for civil disputes: A 6(3)(c) dealt only with criminal proceedings. However, despite the absence of a similar clause for civil litigation, A 6(1) could sometimes compel the State to provide for the assistance of a lawyer when such assistance proved indispensable for effective access to court either because legal representation was rendered compulsory for various types of litigation, or by reason of the complexity of the procedure or of the case. Having regard to all the circumstances of the case, the Court found that the applicant did not enjoy an effective right of access to the High Court for the purpose of petitioning for a decree of judicial separation. There had accordingly been a breach of A 6(1).

A 14 had no independent existence. The articles enshrining the Convention rights could be violated alone and/or in conjunction with A 14. An examination would be required where a clear inequality of treatment in the enjoyment of the right in question was a fundamental aspect of the case but that did not apply to the breach of A 6(1) in the present proceedings; accordingly, the Court did not deem it necessary also to examine the case under A 14.

The State could not be said to have 'interfered' with the applicant's private or family life: the substance of her complaint was not that the State has acted but that it has failed to act. However, although the object of A 8 was essentially that of protecting the individual against arbitrary interference by the public authorities, it did not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private or family life. The State had failed to respect her family life but had not interfered with her private or family life. In Ireland, many aspects of private or family life are regulated by law. In principle, husbands and wives were under a duty to cohabit but were entitled, in certain cases, to petition for a decree of judicial separation. Effective respect for private or family life obliged Ireland to make this means of protection effectively accessible, when appropriate, to anyone who may wish to have recourse thereto. However, it was not effectively accessible to the applicant for the reasons applicable to A 6(1) above, and therefore A 8 was violated.

As A 13 and A 6(1) overlapped in this particular case, it was not necessary to determine whether there has been a failure to observe the requirements of A 13, those requirements were less strict than and entirely absorbed by those of A 6(1).

Agreement was reached between the parties on domestic costs, IRP 3,140 was awarded in respect of remainder of claims.

Cited: 'Belgian Linguistic' case (9.2.1967), De Wilde, Ooms & Versyp v B (10.3.1972), Delcourt v B (17.1.1970), Golder v UK (21.2.1975), Klass v D (6.9.1978), König v D (28.6.1978), Luedicke, Belkacem & Koç v D (28.11.1978), Marckx v B (13.6.1979), National Union of Belgian Police v B (27.10.1975).

Aït-Mouhoub v France 98/90

[Application lodged 9.11.1992; Commission report 9.9.1997; Court Judgment 28.10.1998]

Mr Areski Aït-Mouhoub was sentenced to twelve years' imprisonment for aiding and abetting armed robbery and for aggravated handling. He lodged two criminal complaints, one against two gendarmes who had taken part in the judicial investigation and the other against a prosecution witness and another, alleging, *inter alia*, theft, forgery, abuse of office. He complained that he had been ruined by the thefts that had been committed. His applications for legal aid to pursue those complaints were refused. On appeal, a senior investigating judge directed that the applicant should pay FF 80,000 into court as security for costs.

Comm found by majority (22–8) V 6(1).

Court unanimously found V 6(1).

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr J De Meyer, Mr N Valticos, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou, Mr L Wildhaber, Mr V Butkevych.

The applicant had been caused financial loss by the alleged offences by the prosecution witness and the other person against him; the complaint therefore concerned a civil right. The applicant's

complaint was designed to set in motion judicial criminal proceedings in order to secure a conviction that could have enabled him to exercise his civil rights, in particular, to obtain compensation for the financial loss. The outcome of the proceedings was, therefore, for the purposes of A 6(1) of the Convention, decisive for establishing the applicant's right to compensation. Consequently, A 6(1) applied.

The 'right to a court', of which the right of access constituted one aspect, was not absolute but could be subject to limitations. However, any limitations should not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right was impaired, and the limitations would not be compatible with A 6(1) if they did not pursue a legitimate aim or if there was not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. The applicant's income had been assessed by the Legal Aid Office at nil in connection with his first complaint and despite his renewed application he had never received a reply from the Legal Aid Office in connection with his second complaint, although his position had not changed. The senior investigating judge, after noting that the applicant had not received legal aid, declared the civil-party application relating to his second complaint inadmissible as he had not paid the sum required of FF 80,000. It was not for the Court to assess the merits of the complaint lodged by the applicant with the appropriate judge. However, the setting of such a large sum by the senior investigating judge was disproportionate as the applicant, who had not received a reply from the Legal Aid Office, had no financial resources whatsoever. Requiring the applicant to pay such a large sum amounted to depriving him of his recourse before the investigating judge. The applicant's right of access to a tribunal within the meaning of A 6(1) was infringed.

Just satisfaction, costs and expenses (FF 30,000) awarded.

Cited: Acquaviva v F (21.11.1995), Aerts v B (30.7.1998), Airey v IRL (9.10.1979), Bellet v F (4.12.1995), Golder v UK (21.2.1975), Levages Prestations Services v F (23.10.1996), Tomasi v F (27.8.1992).

Aka v Turkey 98/78

[Application lodged 15.8.1991; Commission report 9.9.1997; Court Judgment 23.9.1998]

The National Water Board expropriated two plots of land belonging to the applicant and paid him TRL 4,370,962 compensation. On 2 October 1987 the applicant brought an action for increased compensation for the expropriation. The Court of First Instance ordered additional compensation with interest, a decision confirmed by the Court of Cassation. The Water Board did not pay the additional compensation until 30 January 1992 and 7 January 1993 (more than sixteen months after the Court of Cassation's judgments and four years and three months after the expropriation of the first plot of land and five years and three months after the expropriation of the second). The applicant complained about the insufficiency of the statutory interest for delay.

Comm found unanimously V P1A1.

Court unanimously rejected Government's preliminary objection, found V P1A1.

Judges: Mr Thór Vilhjálmsson, President, Mr F Gölcüklü, Mr F Matscher, Mr N Valticos, Mr AN Loizou, Sir John Freeland, Mr AB Baka, Mr K Jungwiert, Mr V Toumanov.

The Government had failed to establish the adequacy and effectiveness of the remedy provided by Article 105 of the Code of Obligations. Therefore the preliminary objection was dismissed.

The applicant's complaint came within the second sentence of the first paragraph of P1A1. An interference, including one resulting from expropriations intended to secure the realisation of large-scale public-works schemes, must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In order to assess whether a fair balance was preserved between the various interests concerned, consideration had to be given to the terms and conditions on which compensation was payable under domestic legislation and the manner in which they were applied in the applicant's case. National authorities had a margin of appreciation; it was important for them to limit the amount of interest payable on debts due by the State. However, the Court had to ensure that a

reasonable relationship of proportionality between the means employed and the aim pursued had been maintained and that no disproportionate burden had been imposed on the person who had been deprived of his property. During the periods under consideration in the instant case, inflation in Turkey reached 70% per annum. Yet, the rate of interest for delay payable on the amounts due to the applicant was 30% per annum. Abnormally lengthy delays in the payment of compensation for expropriation led to increased financial loss for the person whose land has been expropriated putting him in a position of uncertainty, especially when the monetary depreciation which occurred in certain States was taken into account. In addition there was increased financial loss when people whose land had been expropriated were obliged to resort to proceedings in order to obtain the compensation to which they were entitled. The difference between the value of the amounts due to the applicant when his land was expropriated and when actually paid, which difference was due solely to failings on the part of the expropriating authority, caused him to sustain a separate loss which, coupled with the loss of his land, upset the fair balance that should have been maintained between the protection of the right to property and the demands of the general interest. There had therefore been a violation of P1A1.

Pecuniary damage (USD 9,557), non-pecuniary damage (USD 1,000). No evidence to support costs and expenses.

Cited: Akdivar and Others v TR (16.9.1996), Akkus v TR (9.7.1997), Dalia v F (19.2.1998), Lithgow and Others v UK (8.7.1986), National & Provincial Building Society and Others v UK (23.10.1997), Pressos Compania Naviera SA and Others v B (A50, 3.7.1997), Yagci and Sargin v TR (8.6.1995).

Akdivar and Others v Turkey (1997) 23 EHRR 143 96/34

[Application lodged 3.5.1993; Commission report 26.10.1995; Court Judgment 16.9.1996 (merits) 1.4.1998 (A 50)]

The 7 applicants were resident in villages in areas which had been the centre of intense PKK terrorist activity. The applicants alleged that on 10 November 1992 State security forces launched an attack on their village, burnt nine houses and forced the immediate evacuation of the entire village. The Government categorically denied these allegations, contending that the houses had been set on fire by the PKK. The Commission inquiry found that the security forces were responsible for the destruction of the properties and that no proper investigation was carried out at the domestic level regarding the destruction of the houses on 10 November 1992 either immediately after the event or thereafter.

Comm found by majority (18–1) V 8, P1A1, (14–5) V 3, unanimously NV 5(1), (12–7) V 6(1) and 13, unanimously NV 14 and 18 and (12–7) that Turkey had failed to comply with its obligations under 25(1).

Court by majority (20–1) rejected Government's preliminary objection concerning an alleged abuse of process and by majority (19–2) rejected the preliminary objection concerning the exhaustion of domestic remedies, found by majority (19–2) V 8 and P1A1, (20–1) not necessary to examine 3, 5, 6(1), 13, unanimously NV 14 and 18, by majority (17–4) that Turkey has failed to fulfil its obligation under 25(1).

Judges: Mr R Ryssdal (pd), President, Mr R Bernhardt, Mr Thór Vilhjálmsson, Mr F Gölcüklü (d), Mr R Macdonald, Mr A Spielmann, Mr N Valticos, Mr SK Martens, Mrs E Palm, Mr I Foighel (pd), Mr AN Loizou, Mr MA Lopes Rocha, Mr L Wildhaber, Mr G Mifsud Bonnici (pd), Mr J Makarczyk, Mr D Gotchev (d), Mr B Repik, Mr K Jungwiert, Mr P Kûris, Mr U Lôhmus, Mr E Levits.

Judges (A 50): Mr Bernhardt, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü, (d) Mr A Spielmann, Mr N Valticos, Mrs E Palm, Mr I Foighel, Mr AN Loizou, Mr MA Lopes Rocha, Mr L Wildhaber, Mr G Mifsud Bonnici , Mr J Makarczyk, Mr D Gotchev, Mr B Repik, Mr K Jungwiert, Mr P Kûris, Mr U Lôhmus, Mr E Levits.

The Government's argument on abuse of process could only be accepted if it were clear that the application was based on untrue facts, which it was not. The Commission in its findings of fact had substantially upheld the applicants' allegations concerning the destruction of their property. Accordingly, the Government's plea must be rejected. The rule of exhaustion of domestic remedies

in A 26 obliged those seeking to bring their case against the State before the Court to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. In the area of the exhaustion of domestic remedies there is a distribution of the burden of proof. It was incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of case. A 26 had to be applied with some degree of flexibility and without excessive formalism, it was not absolute nor capable of being applied automatically. Having reviewed the facts of the case the Court concluded that the application could not be rejected for failure to exhaust domestic remedies. The Court emphasised that its ruling was confined to the particular circumstances of the present case.

The Court accepted the facts as established by the Commission who had made findings following hearing of witnesses in Turkey on two separate occasions by a delegation of the Commission in the presence of the representatives from both sides who were able to cross-examine the witnesses and to a hearing on the merits in Strasbourg before the Commission. It was therefore established that the security forces were responsible for the burning of the applicants' houses on 10 November 1992 and that the loss of their homes caused them to abandon the village and move elsewhere. However, it had not been established that the applicants were forcibly expelled from the village by the security forces.

The deliberate burning of the applicants' homes and their contents constituted a serious interference with the right to respect for their family lives and homes and with the peaceful enjoyment of their possessions. No justification for these interferences having been proffered by the respondent Government, the Court concluded that there had been violations A 8 and P1A1.

In view of the absence of precise evidence concerning the specific circumstances in which the destruction of the houses took place and its finding of a violation of the applicants' rights under A 8 and P1A1, the Court did not propose to examine further this allegation.

The applicants did not maintain their complaints under A 5 before the Court and they would therefore not be considered.

Regarding A 6(1) and 13, while the Turkish Government had shown the existence of a scheme of remedies under Turkish law to deal with complaints arising out of the struggle against terrorism, the action for compensation before the administrative courts could not be considered an effective remedy in respect of the applicants' complaints. In addition, there existed special circumstances which dispensed the applicants from availing themselves of the civil remedy for damages. Since the complaints under this head reflected the same or similar elements as those issues already dealt with in the context of the objection concerning the exhaustion of domestic remedies, the Court considered that it was not necessary to examine these further complaints.

Regarding A 14 and 18 and the claim by the applicants that they had been targeted because they are Kurds, the Court recalled that these allegations were examined by the Commission which found that they were unsubstantiated. The Court having accepted the Commission's findings of facts concluded no violation A 14 and A 18.

It was of the utmost importance for the effective operation of the system of individual petition instituted by A 25 that applicants or potential applicants were able to communicate freely with the Commission without being subjected to any form of pressure from the authorities to withdraw or modify their complaints Given the vulnerable position of the applicant villagers and the reality that in South-East Turkey complaints against the authorities might well give rise to a legitimate fear of reprisals, the matters complained of by the applicants amounted to a form of illicit and unacceptable pressure on them to withdraw their application. The filming of the two persons who

were subsequently declared not to be applicants could have contributed to this pressure. The fact that the applicants pursued their application to the Commission did not prevent such behaviour on the part of the authorities from amounting to a hindrance in respect of the applicants in breach of A 25(1).

Pecuniary damage (GBP 6,057.85, GBP 7,205.99, GBP 32,578.79, GBP 16,173.44, GBP 14,533.23, GBP 12,539.36, GBP 25,974.10 to applicants respectively), non-pecuniary damage (GBP 8,000 each), costs and expenses (GBP 20,810 less FF 14,095).

Cited: (merits) Campbell v UK, Cardot v F (19.3.1991), Cruz Varas and Others v S, Handyside v the UK (7.12.1976), Ireland v UK (18.1.1978), Johnston and Others v IRL (18.12.1986), McCann and Others v UK, Vernillo v F (20.2.1991), Van Oosterwijck v B (6.11.1980). Cited: (A50) Papamichalopoulos and Others v GR, Tolstoy Miloslavsky v UK (13.7.1995).

Akkus v Turkey 97/42

[Application lodged 26.8.1991; Commission report 27.2.1996; Court Judgment 9.7.1997]

In 1987 the National Water Board expropriated rice growing land belonging to Mrs Sariye Akkus, in order to build a hydro-electric dam. The applicant was paid compensation. The applicant's application for increased compensation was granted by the Court of First Instance and upheld by the Court of Cassation on appeal. The additional compensation was paid in February 1992, six months after the application was lodged with the Strasbourg institutions and approximately seventeen months after the Court of Cassation's decision. She complained of an infringement with her right to peaceful enjoyment of her possessions on account of the delay in paying the additional compensation.

Commission found by majority (22–6) V P1A1.

Court by majority (8–1) rejected Government's preliminary objection and found by majority (7–2) V P1A1.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson (d), Mr F Gölcüklü, Mr J De Meyer, Mr AN Loizou, Mr G Mifsud Bonnici (jd), Mr J Makarczyk, Mr B Repik, Mr P Kûris.

Regarding the Government's preliminary objection of non-compliance with the six-month time limit, the complaint concerned the national authorities' delay in paying the additional compensation and the damage sustained by the applicant as a result. The applicant could not have made such a complaint until some time after the final judgment of the Court of Cassation; by applying to the Commission on 26 August 1991 when the compensation due had still not been paid, the applicant satisfied the requirement of A 26. The objection was therefore rejected. The objection of failure to exhaust domestic remedies had not been raised before the Commission; the Government were therefore estopped from relying on that objection.

The Court had to examine whether a fair balance had been maintained between the demands of the general interest and the requirements of the protection of the individual's fundamental rights. It was not the Court's task to rule on the valuation of the land, the Court was concerned with the alleged damage sustained because of the authorities' delay in paying the compensation due. The adequacy of compensation diminished if paid without reference to various circumstances liable to reduce its value, such as unreasonable delay. Abnormally lengthy delays in the payment of compensation for expropriation led to increased financial loss for the person whose land has been expropriated, putting him in a position of uncertainty, especially when the monetary depreciation which occurs in certain States was taken into account. The additional compensation together with interest at the rate of 30% per annum was paid to the applicant in February 1992, at a time when inflation rates in Turkey had reached 70% per annum. The difference in the value of the applicant's compensation as finally determined by the Court of Cassation and its value when actually paid caused the applicant to sustain separate loss in addition to the loss deriving from the expropriation of her land. By deferring payment of the compensation for seventeen months, the national authorities rendered that compensation inadequate and, consequently, upset the balance between the protection of the right to property and the requirements of the general interest. There had therefore been a violation of P1A1.

Pecuniary damage (USD 48), non pecuniary damage (USD 1,000), costs and expenses (USD 5,000 less FF 8,968 already received by way of legal aid) awarded.

Cited: Lithgow and Others v UK (8.7.1986), Stran Greek Refineries and Stratis Andreadis v GR (9.12.1994).

Aksoy v Turkey (1997) 23 EHRR 553 96/64

[Application lodged 20.5.1993; Commission report 23.10.1995; Court Judgment 18.12.1996]

The applicant was a metal worker living in south-east Turkey. He was shot and killed on 16 April 1994 since which time his father pursued the case. The facts in the case were in dispute. The applicant claimed that he was arrested on suspicion of membership of, and working for, the PKK (the Kurdish Workers Party) together with 13 other persons and that while in custody was tortured including being strung up by his arms (Palestinian hanging) and being beaten repeatedly. The Government disputed this. The Commission heard evidence and drew conclusions. The applicant was arrested no later than 26 November 1992 and detained for at least 2 weeks by the Turkish police. On 15 December 1992 the applicant was admitted to hospital and was diagnosed with bilateral radial paralysis. There was no evidence that he had suffered any disability prior to his arrest nor that he had suffered any injury between his release from custody and his admission to hospital. Medical evidence indicated that the paralysis might have been caused in various ways, but that it was consistent with the form of ill-treatment the applicant alleged. The Commission was unconvinced by the evidence of the policeman and public prosecutor who claimed it was inconceivable that the applicant could have been ill-treated as alleged. The Turkish Government offered no explanation for the applicant's injuries. There was insufficient evidence to draw any conclusions about the other ill-treatment which the applicant alleged (electric shocks and beatings); however, it did appear that he had been detained in a small cell with two other people who had had to share a single bed and blanket and that he had been blindfolded during interrogation. The applicant also claimed that he was never brought before a judge or other authority in violation of A 5(3) and did not have an opportunity to bring proceedings against those responsible for his ill-treatment in violation of A 6(1) and 13. The applicant's father claimed that the applicant was killed because he had brought the case to the ECHR and that it was therefore an interference with his right of individual petition under A 25.

Comm found by majority (15–1) V 3, 5(3) (13–3) V 6(1) unanimously no separate issue arose under 13 and that no further action needed to be taken under 25.

Court by majority (8–1) dismissed the preliminary objection of non-exhaustion, found by majority (8–1) V 3, 5(3), 13, not necessary to consider A 6, unanimously NV 25.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü (d), Mr L-E Pettiti, Mr J De Meyer (pd), Mr JM Morenilla, Mr AB Baka, Mr J Makarczyk, Mr U Lôhmus.

The Court was not bound by the Commission's findings of facts, but would only make its own findings in exceptional circumstances. Here, the Court accepted the findings of the Commission which had taken evidence in Turkey and Strasbourg. There was no obligation to have recourse to remedies which were inadequate or ineffective and there could be special circumstances which absolved the applicant from exhausting domestic remedies. The Turkish authorities claimed that the applicant failed to bring either criminal or civil actions. The applicant claimed that on 10 December 1992 he had complained to the public prosecutor about his ill-treatment in custody. The Court considered that, even if the applicant did not complain to the public prosecutor, the injuries he had sustained must have been clearly visible during their meeting; however, the prosecutor made no enquiry as to the fact, nature and cause of the injuries despite the fact that under Turkish law he was under a duty to investigate such matters. The applicant had been detained and ill-treated without access to legal advice or medical assistance and had sustained serious injuries. That alone would have made him feel vulnerable and powerless and apprehensive of the State. As the public prosecutor had taken no action having seen his injuries it would be understandable if the applicant decided that he would not obtain satisfaction through domestic channels. Thus there

were special circumstances which absolved the applicant from exhausting domestic remedies in this case.

Where an individual was taken into custody in good health, but was found injured at the time of release, it was incumbent on the State to provide a plausible explanation for the cause of the injury failing which a clear issue arose under A 3. There was no derogation from or limitation on A 3. The Palestinian hanging torture to which the applicant had been subjected (being stripped naked, arms tied together behind his back and suspended in the air by his arms) was treatment of such severity and cruelty as to constitute torture. It could only have been inflicted deliberately and preparation was required to carry it out; further, it was administered with the aim of obtaining admissions or information. It must have caused severe pain and led to paralysis of both arms for some time. Thus violation of A 3.

A 5 enshrined a fundamental human right, namely the protection of the individual against arbitrary interference with his liberty and judicial control of interference was an essential feature of A 5. The applicant was detained for at least 14 days without being brought before a judge or other officer; although the Court accepted that the investigation of terrorist offences was especially problematic for States, it could not accept that it was necessary to hold a suspect for 14 days without judicial intervention. 14 days was an exceptionally long period and left the applicant vulnerable not only to arbitrary interference with his right to liberty, but also to torture. Turkey had not given any reasons why the fight against the PKK in South-East Turkey rendered judicial intervention impracticable. The derogation allowed from A 5 was limited to the strict minimum required for the fight against terrorism. The situation did not require that the applicant be detained for 14 days incommunicado without access to a judge or judicial officer. Thus there was a violation of A 5(3).

The applicant claimed that he had been denied access to a court in violation of A 6(1) and focused on the prosecutors' failure to take action having noted his visible injuries. The Court considered it more appropriate to consider the matter under A 13.

Given the importance of A 3, where such treatment was alleged, A 13 imposed an obligation on the State to carry out a thorough and effective investigation of the allegation of torture which was capable of leading to the identification and punishment of those responsible and included access of the victim to the process. Under Turkish law the prosecutor had a duty to carry out such investigations. In this case the prosecutor had ignored the visible evidence before him that the applicant had been tortured. Such an attitude from a State official under a duty to investigate was tantamount to undermining the effectiveness of any other remedies which may exist. Thus there was a violation of A 13.

There was no evidence that the applicant's murder was connected to his bringing of legal action under the Convention, thus no violation of A25.

Damages (TRL 4,283,450,000), costs and expenses (GBP 20,710 less FF 12,515).

Cited: Akdivar and Others v TR (16.9.1996), Brannigan and McBride v UK (26.5.1993), Brogan and Others v UK (29.11.1988), Chahal v UK (15.11.1996), Ireland v UK (18.1.1978), Lawless v IRL (1.7.1961), Ribitsch v A (4.12.1995), Soering v UK (7.7.1989), Tomasi v F (27.8.1992).

Albert and Le Compte v Belgium (1982) 5 EHRR 533, 13 EHRR 415 83/1

[Applications lodged 10.12.1975 and 6.5.1976; Commission report 14.12.1981; Court Judgment 28.2.1983 (merits) 24.10.1983 (JS)]

The applicants' complaints related to disciplinary proceedings instituted against them before the competent body of the medical association, the Belgian Ordre des Médecins.

Comm found unanimously NV 3 and 11, by majority V 6(1) on the basis that the applicants had been denied a public hearing.

Court unanimously found NV 3 with respect to Dr Le Compte, by majority (16–4) V 6(1) in respect to the hearing of the case of each of the applicants, V 6(1) in that the applicants' cases were not heard publicly

by the disciplinary tribunal, which did not pronounce its judgment publicly, unanimously NV 6 as regards the applicants' other complaints and NV 11.

Judges: Mr G Wiarda, President, Mr R Ryssdal, Mr J Cremona (jc), Mr Thór Vilhjálmsson (declaration), Mr W Ganshof Van Der Meersch, Mrs D Bindschedler-Robert (jc), Mr D Evrigenis, Mr G Lagergren, Mr L Liesch (d), Mr F Gölcüklü, Mr F Matscher (pd), Mr J Pinheiro Farinha (pd), Mr E García De Enterría, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans (pd), Mr R MacDonald, Mr C Russo, Mr R Bernhardt, Mr J Gersing.

Judges (A 50): Mr G Wiarda, President, Mr J Cremona, Mr W Ganshof Van Der Meersch, Mr D Evrigenis, Mr J Pinheiro Farinha, Sir Vincent Evans, Mr R Macdonald.

Withdrawal of the right to practise as a disciplinary measure was intended to penalise a doctor whose serious misconduct had shown that he no longer satisfied the required conditions for exercising the medical profession. There was no cause to question the legitimacy or justification of a sanction whose object was not to debase or adversely affect Dr Le Compte's personality in a manner incompatible with A 3.

A 6 was applicable because there was a dispute, which related to 'civil rights and obligations'. The disciplinary proceedings directly and materially interfered with the right to continue to exercise the medical profession. The fact that the result was a temporary suspension did not prevent it impairing that right. It was not necessary for the Court to consider whether 'civil rights' extended beyond private rights, as a private right was directly established between medical practitioners and their patients, nor whether A 6(1) was applicable under the criminal head as the fair trial notion in A 6(1) embodied the guarantees in A 6(2) and (3), the benefits of which Dr Albert complained he did not receive. Regarding the complaint of impartiality, its existence had to be determined according to a subjective test, that is, the personal conviction of a particular judge, and also according to an objective test, that is, whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect. On the material before the Court there was nothing to bring the impartiality of the disciplinary tribunal's members into question. In particular, the manner of appointment of the medical practitioners sitting provided no cause for treating those individuals as biased for they acted not as representatives of the Ordre but in a personal capacity. As regards publicity, the conditions providing for exceptions to the rule requiring publicity for the tribunal hearing and pronouncement of the decision were not satisfied and neither applicant waived his entitlement. The public character of the subsequent proceedings before a court did not remedy the defect in the earlier disciplinary proceedings. In relation to Dr Albert's complaints under A 6(2) and (3), the Court, having found that those provisions were applicable to disciplinary proceedings, found that the presumption of innocence had been observed, despite regard being had to the applicant's previous criminal record, as had the provisions complained of in A 6(3). The nature and cause of the complaints against the applicant had been specified, the applicant had had more than 15 days in order to prepare his defence, which was not complex, and there was no evidence to suggest that the attendance and examination of any witnesses Dr Albert wished to call had been refused.

Regarding Dr Le Compte's complaints under A 11, the Ordre was not an association within the meaning of this Article as it was a public-law institution employing processes of a public authority. Nor was there any interference with A 11(1) as the setting up of the Ordre prevented practitioners from forming together or joining professional associations.

Finding of a violation sufficient to constitute just satisfaction, costs and expenses (BEF 77,000).

Cited: De Wilde, Ooms and Versyp v B (18.6.1971), Engel and Others v NL (8.6.1976), Golder v UK (21.2.1975), König v D (28.6.1978), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Neumeister v A (27.6.1968), Piersack v B (1.10.1982), Ringeisen v A (22.6.1972).

Ali v Switzerland (1999) 28 EHRR 304 98/63

[Application lodged 14.9.1994; Commission report 26.2.1997; Court Judgment 5.8.1998]

The applicant entered Switzerland on 18 November 1991 and applied for political asylum. He was subsequently convicted of a number of criminal offences including theft, contravention of the

Dangerous Drugs Act, motoring offences and violence against a female Red Cross worker. His asylum claim was refused and it was ordered that he should be expelled from Switzerland. On 18 August 1993 he was detained pending removal. However, as it was impossible to expel him because he had no travel documents, he was released on 9 September 1993. Further criminal complaints were lodged against him which resulted in further detention. His administrative detention was ordered on 24 December 1993. His appeal was refused. He was released on 23 June 1994 and lodged an application to the Convention institutions. On 15 November 1994 the applicant left the hostel where he was living in Switzerland, without leaving any other address. The Court was subsequently informed that the applicant was in Somalia.

Commission found unanimously V 5(1).

Court unanimously struck the case from the list.

Judges: Mr R Bernhardt, President, Mr I Foighel, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr D Gotchev, Mr B Repik, Mr P Jambrek, Mr U Lôhmus, Mr P Van Dijk.

The Court struck the case out of the list holding that in the light of the facts, further examination of the case was not justified.

Alimena v Italy 91/11

[Application lodged 8.11.1985; Commission report 5.12.1989; Court Judgment 19.2.1991]

On 8 February 1978 Mr Bernadino Alimena, a lawyer, was charged with contempt of court during a hearing. He was alleged to have said to the judge who had decided in his absence on a case in which he was involved as counsel and had advised the court that he would be late, that his conduct was arbitrary and improper and to have thrown the file onto the judge's desk. The judge ordered the applicant's arrest and started summary proceedings for contempt. On 22 March 1982 the District Judge gave the applicant an 8 month suspended sentence of imprisonment. The appellant's appeals were dismissed. The applicant appealed to the Court of Cassation who fixed a hearing for 27 June 1985 and notified the applicant's lawyer. On that date the applicant's lawyer appeared and learned that the Court had dealt with the appeal on 26 June without notifying him of the change of date and had dismissed the appeal.

Comm found unanimously V 6(1) and (3)(c).

Court unanimously found V 6(1) and (3)(c).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Sir Vincent Evans, Mr C Russo, Mr J De Meyer, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla.

The period to be taken into account began on 8 February 1978 and ended on 27 June 1985. The reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case. The case was a simple one, the applicant's conduct gave rise to hardly any delay. There were long periods of inactivity which the applicant alleged were due to faults inherent in the legal and court system in Italy and for which no satisfactory explanation had been given by the Government. A lapse of 7 years 4 months could not therefore be regarded as reasonable.

The Italian authorities were under a duty to take steps to ensure the applicant enjoyed effectively the right to which they had recognised he was entitled, namely the possibility of being represented by a lawyer at the examination of his appeal. They had deprived him of legal assistance which could have helped him in his attempt to secure an unqualified acquittal. Accordingly there had been a violation of A6(3)(c).

Non-pecuniary damage (ITL 10,000,000), costs and expenses (ITL 3,000,000) awarded.

Cited: Artico v I (13.5.1980), Baggetta v I (25.6.1987), Obermeier v A (28.6.1990).

Allenet de Ribemont v France (1995) 20 EHRR 557 95/4

[Application lodged 24.5.1989; Commission report 12.10.1993; Court Judgment 10.02.1995]

Following the murder on 24 December 1976 of Mr Jean de Broglie, a Member of Parliament and former minister in front of the applicant's home, a judicial investigation was launched and the applicant arrested. At a press conference (which was unrelated to the investigation) the Minister of Interior, amongst other senior public officials, referred to the applicant as one of the instigators. The applicant was later charged but subsequently released and a discharge order was issued. The applicant alleged that the statements made by the Minister at the press conference infringed A 6 (2), that he had not had an effective remedy contrary to A 13, that the domestic courts had not been independent and that the proceedings had taken too long.

Commission found unanimously V 6(1)+(2).

Court found unanimously V 6(1), by majority (8–1) V 6(2).

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr L-E Pettiti, Mr J De Meyer, Mr I Foighel, Mr AN Loizou, Mr JM Morenilla, Mr G Mifsud Bonnici (pd), Mr B Repik.

The proceedings had begun on 23 March 1977 and ended on 30 November 1988 with the Court of Cassation's decision, a period of 11 years 8 months. The reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case, taking into account the complexity of the case, conduct of the applicant and of the competent authorities. The present case was complex, the applicant had delayed the proceedings at most by 3 years and 4 months, the overall delay was essentially caused by the way the national authorities had handled the case. A lapse of 11 years and 8 months was not reasonable.

At the material time the applicant had been 'charged with a criminal offence' and as the presumption of innocence could be infringed by public authorities other than a judge or court, A 6(2) applied. As the applicant had been referred to at the press conference as one of the instigators, encouraging the public to believe him guilty as an accomplice and prejudicing the assessment of facts by the competent judicial authority, there had been a breach of A 6(2).

Damages (FF 2,000,000) costs and expenses (FF 100,000).

Cited: Adolf v A (26.3.1982), Artico v I (13.5.1980), Cruz Varas v S (20.3.1991), Deweer v B (27.2.1980), Englert v D (25.8.1987), Hokkanen v SF (23.9.1994), Idrocalee Srl v I (27.2.1992), Karakaya v F (26.8.1994), Katte Klitsche de la Grange v I (27.10.1994), Lutz v D (25.8.1987), Minelli v CH (25.3.1983), Nölkenbockhoff v D, Pelladoah v NL (22.9.1994), Sekanina v A (25.8.1993), Soering v UK (7.7.1989).

Almeida Garrett, Mascarenhas Falcão and Others v Portugal 00/3

[Applications lodged 5.1.1996, 14.2.1996; Commission report 23.4.1998; Court Judgment 11.1.2000]

Mr Alexandre de Almeida Garrett, Mr José Mascarenhas Falcão, Mr Francisco Augusto Mascarenhas Falcão, Mrs Maria Teresa Mascarenhas de Oliveira Falcão de Azevedo, Mrs Maria José Mascarenhas Falcão Themudo de Castro and Leone Marie Irion Falcão were all owners of land which was expropriated and made national property as part of Portugal's agrarian reform after the 1974 revolution. They received interim compensation in the form of Government bonds but had not yet received their final compensation. Their applications through the courts for damages for the delay in determining and paying out the final compensation were rejected. They complained, *inter alia*, that they had suffered an infringement of their right to the peaceful enjoyment of their possessions.

Comm found by majority (23–3) V P1A1, unanimously no need to examine 6, 13 and 17.

Court unanimously dismissed the Government's preliminary objection, found V P1A1, not necessary to examine 6, 13 and 17.

Judges: Mrs E Palm, President, Mr J Casadevall, Mr Gaukur Jörundsson, Mr R Türmen, Mrs W Thomassen, Mr R Maruste, Mr A De Sousa Inês, ad hoc judge.

The Court could not examine issues arising from the deprivation of ownership in itself since these fell outside its jurisdiction, *ratione temporis*. However, the applications had still not received final compensation and since the applicants were placed in a continuing situation the Government's preliminary objection had to be dismissed.

P1A1 protected financial assets such as debts. The relevant Portuguese legislation and a court decision had upheld the applicants' right to compensation on account of the deprivation of their possessions. The applicants could accordingly assert the right to receive payment of the State's debts towards them, so P1A1 was applicable. It was the fact that no final compensation had been paid to date which constituted the interference with the applicants' right to peaceful enjoyment of their possessions. Neither the deprivation of ownership itself nor the amount of compensation could be examined. The applicable rule was the one in the first sentence of the first paragraph of P1A1. The interference had pursued a legitimate aim since it could not be unreasonable for a State to take into account its economic and budgetary resources following far-reaching land reform whose economic and social policy objectives could not be contested. However, 24 years had elapsed without the applicants receiving final compensation, even though it was provided for in the relevant legislation. The adequacy of compensation was diminished if payment failed to take account of factors which might reduce its value, such as the lapse of a period of time which could not be considered reasonable. The length of the period was attributable to the State; the complexity of the task could not justify the length of the period. The interim compensation had been paid several years after the deprivations of property in issue. The fact of payment did not alter the situation of uncertainty which still affected the applicants. It was the uncertainty coupled with the lack of any effective domestic remedy capable of providing redress which led to the conclusion that the applicants had already had to bear a special, excessive burden which had upset the fair balance required between the requirements of the general interests and the protection of the right to peaceful enjoyment of possessions. Accordingly, there had been a violation of P1A1.

In view of the conclusion above, it was not necessary to examine separately the complaints under A 6, 13 and 17.

A 41 reserved. Costs and expenses (PTE 3,500,000 to Mr Almeida Garrett and PTE 2,000,000 to the Mascarenhas Falcão family).

Cited: Akkus v TR (9.7.1997), Lithgow and Others v UK (8.7.1986), Matos e Silva, Lda, and Others v P (16.9.1996), Pressos Compania Naviera SA and Others v B (20.11.1995), Yagci and Sargin v TR (8.6.1995).

Amann v Switzerland 00/81

[Application lodged 27.6.1995; Commission report 20.5.1998; Court Judgment 16.2.2000]

Mr Hermann Amann was a businessman importing depilatory appliances into Switzerland which he advertised in magazines. On 12 October 1981 a woman telephoned the applicant from the former Soviet embassy in Berne to order a 'Perma Tweez' depilatory appliance. That telephone call was intercepted by the Federal Public Prosecutor's Office which then requested the Intelligence Service to carry out an investigation into the applicant and the goods he sold. In December 1981 the Public Prosecutor's Office drew up a card on the applicant for its national security card index on the basis of the particulars provided by the police of the Canton of Zürich. The card indicated that the applicant had been identified as a contact with the Russian Embassy. In 1990, having learnt of the existence of the card index being kept by the Public Prosecutor's Office, the applicant asked to consult his card. He was provided with a copy, but two passages had been blue-pencilled. He asked the Ombudsman at the Public Prosecutor's Office to disclose the blue-pencilled passages and in March 1992, having met with no success, he filed an administrative-law action with the Federal Court claiming compensation from the Swiss Confederation of CHF 5,000 for the unlawful entry of his particulars in the card index kept by the Public Prosecutor's Office. In a judgment of 14 September 1994, served on 25 January 1995, the Federal Court dismissed the applicant's claims. He

complained that the interception of his telephone call on 12 October 1981 and the creation by the Public Prosecutor's Office of a card on him and the storage of the card in the federal card index violated his rights under A 8. He also complained that he had had no effective remedy in that connection.

Comm found by majority (9–8) V 8, unanimously NV 13.

Court found unanimously V 8 regarding the interception of the telephone call, V 8 regarding the creation and storing of the information card, dismissed the Government's preliminary objection relating to 13, NV 13.

Judges: Mrs E PAlm, President, Mr L Wildhaber, Mr L Ferrari Bravo, Mr Gaukur Jörundsson, Mr L Caflisch, Mr I Cabral Barreto, Mr J-P Costa, Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach, Mr B Zupancic, Mrs N Vajic, Mr J Hedigan, Mrs W Thomassen, Mrs M Tsatsa-Nikolovska, Mr E Levits, Mr K Traja.

Telephone calls received on private or business premises were covered by the notions of private life and correspondence within the meaning of A 8(1). The interception of the telephone call amounted to an interference by a public authority with the exercise of applicant's rights under A 8(1). Such interference breached A 8 unless it was in accordance with the law, pursued one or more of the legitimate aims referred to in A 8(2) and was necessary in a democratic society to achieve those aims. Lawfulness required not only that the impugned measure should have some basis in domestic law, but also referred to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects. The Federal Council's Decree of 29 April 1958 on the Police Service of the Federal Public Prosecutor's Office and the Federal Criminal Procedure Act (FCPA) were worded too generally to satisfy the forseeability requirement and the Government had not established that the conditions of application of the relevant provisions had been complied with or that the safeguards provided for had been observed. With regard to the Government's submission that the applicant had not been the subject of the impugned measure, either as a suspect or an accused, or as a third party, but had been involved 'fortuitously' in a telephone conversation recorded in the course of surveillance measures taken against a particular member of staff of the former Soviet embassy in Berne, the Act did not regulate in detail the case of persons monitored 'fortuitously' as 'necessary participants' in a telephone conversation recorded by the authorities pursuant to those provisions. In particular, the Act did not specify the precautions which should be taken with regard to those persons. The interference could not therefore be considered to have been 'in accordance with the law' since Swiss law did not indicate with sufficient clarity the scope and conditions of exercise of the authorities' discretionary power in the area under consideration. There had therefore been a violation of A 8 arising from the recording of the telephone call received by the applicant on 12 October 1981 from a person at the former Soviet embassy in Berne.

The storing of data relating to the private life of an individual fell within the application of A 8(1). The term 'private life' should not be interpreted restrictively. The card filled in on the applicant stated that he was a 'contact with the Russian embassy' and did 'business of various kinds with the company [A]'. Those details undeniably amounted to data relating to the applicant's 'private life' and, accordingly, A 8 was applicable to this complaint also. The storing by a public authority of data relating to the private life of an individual amounted to an interference within the meaning of A 8. The subsequent use of the stored information had no bearing on that finding and it was not for the Court to speculate as to whether the information gathered on the applicant was sensitive or not or as to whether the applicant had been inconvenienced in any way. The creation and storing of the impugned card amounted to an interference, within the meaning of A 8, with the applicant's right to respect for his private life. The relevant provisions, as above, were drafted in terms too general to satisfy the requirement of forseeability. The Federal Council's Directives applicable to the Processing of Personal Data in the Federal Administration did not contain any appropriate indication as to the scope and conditions of exercise of the power conferred on the Public Prosecutor's Office to gather, record and store information; thus, they did not specify the conditions in which cards may be created, the procedures that had to be followed, the information

which might be stored or comments which might be forbidden. Those provisions could not be considered sufficiently clear and detailed to guarantee adequate protection against interference by the authorities with the applicant's right to respect for his private life. The creation of the card on the applicant was not, therefore, in accordance with the law within the meaning of A 8. Swiss law provided that data which turned out not to be 'necessary' or 'had no further purpose' should be destroyed. The authorities did not destroy the stored information when it emerged that no offence was being prepared. The storing of the card on the applicant was therefore not in accordance with the law within the meaning of A 8. Thus both the creation of the card by the Public Prosecutor's Office and the storing of it in the Confederation's card index amounted to interference with the applicant's private life which could not be considered to be in accordance with the law since Swiss law did not indicate with sufficient clarity the scope and conditions of exercise of the authorities' discretionary power in the area under consideration. It followed that there has been a violation of A 8.

The applicant relied on A 13 before the Commission and submitted observations on it in his memorial before the Court. Accordingly, the applicant did not manifest an intention to waive his complaint of a violation of A 13 and the Government's preliminary objection that the applicant had not repeated his complaint in his earlier memorial could not be upheld.

A 13 required that any individual who considered himself injured by a measure allegedly contrary to the Convention should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress. That provision did not, however, require the certainty of a favourable outcome. In the present case the applicant was able to consult his card as soon as he asked to do so. He complained in his administrative-law action in the Federal Court, first, about the lack of a legal basis for the telephone tapping and the creation of his card and, secondly, the lack of an effective remedy against those measures. The Federal Court had had jurisdiction to rule on those complaints and had duly examined them. The applicant had therefore had an effective remedy under Swiss law to complain of the violations of the Convention which he alleged. There had not therefore been a violation of A 13.

Present judgment constituted sufficient just satisfaction for the non-pecuniary damage. Costs and expenses (CHF 7,082.15).

Cited: D v UK (2.5.1997), Halford v UK (25.6.1997), Holy Monasteries v GR (9.12.1994), Kopp v CH (25.3.1998), Kruslin v F (24.4.1990), Leander v S (26.3.1987), Malone v UK (2.8.1984), Niemietz v D (16.12.1992).

Amuur v France (1996) 22 EHRR 533 96/24

[Application lodged 27.3.1992; Commission report 10.1.1995; Court Judgment 23.6.1996]

The 4 applicants, Somali nationals, were brothers and sister. They arrived at Paris-Orly Airport on 9 March 1992 on board a Syrian Airlines flight from Damascus, where they had stayed for two months after travelling there via Kenya. They asserted that they had fled Somalia because, after the overthrow of the regime of President Siyad Barre, their lives were in danger and several members of their family had been murdered. They were refused admission to French territory on the ground that their passports had been falsified, and they were held at the Hôtel Arcade, part of which had been let to the Ministry of the Interior and converted for use as a waiting area for Orly Airport. They applied for asylum. On 29 March, after the Minister of the Interior had refused them leave to enter, the applicants were sent back to Syria.

Comm found by majority (16–10) NA 5, NV 5.

Court unanimously dismissed the Government's preliminary objection and found V 5(1).

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr R Macdonald, Mr C Russo, Mrs E Palm, Mr JM Morenilla, Mr J Makarczyk, Mr P Kûris, Mr U Lôhmus.

The word 'victim' in A 25 denoted the person directly affected by the act or omission in issue. A decision or measure favourable to the applicant was not in principle sufficient to deprive him of

his status as a 'victim' unless the national authorities had acknowledged and then afforded redress for the breach of the Convention. The Créteil tribunal de grande instance had ruled on 31 March that holding the applicants in the transit zone at Paris-Orly Airport was unlawful, and ordered their release. The haste with which the applicants were returned, before the decision, made the prospects for the institution of proceedings unrealistic. The objection must therefore be rejected.

The Court noted that France was a party to the 1951 Geneva Convention Relating to the Status of Refugees. Contracting States had the undeniable sovereign right to control aliens' entry into and residence in their territory. That right had to be exercised in accordance with the provisions of the Convention, including A 5. In order to determine whether someone had been 'deprived of his liberty' within the meaning of A 5, the starting point had to be his concrete situation, and account had to be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question. The difference between deprivation of and restriction upon liberty was one of degree or intensity, and not one of nature or substance. Holding aliens in the international zone involved a restriction upon liberty. Such confinement, accompanied by suitable safeguards for the persons concerned, was acceptable only in order to enable States to prevent unlawful immigration while complying with their international obligations, particularly under the 1951 Geneva Convention. Such confinement must not deprive the asylum-seeker of the right to gain effective access to the procedure for determining refugee status. The mere fact that it was possible for asylum-seekers to leave voluntarily the country where they wished to take refuge could not exclude a restriction on liberty. The Court concluded that holding the applicants in the transit zone of Paris-Orly Airport was equivalent in practice, in view of the restrictions suffered, to a deprivation of liberty. A 5 was therefore applicable.

Where a national law authorised deprivation of liberty, especially in respect of a foreign asylum-seeker, it had to be sufficiently accessible and precise, in order to avoid all risk of arbitrariness. Even though the applicants were not in France, holding them in the international zone of Paris-Orly Airport made them subject to French law. From 9 to 29 March 1992 the applicants were in the situation of asylum-seekers whose application had not yet been considered. At the material time no provisions allowed the ordinary courts to review the conditions under which aliens were held or, if necessary, to impose a limit on the administrative authorities as regards the length of time for which they were held. They did not provide for legal, humanitarian and social assistance, nor did they lay down procedures and time limits for access to such assistance so that asylum-seekers like the applicants could take the necessary steps. The French legal rules in force at the time, as applied in the present case, did not sufficiently guarantee the applicants' right to liberty. There had accordingly been a breach of A 5(1).

Judgment in itself constituted sufficient just satisfaction, costs and expenses (FF 57,000 less FF 9,758).

Cited: Guzzardi v I (6.11.1980), Kemmache (No 3) v F (24.11.1994), Lüdi v CH (15.6.1992), Malone v UK (2.8.1984).

Anne-Marie Andersson v Sweden (1998) 25 EHRR 722 97/45

[Application lodged 11.2.1992; Commission report 11.4.1996; Court Judgment 27.8.1997]

The applicant, a taxi driver, was divorced and living with her son. She was unable to work due to dental problems which caused her severe pain, and anxiety about a dispute with her landlord. She contacted a psychiatric clinic and was advised to seek support for her son. The psychiatrist informed the applicant that she (the psychiatrist) had an obligation under Swedish law to contact the Social Council. The Council thereafter commenced an investigation which, with the applicant's agreement, led to the placement of her son in a non-residential therapeutic school on 2 March 1992. She complained that the passing of information to the Social Council infringed her right to respect for private life and that she could not appeal to a court against the psychiatrist's decision to disclose the information. The applicant died in 1996.

Comm found unanimously NV 6(1) and by majority (22–7) no separate issue under 13.

Court unanimously rejected Government's preliminary objection, by majority (5–4) NA 6(1) and (8–1) NV 6(1), unanimously NV 13.

Judges: Mr R Ryssdal (pc/pd), President, Mr B Walsh (separate opinion), Mr J De Meyer (pd), Mrs E Palm, Mr AN Loizou, Sir John Freeland, Mr AB Baka, Mr K Jungwiert, Mr J Casadevall (pc/pd).

Preliminary objection rejected, the applicant's heir, her son, had sufficient interest to justify the continuation of the examination of the case.

Regarding the applicability of A 6(1) to the disagreement, regard had to be had to whether there was a dispute over a 'right' which could be said, at least on arguable grounds, to be recognised under domestic law. The dispute had to be genuine and serious; it had to relate not only to the existence of a right but also to its scope and the manner of its exercise; and the outcome of the proceedings had to be directly decisive for the right in question. In addition to the obligation on psychiatrists to report to the Social Council in cases where it was considered intervention was necessary, the psychiatrist enjoyed a very wide discretion in assessing what data would be of importance to the Social Council's investigation. In that regard, the psychiatrist had no duty to hear the applicant's views before transmitting the information to the Social Council. Swedish national law did not recognise a 'right' to prevent communication of such data. Therefore, A 6(1) was not applicable.

A 13 of the Convention guaranteed the availability of a remedy at national level to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. In granting appropriate relief, Contracting States were afforded some discretion as to the manner in which they conformed to their obligations under A 13. That provision applied only in respect of grievances under the Convention which were arguable. Whether that was so in the case of the applicant's claim under A8 had to be determined in the light of the particular facts and the nature of the legal issues raised. The Commission had declared the complaint under A 8 inadmissible as being manifestly ill-founded. On the evidence the applicant had no arguable claim in respect of a violation of the Convention. There had therefore been no violation of A 13.

Cited: Boyle and Rice v UK (27.4.1988), Chahal v UK (15.11.1996), Kerojärvi v SF (19.7.1995), Masson and Van Zon v NL (28.9.1995), X v F (31.3.1992), Z v SF (25.2.1997), Zander v S (25.11.1993).

Jan-Åke Andersson v Sweden (1993) 15 EHRR 218 91/42

[Application lodged 16.10.1984; Commission report 15.3.1990; Court Judgment 29.10.1991]

The applicant was charged by police with driving a tractor on a highway. The District Court found him guilty. In his appeal to the Court of Appeal he claimed that the proceedings before the District Court had been 'unbalanced' and that numerous 'interruptions' by the judge had prevented him from following the arguments and from presenting his case in a satisfactory manner, that the fine imposed was too high and that the District Court had overlooked the fact that certain road signs had been missing. He asked the Court of Appeal for a public hearing, for the police inspector to be heard as a witness and for the relevant meteorological records to be examined. In addition, he requested free legal assistance since he needed defence counsel and did not have sufficient means to pay for one. The Court of Appeal rejected the applicant's requests and decided the case on the basis of the case-file, upholding the findings of the District Court. The Supreme Court refused leave to appeal.

Comm by majority (17–2) found V 6(1).

Court by majority (13–7) found NV 6(1).

Judges: Mr J Cremona (d), President, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh (jd), Sir Vincent Evans, Mr R Macdonald, Mr C Russo (jd), Mr R Bernhardt, Mr A Spielmann (jd), Mr J De Meyer (jd), Mr SK Martens, Mrs E Palm, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou (jd), Mr JM Morenilla, Mr F Bigi (jd).

In order to decide the question of whether there should be a departure from the principle of a hearing, regard had to be had to the nature of the Swedish appeal system, to the scope of the Court of Appeal's powers and to the manner in which the applicant's interests were actually presented and protected before the Court of Appeal, particularly in the light of the nature of the issues to be decided by it. Value attached to the publicity of legal proceedings. However, even where the court of appeal had jurisdiction to review the case both as to facts and as to law, A 6 did not always require a right to a public hearing irrespective of the nature of the issues to be decided. The publicity requirement was one of the means whereby confidence in the courts was maintained. However, there were other considerations, including the right to trial within a reasonable time and the related need for expeditious handling of the courts' case-load, which had to be taken into account in determining the need for a public hearing at stages in the proceedings subsequent to the trial at first instance. Provided a public hearing has been held at first instance, the absence of such a hearing at second or third instance could be justified by the special features of the proceedings at issue. Thus, leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, could comply with the requirements of A 6, although the appellant was not given an opportunity of being heard in person by the appeal court. The applicant had admitted driving a tractor on a highway but claimed that this should not be punished having regard to the circumstances prevailing at the time of the offence. He referred first to the alleged absence of certain road signs, but this argument was rejected by the Court of Appeal on the basis of photographs contained in the case-file. He also invoked the poor weather conditions and this again was a matter on which the District Court had heard evidence but which it had found could not relieve him from his duty as a driver. As to the sentence, the Court noted that he received only a small fine of a fixed amount. His appeal did not therefore raise any questions of fact or law which could not be adequately resolved on the basis of the case-file. Considering also the minor character of the offence with which he was charged and the prohibition against increasing his sentence on appeal, the Court of Appeal could, as a matter of fair trial, properly decide to examine the appeal without the applicant having a right to present his arguments at a public hearing. Having regard to the entirety of the proceedings before the Swedish courts and to the nature of the issues submitted to the Court of Appeal, the Court reached the conclusion that there were special features to justify the decision not to hold a public hearing. There had accordingly been no violation of A 6(1).

Cited: Axen v D (8.12.1983), Ekbatani v S (26.5.1988).

Margareta and Roger Andersson v Sweden (1992) 14 EHRR 615 92/1

[Application lodged 13.2.1987; Commission report 3.10.1990; Court Judgment 25.2.1992]

The applicants were mother and son. The son was taken into care and then placed in a foster home to protect his health and development. Restrictions were placed on their contact with each other, including restrictions on communication by phone and letter.

Comm found unanimously V 8 and NV 13 unanimously with regard to Margareta Andersson, by majority (10–2) with regard to Roger Andersson.

Court found by a majority (8–1) V 8, unanimously that it was not necessary to examine A13 with regard to Margareta and by a majority (5–4) NV 13 with regard to Roger Andersson.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr F Gölcüklü, Mr J Pinheiro Farinha (jpd), Mr L-E Pettiti (jpd), Mr A Spielmann (jpd), Mr J De Meyer (jpd), Mr F Bigi, Mr G Lagergren, ad hoc judge (pd).

The mutual enjoyment by parent and child of each other's company constituted a fundamental element of family life and that relationship was not terminated if the child was taken into public care. The restrictions on contact amounted to interferences with respect for family life and correspondence. 'In accordance with the law' required that the measures had a basis in domestic

law, that the law should be accessible, sufficiently precise to be foreseeable. A discretionary provision was not inconsistent with this requirement provided it was sufficiently clear to protect against arbitrary interference. The restrictions were covered under s 16 of the Social Services Act 1980; the interference was in accordance with the law. The measures were aimed at protecting heath or morals and the rights and freedoms of children which were legitimate aims under A 8(2). A parent's and child's right to respect for family life also included a right to the taking of measures with a view to their being reunited. In this case their rights to visits were severely restricted and they were prohibited from having any contact by mail or phone from August 1986 to February 1988. Those restrictions had to be supported by strong reasons to be justified. The Government had not shown that it was necessary to deprive the applicants of almost every means of maintaining contact with each other for a period of about one and a half years, it was questionable whether the measures were compatible with the aim of reuniting the applicants. The aggregate of the restrictions was disproportionate to the legitimate aims pursued and therefore not necessary in a democratic society.

At the hearing before the Court the applicant did not pursue the claim under A 13 and the Court did not therefore consider it necessary to examine it. During the relevant period the applicants had met on a number of occasions and the mother was not prevented from appealing on her son's behalf against the restrictions on access, there was therefore no violation of A 13.

Non-pecuniary damage (SEK 50,000 to each of the applicants), costs and expenses (SEK 125,000 jointly).

Cited: Eriksson v S (22.6.1989), Klass v D (22.9.1993), Kruslin v F (24.4.1990), Olsson v S (24.3.1988).

Andreucci v Italy 92/9

[Application lodged 23.5.1987; Commission report 15.1.1991; Court Judgment 27.2.1992]

On 18 March 1985 Mr Aldo Andreucci brought an action for damages before the Rome District Court in respect of the injuries caused by an assault on him. The trial hearing was on 22 February 1989. The District Court allowed the applicant's claim and on 14 November 1989 the defendants paid the applicant the amount awarded by the District Court. The applicant complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously NV 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 18 March 1985 when the proceedings against the defendants were instituted in the Rome District Court. It ended, at the latest, on 14 November 1989. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case. The investigation took almost 23 months, after which 2 years elapsed before the trial hearing. As regards the first of these periods, the investigating judge failed to carry out with proper diligence his duty of supervising the work of the expert, but the number of witnesses called had to be taken into account, as had the fact that the examination of one of them necessitated a request for evidence to be taken on commission. The second period appeared on the face of it excessive. Contracting States had a duty to organise their legal systems in such a way that their courts could meet each of its requirements. The period in question would nevertheless seem to be acceptable if viewed in the context of the total duration of the proceedings. Accordingly, the delays were not so substantial as to violate A 6(1).

Cited: Capuano v I (25.6.1987), Vocaturo v I (24.5.1991).

Andronicou and Constantinou v Cyprus (1998) 25 EHRR 491 97/76

[Application lodged 28.8.1994; Commission report 23.5.1996; Court Judgment 9.10.1997]

Lefteris Andronicou and Elsie Constantinou met in August 1993. They announced their engagement in the local press on 22 December 1993. On 24 December 1993, as a result of an

incident, police were called to the flat. Lefteris Andronicou was armed and had taken Elsie hostage in the flat. Negotiations with Lefteris Andronicou, involving family, friends and police all failed. The police devised a rescue plan, which involved adding soporifics to any food ordered, and storming the flat. The rescue resulted in the wounding of one officer by a shot from Lefteris' gun and the deaths of Lefteris and Elsie. A Commission of Inquiry was set up. The applicants, heirs of the deceased, were granted ex gratia legal aid for the purposes of the inquiry. The Attorney General subsequently informed the applicants that, in the light of the findings of the commission of inquiry, no criminal proceedings would be instituted in connection with the deaths. However, he indicated that he would propose to the Government that it make an ex gratia payment of 'full and substantial compensation' to the heirs of the two deceased. No agreement was reached as to the payment.

Comm found by majority (15–3) V 2 and (12–6) NV 6(1).

Court rejected unanimously Government's preliminary objection concerning abuse of process, rejected by majority (7–2) preliminary objection concerning exhaustion of remedies, held by majority (5–4) NV 2 and unanimously NV 6.

Judges: Mr R Ryssdal, President, Mr N Valticos, Mrs E Palm, Mr R Pekkanen, Mr AB Baka, Mr G Mifsud Bonnici, Mr D Gotchev, Mr K Jungwiert, Mr G Pikis, ad hoc judge.

The commission of inquiry was not competent to grant a remedy even though it could make any recommendations or observations in the light of its findings. The conclusions of the commission of inquiry, chaired by the highest judicial appointee in the State, could reasonably be considered to be decisive of the issue of liability. While those conclusions were not binding on a domestic civil court, they were likely in practice to remove any reasonable prospects of success which a civil claim for damages may have offered the applicants. Accordingly, the applicants' decision not to accept the Attorney General's ex gratia offer of legal aid and to institute civil proceedings on the strength of that offer could be considered to have been justified in the circumstances. The preliminary objection of non-exhaustion of domestic remedies was therefore rejected. The applicant's refusal either to enter into or continue negotiations with the authorities on the terms of a friendly settlement over an alleged breach of a right guaranteed under the Convention could not be construed as an abuse of process. The proposed settlement did not involve any admission of the Government's liability for the deaths of the couple as the applicants sought. Accordingly, that preliminary objection also failed.

A 2 is one of the most fundamental provisions of the Convention admitting of no derogation under A 15. It enshrines one of the basic values of the democratic societies making up the Council of Europe and as such, its provisions must be strictly construed. This is particularly true of the exceptions in paragraph 2 which apply not only to intentional deprivation of life but also to situations where it is permitted to use force which may result, as an unintended outcome, in the deprivation of life. However, the use of force must be no more than 'absolutely necessary' for the achievement of one of the purposes defined in sub-paras (a), (b) and (c). The use of the term 'absolutely necessary' in A 2(2) indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is 'necessary in a democratic society' under paras 2 of A 8–11. In particular, the force used must be strictly proportionate to the achievement of the aims set out in A 2(2). In making its assessment, deprivations of life had to be subject to the most careful scrutiny, particularly where deliberate lethal force was used, taking into consideration not only the actions of the agents of the State who actually administered the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination.

The Court's concern was to evaluate whether in the circumstances the planning and control of the rescue operation showed that the authorities had taken appropriate care to ensure that any risk to life had been minimised and that they were not negligent in their choice of action. It was not appropriate to discuss with the benefit of hindsight the merits of alternative tactics. The authorities understood that they were dealing with a young couple and not with hardened criminals or terrorists. They tried to bring the incident to an end through persuasion and dialogue. While there

may have been shortcomings as regards, for example, the lack of crowd control or the absence of a dedicated telephone line between the police negotiator and Lefteris Andronicou, nevertheless the negotiations were in general conducted in a manner which could be said to be reasonable in the circumstances. The situation developed in the eyes of the authorities present into a dangerous situation in which critical decisions had to be taken. The decision to use specialist officers in the circumstances at the time was justified. The officers were issued with clear instructions as to when to use their weapons. It had not been shown that the rescue operation was not planned and organised in a way which minimised to the greatest extent possible any risk to the lives of the couple. The officers' use of lethal force in the circumstances was the direct result of Lefteris Andronicou's violent reaction to the storming of the flat. He sought to take the life of the first officer who entered the room and had fired the second shot at Elsie. The use of force by agents of the State in pursuit of one of the aims set out in A 2(2) may be justified where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but subsequently turns out to be mistaken. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and the lives of others. The Court could not substitute its own assessment of the situation for that of the officers who were required to react in the heat of the moment in what was for them a unique and unprecedented operation to save life. The officers were entitled to open fire for this purpose and to take all measures which they honestly and reasonably believed were necessary to eliminate any risk either to the young woman's life or to their own lives. The use of lethal force in the circumstances, however regrettable it may have been, did not exceed what was 'absolutely necessary' for the purposes of defending the lives of the hostage and of the officers and to effect a lawful arrest within the meaning of A 2(2) and did not amount to a breach by the respondent State of its obligations under A 2.

Whilst A 6(1) guaranteed to litigants an effective right of access to the courts for the determination of their 'civil rights and obligations', it left the State a free choice of the means to be used towards that end. The institution of a legal-aid scheme constituted one of those means but there were others. It was not the Court's function to indicate or stipulate which measures should be taken. All that the Convention required was that an individual should enjoy his effective right of access to the courts in conditions not at variance with A 6(1). The Attorney General's ex gratia offer provided a solution to help overcome the applicants' lack of resources. They had not taken up that offer and it was significant that they had no hesitation in accepting the Government's earlier offer to cover the costs and expenses of the commission of inquiry. In the circumstances, therefore, the applicants could not maintain that they did not have an effective access to a court within the meaning of A 6(1) of the Convention, which provision did not guarantee a litigant a favourable outcome. There had accordingly been no violation of A 6(1).

Cited: Airey v IRL (9.10.1979), Aksoy v TR (18.12.1996), Ireland v UK (18.1.1978), McCann and Others v UK (27.9.1995).

Angelucci v Italy 91/15

[Application lodged 10.12.1986; Commission report 13.12.1989; Court Judgment 19.2.1991]

The applicant with others was reported on 5 August 1975 for aggravated criminal association and drug trafficking. On 10 May 1978 he appointed a defence lawyer and was questioned for the first time by the investigating judge on 28 January 1986 following the summons issued by the latter. After the interrogation he was discharged on 16 July 1986. He complained of the length of proceedings.

Comm found unanimously V 6(1).

Court unanimously found V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Sir Vincent Evans, Mr C Russo, Mr J De Meyer, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla.

The period to be taken into consideration began, at the latest, on 10 May 1978, when the applicant appointed defence counsel. It ended, at the earliest, on 16 July 1986, with the pronouncement that there was no case to answer and, at the latest, on 19 July 1986, when the time limit for an appeal by the prosecuting authorities against that pronouncement expired. The reasonableness of the length of proceedings was to be assessed in the light of the particular circumstances of the case. The case was of some complexity owing to the number of accused, but there were very long periods of inactivity in the proceedings; the applicant did nothing to slow down the progress. Therefore a lapse of time of at least eight years and two months could not be regarded as reasonable.

Non-pecuniary damages, costs and expenses awarded (30 million ITL total).

Cited: Obermeier v A (28.6.1990).

Ankerl v Switzerland 96/42

[Application lodged 10.12.1990; Commission report 24.5.1995; Court Judgment 23.10.1996]

Mr Guy Ankerl and his wife moved into a flat which he sublet from a property-management company. In 1987 the landlords went into liquidation and requested termination of the sub-tenancy agreement. In 1988 an action for possession was brought against the applicant alleging that he was occupying the premises unlawfully since his sub-tenancy agreement had been terminated. The Court of First Instance held a hearing on 19 May 1989. Only the witnesses for the claimant were heard on oath; although evidence was heard from the applicant's wife, it could not be heard on oath under Swiss law. Judgment was given against the applicant. He complained of a lack of equality of arms.

Comm by majority (7–6) found NV 6(1) unanimously that it was unnecessary to examine 14+6(1).

Court unanimously rejected Government's preliminary objection, found NV 6(1) and unnecessary to examine 14+6(1).

Judges: Mr R Bernhardt, President, Mr F Gölcüklü, Mr F Matscher, Mr I Foighel, Mr JM Morenilla, Sir John Freeland, Mr L Wildhaber, Mr B Repik, Mr P Kûris.

Regarding the Government's preliminary objection of non-exhaustion of domestic remedies (A 26), the purpose was to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations were submitted to the Convention institutions. A 26 had to be applied with some degree of flexibility and without excessive formalism. In the present case the applicant had given the Federal Court an adequate opportunity to remedy by its own means the situation complained of. The objection was therefore dismissed.

The requirement of 'equality of arms', in the sense of a 'fair balance' between the parties, applied to litigation in which private interests were opposed; in such instances 'equality of arms' implied that each party had to be afforded a reasonable opportunity to present his case and evidence under conditions which did not place him at a substantial disadvantage vis-à-vis his opponent. Although the applicant's wife was not able to give evidence on oath, she was heard by the Court of First Instance. In the exercise of its power freely to assess the evidence the court was entitled not to regard Mrs Ankerl's statements as decisive in regard to the conclusion of an unwritten agreement to enter into a lease. Additionally, it did not appear from the judgment that the court attached any particular weight to the claimant's testimony on account of his having given evidence on oath. The national court also relied on evidence other than just the statements in issue. The Court did not see how the fact of Mrs Ankerl's giving evidence on oath could have influenced the outcome of the proceedings. Accordingly, the difference of treatment in respect of the hearing of the parties' witnesses by the Court of First Instance did not place the applicant at a substantial disadvantage vis-à-vis his opponent. There had not therefore been a breach of A 6(1).

No separate issue arose under A 14 and A6.

Cited: Akdivar and Others v TR (16.9.1996), De Geouffre de la Pradelle v F (16.12.1992), Dombo Beheer BV v NL (27.10.1993), Hentrich v F (22.9.1994), Remli v F (23.4.1996).

Antonakopoulos, Vorstsela and Antonakopoulos v Greece 99/101

[Application lodged 28.2.1997; Court Judgment 14.12.1999]

The applicants were the children and widow of a former Court of Appeal judge. His widow sought an adjustment of his pension for the period June 1992 to December 1995. In July 1996 the Court of Audit allowed the claim in part. The State General Accounting Department did not pay the sums awarded. In July 1996 a new law was enacted preventing the applicants from enforcing the Court of Audit's judgment. The Court of Audit held the new enactment unconstitutional and contrary to A 6 and dismissed an appeal by the State. The applicants had still not received the amounts owing to them.

Court unanimously found V 6(1), P1A1.

Judges: Sir Nicolas Bratza, President, Mr C Rozakis, Mr L Loucaides, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The enforcement of a court judgment had to be considered as an integral part of the proceedings for the purposes of A 6. If the authorities refused or omitted to enforce judgment or delayed in doing so, the guarantees under A 6 would become purposeless. Furthermore, the principle of the rule of the law and the notion of fair trial precluded any interference by the legislature with the administration of justice designed to influence the judicial outcome of a dispute in which the State was a party. The refusal of the State General Accounting Department to comply with the judgment of the Court of Audit infringed the applicant's right to effective judicial protection.

The judgment of the Court of Audit had given rise to a debt in the applicant's favour and not a contingent right as argued by the Government. The applicant's inability to enforce that judgment amounted to interference with their property right. The new law had upset the fair balance between the protection of a property right and the demands of the general interest. In addition, the State General Accounting Department's refusal to pay the sum owed to the appellants after the Court of Audit had declared the new law unconstitutional was a further interference with the applicants' right to respect for peaceful enjoyment of their possessions.

Pecuniary damages (GRD 4,593,735).

Cited: Amuur v F (23.6.1996), Stran Greek Refineries & Stratis Andreadis v GR (9.12.1994), Hornsby v GR (19.3.1997), Francesco Lombardo v I (26.11.1992), Papageorgiou v GR (22.10.1997), Sporrong et Lönnroth v S (23.9.1982).

Antonetto v Italy 00/185

[Application lodged 31.8.1989; Court Judgment 20.7.2000]

Mrs Irma Antonetto owned a house in Turin. In 1964, the city council granted planning permission for the construction of a multi-storey building next to the applicant's house. On 17 October 1967 the Council of State annulled the planning permission. The applicant requested the city council to demolish the parts of the building which had been built in breach. The city council failed to do so. Despite a succession of actions for enforcement, the council failed to comply with the 1967 judgment. In March 1988 a law was enacted which made it possible to remedy breaches of building regulations. On 1 March 1989, the Council of State rejected a fresh application by the applicant on the ground that the issue was then covered by the new law. The applicant complained of the failure to enforce the court judgment.

Court found unanimously V 6(1), V P1A1.

Judges: Mr CL Rozakis, President, Mr AB Baka, Mr B Conforti, Mr G Bonello, Mrs M Tsatsa-Nikolovska, Mr E Levits, Mr A Kovler.

The possibility of obtaining enforcement of judgment was an essential ingredient of the right to a court. The administration, as a component of the State governed by the rule of law, was under a duty to comply with the decision of the supreme administrative court. The failure to enforce a

judgment, like a delay in implementing a judgment, had the effect of depriving the person concerned of the guarantees laid down in A 6 of which he had the benefit during the judicial stage of the proceedings. From 1 August 1973, the date on which Italy recognised the right of individual petition, the failure to enforce the judgment of the Council of State deprived A 6(1) of all practical effect. The enactment of the law of 1988 was of no relevance to the assessment of the violation since that provision affected the applicant's situation only because of the administration's failure to enforce the 1967 judgment.

Although it was not a deprivation or control of assets, the city council's refusal to comply with the decision of the Council of State constituted an interference with the applicant's right to the peaceful enjoyment of her possessions, since the fact that the building remained unaltered deprived her house of part of its value. The interference had no basis in law, even if the entry into force of the 1988 law allowed it to acquire one.

Pecuniary damages (ITL 100,000,000), non-pecuniary damages (ITL 15,000,000), costs and expenses (ITL 24,352,000).

Cited: Amuur v F (25.6.1996), Belvedere Alberghiera v I (30.5.2000), EP v I (16.11.1999), Foti and Others v I (10.12.1982), Hornsby v GR (19.3.1997; A 50 1.4.1998), Iatridis v GR (25.3.1999), Immobiliare Saffi v I (28.7.1999), James and Others v UK (21.2.1986), Sporrong and Lönnroth v S (23.9.1982).

Aprile de Puoti v Italy 99/80

[Application lodged 26.7.1995; Commission report 1.12.1998; Court Judgment 9.11.1999]

Mrs Gelsomina Aprile de Puoti complained of the length of proceedings relating to her dismissal from employment.

Comm found by majority (20–5) V 6(1).

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr L Ferrari Bravo, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mr AB Baka, Mr E Levits.

The period to be taken into consideration lasted over nine years, nine months, which could not be considered reasonable.

Non-pecuniary damages (ITL 20,000,000), costs and expenses (ITL 10,000,000).

Cited: Bottazzi v I (28.7.1999).

Aquilina v Malta (2000) 29 EHRR 185 99/20

[Application lodged 7.7.1994; Commission report 4.3.1998; Court Judgment 29.4.1999]

Joseph Aquilina, a handyman, had an affair with a 15-year-old girl, whom he subsequently married. He was arrested by the police on 20 July 1992 and detained for interrogation for two days before being brought before a magistrate on 22 July 1992. He was charged with having defiled his girlfriend in a public place (an offence involving sexual acts) and threatened her family. A bail application was made which was notified to the Attorney General and the case adjourned. His release was ordered on 31 July 1992. He was found guilty on 1 March 1993 and sentenced to probation. On 23 July 1992 the applicant made a constitutional application to the First Hall of the Civil Court, arguing that there had been a violation of A 5(3) as the magistrate did not have power to order his release, thus preventing prompt consideration of the issue. His application was successful but on the Attorney General's appeal the Constitutional Court on 13 June 1994 reversed the decision of the First Hall. He complained that he had not been brought promptly before a judge who could examine the reasonableness of his arrest and order his release.

Comm found unanimously V 5(3).

Court unanimously rejected Government's preliminary objection and unanimously found V 5(3).

Judges: Mr Wildhaber, President, Mrs E Palm, Mr A Pastor Ridruejo, Mr L Ferrari Bravo Bravo, Mr G Bonello (pd A 50), Mr J Makarczyk, Mr P Kûris, Mr R Tümen, Mr J-P Costa, Mrs F Tulkens (jpd A 50) Mrs V Stráznická, Mr Fischbach (pd A 50), Mr V Butkevych, Mr J Casadevall (jpd A 50), Mrs HS Greve (pd A 50), Mr A Baka, Mrs S Botoucharova.

The applicant had raised his A 5(3) arguments before the highest competent judicial authorities. The Government's argument that the applicant should have invoked certain provisions of the criminal code was an argument going directly to the issue of compliance with that provision. Accordingly, the Government's preliminary objection was to be joined to the merits.

A 5(3) provides persons arrested or detained on suspicion of having committed a criminal offence with a guarantee against any arbitrary or unjustified deprivation of liberty. The fact that an arrested person had access to a judicial authority was not sufficient to constitute compliance with the opening part of A 5(3). This provision enjoined the judicial officer before whom the arrested person appeared to review the circumstances militating for or against detention, to decide by reference to legal criteria whether there were reasons to justify detention, and to order release if there were no such reasons. To be in accordance with A 5(3), judicial control had to be prompt. It also had to be automatic, it could not be made to depend on a previous application by the detained person. Such a requirement would change the nature of the safeguard provided for under A 5(3), which was distinct from that in A 5(4), guaranteeing the right to institute proceedings to have the lawfulness of detention reviewed by a court. Prompt judicial review of detention was also an important safeguard against ill-treatment in custody. Judicial officers should themselves hear the detained person before taking the appropriate decision. The applicant's appearance before a magistrate two days after his arrest could be regarded as 'prompt'. The matters which the judicial officer had to examine went beyond just lawfulness; the review to establish whether the deprivation of the individual's liberty was justified, had to be sufficiently wide to encompass the various circumstances militating for or against detention. In this case, the evidence did not disclose that the magistrate had the power to conduct such a review of his or her own motion. Regarding the Government's argument that the applicant could have obtained a wider review by lodging an application under the Criminal Code, compliance with A 5(3) could not be ensured by making an A 5(4) remedy available. The review had to be automatic. It followed that the Government had not substantiated their preliminary objection that the applicant has not exhausted domestic remedies.

The applicant's appearance before the magistrate on 22 July 1992 was not capable of ensuring compliance with A 5(3) as the magistrate had no power to order his release. It followed that there has been a breach of that provision. The question of bail was a distinct and separate issue, which only came into play when the arrest and detention were lawful and did not have to be addressed in this case.

Present judgment constituted sufficient just satisfaction for non-pecuniary damages, costs and expenses (MTL 3,000).

Cited: A v F (23.11.1993), Aksoy v TR (18.12.1996), Assenov v BG (28.10.1998), Brogan and Others v UK (29.11.1988), De Jong, Baljet & Van den Brink v NL (22.5.1985), Kurt v TR (25.5.1998), Navarra v F (23.11.1993), TW v M (29.4.1999).

Arbore v Italy 00/12

[Application lodged 18.3.1998; Court Judgment 25.5.2000]

Mr Aldo Arbore complained of the length of proceedings before the Audit Court.

Court found unanimously V 6(1).

Judges: Mr G Ress, President, Mr B Conforti, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mrs N Vajic, Mr M Pellonpää.

The period to be taken into consideration began on 19 June 1971 and proceedings were still pending on 5 October 1999. They had lasted to date 28 years, three months at one level of

jurisdiction which included 26 years, two months after the entry into force of Italy's acceptance of the right of individual petition. The period could not be considered reasonable.

Non-pecuniary damages (ITL 30,000,000), costs and expenses (ITL 5,000,000).

Cited: Bottazzi v I (28.7.1999).

Arena v Italy 92/10

[Application lodged 10.9.1987; Commission report 15.1.1991; Court Judgment 27.2.1992]

On 22 March 1982 Mr Carlo Arena was involved in a traffic accident as a passenger on a motorcycle. On 20 March 1984 the applicant brought an action for damages in the Rome District Court against the driver of the motorcycle and the insurance company. The investigation opened at a hearing on 12 May 1984. On 12 February 1988 the District Court declared the summons null and void on the ground of a procedural defect. The text of the decision was lodged with the registry on 16 April 1988. The applicant complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously NV 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 20 March 1984 when the proceedings against the driver and the insurance company were instituted in the Rome District Court. It ended, at the earliest, on 16 April 1988, when the District Court's judgment became final. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case. The investigation took a little more than 25 months, after which approximately seventeen and a half months elapsed before the trial hearing. During the first of these periods, expert medical opinion had been requested and the applicant failed to appear at one of the hearings. Although the second period appeared on the face of it excessive, it appeared acceptable if viewed in the context of the total duration of the proceedings, as it must be. In this case the applicant's action had been dismissed on the ground of a procedural defect, he did not take out a new summons. The delays were not so substantial as to violate A 6(1).

Argento v Italy (1999) 28 EHRR 185 97/66

[Application lodged 30.4.1993; Commission report 28.11.1995; Court Judgment 2.9.1997]

Mrs Maria Argento was a doctor employed at her local health unit. On 30 November 1985 she commenced proceedings in the Sicily Regional Administrative Court for judicial review of a decision of the health unit assigning her to a permanent post, at a lower level than the one to which she considered herself to be entitled. On 11 December 1985 she asked for a date to be fixed for the hearing. She complained about the length of the proceedings, which were still pending.

Comm found by majority (23–6) V 6.

Court found by majority (8–1) NA 6.

Judges: Mr R Bernhardt, President, Mr C Russo, Mr N Valticos, Mr R Pekkanen (d), Mr AB Baka, Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr P Kûris, Mr E Levits.

In the law of many Contracting States there is a basic distinction between civil servants and employees governed by private law. This has led the Court to hold that disputes relating to the recruitment, careers and termination of service of civil servants are as a general rule outside the scope of A 6(1). In the present case, the applicant sought only judicial review of her employer's decision assigning her, at the time when she was recruited to a permanent post, to a staff category lower than the one to which she considered herself to be entitled. The dispute related to her recruitment and her career and did not concern a 'civil' right within the meaning of A 6(1), accordingly A 6(1) was not applicable in the case.

Cited: Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993); Neigel v F (7.3.1997).

Arnò v Italy 99/82

[Application lodged 20.7.1993; Commission report 15.9.1998; Court Judgment 9.11.1999]

Mrs Angelina Arnò complained of the length of civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr L Ferrari Bravo, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mr AB Baka, Mr E Levits.

The period to be taken into consideration began on 20 January 1988 and had not yet ended. It had lasted over 11 years 9 months. The period could not be considered reasonable.

Non-pecuniary damage (ITL 35,000,000), costs and expenses (ITL 9,000,000).

Cited: Bottazzi v I (28.7.1999).

Arslan v Turkey 99/30

[Application lodged 7.1.1994; Commission report 11.12.1997; Court Judgment 8.7.1999]

Ms Günay Arslan was the author of a book entitled 'History in Mourning, 33 bullets', published in December 1989, with a second edition appearing in July 1991. It was accompanied by a preface attributed to Musa Anter, a well-known pro-Kurdish politician and leader writer whose main theme was the Kurdish question in Turkey and who was murdered in 1992. The applicant was charged with disseminating separatist propaganda, convicted and sentenced to imprisonment, with the book's confiscation being ordered. As a result of new legislation the conviction was declared null and void on 3 May 1991. The book was republished on 21 July 1991. Following a number of unsuccessful applications by the prosecutor for seizure, on 28 January 1993 the National Security Court found the applicant guilty under the new legislation of disseminating propaganda against 'the indivisible unity of the State' and sentenced him to one year, eight months' imprisonment and a fine of TRL 41,666,666.

Comm found by majority (30–2) V 10 and no separate issue 10+14.

Court unanimously rejected Government's preliminary objection, found V 10 and no separate issue 10+14.

Judges: Mr L Wildhaber, President, Mrs E Palm (jc), Mr A Pastor Ridruejo, Mr G Bonello (c), Mr J Makarczyk, Mr P Kûris, Mr J-P Costa, Mrs F Tulkens (jc), Mrs V Stráznická, Mr M Fischbach (jc), Mr V Butkevych, Mr J Casadevall (jc), Mrs HS Greve (jc), Mr A Baka, Mr R Maruste, Mr K Traja, Mr F Gölcüklü, ad hoc judge.

The purpose of A 35(1) (exhaustion of domestic remedies) was to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations were submitted to the Court. That provision had to be applied with some degree of flexibility and without excessive formalism; it was sufficient that the applicant should have raised before the national authorities, at least in substance and in compliance with the formal requirements and time limits laid down in domestic law, the complaints he intends to make subsequently in Strasbourg. In the present case, the applicant had argued before the Court of Cassation that his conviction seriously threatened his freedom of expression. The Court deduced from that fact that he submitted to the Turkish Supreme Court, at least in substance, the complaint that he now raised under A 10. The objection accordingly had to be dismissed.

The applicant's conviction following publication of the second edition of his book amounted to an interference with the exercise of his right to freedom of expression. As the conviction was based on Turkish law, the Prevention of Terrorism Act, the resulting interference could be regarded as 'prescribed by law'. Having regard to the sensitivity of the security situation in south-east Turkey and to the need for the authorities to be alert to acts capable of fuelling additional violence, the measures taken against the applicant could be said to have been in furtherance of the protection of national security and territorial integrity and the prevention of disorder and crime. Freedom of

expression was one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to A 10(2), it was applicable not only to 'information' or 'ideas' that were favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offended, shocked or disturbed. The freedom was subject to exceptions which had to be construed strictly and their need established convincingly. The meaning of 'necessary' within A 10(2) implied the existence of a 'pressing social need'. Contracting States had a certain margin of appreciation in assessing whether such a need existed, but it went hand in hand with European supervision. The background to cases had to be considered, particularly problems linked to the prevention of terrorism. The second edition of the book was published shortly after the Gulf War, at a time when, fleeing repression in Iraq, a large number of people of Kurdish origin were thronging at the Turkish border. However, the applicant was a private individual who had made his views public by means of a literary work rather than through the mass media, a fact which limited their potential impact on 'national security', 'public order' and 'territorial integrity' to a substantial degree. Although certain particularly acerbic passages in the book painted an extremely negative picture of the population of Turkish origin and gave the narrative a hostile tone, they did not constitute an incitement to violence, armed resistance or an uprising. The nature and severity of the penalties imposed were factors to be taken into account when assessing whether the interference was proportionate. The applicant's conviction was disproportionate to the aims pursued and accordingly not 'necessary in a democratic society'. There had therefore been a violation of A 10.

Having regard to that conclusion, it was not necessary to examine the complaint under A 14.

Non-pecuniary damage (FF 30,000), costs and expenses (FF 15,000).

Cited: Fressoz and Roire v F (21.1.1999), Incal v TR (9.6.1998), Wingrove v UK (25.11.1996), Zana v TR (25.11.1997).

Artico v Italy (1981) 3 EHRR 1 80/2

[Application lodged 26.4.1974; Commission report 8.3.1979; Court Judgment 13.5.1980]

Mr Ettore Artico, an accountant by profession, was sentenced by the Verona District Judge to terms of imprisonment and fines for repeated fraud, impersonation and uttering worthless cheques. He appealed against the decisions. His sentence was subsequently re-calculated but an application for compensation for wrongful detention was dismissed by the Court of Cassation on the ground that it had been lodged out of time. The applicant, who had originally been represented by a lawyer of his own choice, requested free legal aid in connection with his applications to quash his convictions. That request was granted and a lawyer was appointed for the purpose. The applicant subsequently complained about the lawyer and sought a replacement lawyer. No replacement was provided.

Comm found unanimously V 6(3)(c).

Court unanimously found the Government were estopped from contesting the admissibility of the application, found V 6(3)(c).

Judges: Mr G Wiarda, President, Mr G Balladore Pallieri, Mr M Zekia, Mrs D Bindschedler-Robert, Mr L Liesch, Mr F Gölcüklü, Mr J Pinheiro Farinha.

The preliminary objection of admissibility had not been raised before the Commission and accordingly the Government were estopped from raising the preliminary objection.

The Convention was intended to guarantee not rights that were theoretical or illusory but rights that were practical and effective; that was particularly so of the rights of the defence in view of the prominent place held in a democratic society by the right to a fair trial, from which they derive. A 6(3)(c) spoke of 'assistance' and not of 'nomination'. Mere nomination did not ensure effective assistance since the lawyer appointed for legal aid purposes might die, fall seriously ill, be prevented for a protracted period from acting or shirk his duties. If they were notified of the situation, the authorities had to either replace the lawyer or cause him to fulfil his obligations. In

the present case, the applicant did not have the benefit of the lawyer's services at any point of time. From the very outset, the lawyer stated that he was unable to act, he invoked firstly the existence of other commitments and subsequently his state of health. The Court was not called upon to enquire into the relevance of these explanations: the applicant did not receive effective assistance before the Court of Cassation. In this case the interests of justice required the provision of effective assistance, the President of the criminal section had come to the conclusion that there was a genuine need for a lawyer to be nominated for legal aid purposes. The State could not be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes but, in the particular circumstances, it was for the competent Italian authorities to take steps to ensure that the applicant enjoyed effectively the right to which they had recognised he was entitled. Compliance with the Convention called for positive action on the part of the authorities by replacing the lawyer or causing him to fulfil his obligations. There had therefore been a breach of A 6(3)(c).

Non-pecuniary damage (ITL 3,000,000).

Cited: Airey v IRL (9.10.1979), De Wilde, Ooms and Versyp v B (18.6.1971), Delcourt v B (17.1.1970), Deweer v B (27.2.1980), Ireland v UK (18.1.1978), Lawless v IRL (14.11.1960), Marckx v B (13.6.1979), Schiesser v CH (4.12.1979).

Artner v Austria 92/55

[Application lodged 6.7.1987; Commission report 8.1.1991; Court Judgment 28.8.1992]

On 16 December 1986 the applicant, Mr Josef Artner, was sentenced by the Vienna Regional Court to three years' imprisonment for usury, aggravated fraud, attempted aggravated fraud, embezzlement and aggravated theft. The complainant had been interviewed first by the police and then by the investigating judge. She was not confronted with the applicant, who had disappeared. He was eventually extradited from Germany on 19 June 1986. By the trial date, the complainant had moved and failed to appear at the hearing, and despite an adjournment, efforts to trace her were unsuccessful. At the hearing the complainant's statements to the police and before the investigating judge were read out. The Court found the complainant's evidence credible and having regard to the applicant's eight previous convictions, mostly for theft and a similar fraud, the court refused to accept his version of events. His appeal was unsuccessful.

Comm found by majority (9–7) NV 6(1) and 6(3)(d).

Court found by majority (5–4) NV 6(1)+6(3)(d).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson (d), Mr F Gölcüklü, Mr F Matscher, Mr B Walsh (jd), Mr R Macdonald (jd), Mr J De Meyer, Mrs E Palm (jd), Mr F Bigi.

Although the Regional Court did not hear the complainant she could, for the purposes of A 6(3)(d), be regarded as a witness, a term to be given an autonomous interpretation, because her statements as taken down in writing and then read out at the hearing, were before the court, which took account of them. From June 1983 to June 1986 the applicant's absence made it impossible to organise a confrontation between him and the complainant. The investigating judge had to wait until he was extradited on 19 June 1986 before he could question him. Shortly afterwards the complainant had disappeared. The Regional Court had twice instructed the police to make every effort to find her, even adjourning the hearing in order to allow the inquiries sufficient time to bear fruit, but to no avail. It would have been preferable if she could have testified in court, but her failure to appear did not in itself make it necessary to halt the prosecution. The appropriateness of that course of action fell outside the scope of the Court's review, provided that the authorities had not been negligent in their efforts to find the persons concerned. As it was impossible to secure the complainant's attendance at the hearing, it was open to the national court, subject to the rights of the defence being respected, to have regard to the statements obtained by the police and the investigating judge, in particular in view of the fact that it could consider those statements to be corroborated by other evidence before it. That other evidence included documentary evidence as

well as the applicant's criminal record and his conviction in another case of usury on similar facts. The complainant's contested statements were not the only evidence on which the Regional Court based its finding. Accordingly, the fact that it was impossible to examine the complainant at the hearing did not, in the circumstances of the case, infringe the rights of the defence to such an extent that it constituted a breach of A6(1) and 6(3)(d).

Cited: Asch v A (26.4.1991).

Arvois v France 99/89

[Application lodged 20.12.1996; Court Judgment 23.11.1999]

Mr Armel Arvois complained of the length of land consolidation proceedings.

Court found unanimously V 6(1).

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr L Loucaides, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration had lasted around eight years.

Non-pecuniary damage (FF 30,000), costs and expenses (FF 5,000).

Cited: Doustaly v F (23.4.1998), Richard v F (22.4.1998).

Asan Rushiti v Austria 00/92

[Application lodged 5.7.1995; Court Judgment 21.3.2000]

Mr Asan Rushiti was detained on remand on 1 April 1993 on suspicion of attempted murder. On 1 September 1993 he was acquitted by a jury by 7 votes to 1. On 2 September 1993 the applicant filed a compensation claim relating to his detention on remand. On 25 November 1993, the Graz Regional Criminal Court, sitting in camera, dismissed the applicant's compensation claim. The court found that there had been a reasonable suspicion against the applicant, which had not been dissipated. On 15 December 1994 the Graz Court of Appeal, sitting in camera, dismissed the applicant's appeal. The applicant complained about the lack of a public hearing and the lack of any public pronouncement of the decisions in the proceedings relating to his compensation claim for detention on remand. He also complained that the reasoning of the Graz Court of Appeal dismissing his compensation claim on the ground that the suspicion against him had not been dissipated violated the presumption of innocence in A 6(2).

Court found unanimously V 6(1) on account of the lack of a public hearing in the proceedings concerning the applicant's compensation claim for detention on remand and on account of the failure to pronounce the judgments in these proceedings publicly, V 6(2).

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mrs HS Greve, Mr K Traja.

The Court held in Szücs and Werner that A 6(1) applied to the compensation proceedings and that both the lack of a public hearing in these proceedings and the failure to deliver judgments publicly constituted violations of A 6(1). There was no reason to reach a different conclusion in this case.

The Graz Court of Appeal, which was not the court which acquitted the applicant, did not proceed to a new assessment of the applicant's guilt on the basis of the Assize Court file. The Court was not convinced that a voicing of suspicions was acceptable under A 6(2) if those suspicions had already been expressed in the reasons for the acquittal. Once an acquittal had become final, the voicing of any suspicions of guilt, including those expressed in the reasons for the acquittal, was incompatible with the presumption of innocence. In the present case, the Graz Court of Appeal made statements in the compensation proceedings following the applicant's final acquittal which expressed that there was a continuing suspicion against him and, thus, cast doubt on his innocence. Accordingly, there had been a violation of A 6(2).

No causal link between the breaches found and the alleged pecuniary damage. Finding of violation sufficient for non-pecuniary damage. Costs and expenses (ATS 61,318.80).

Cited: Allenet de Ribemont v F (10.2.1995), Englert v D (25.8.1987), Nölckenbockhoff v D (25.8.1987), Sekanina v A (25.8.1993), Szücs v A (24.11.1997), Werner v A (24.11.1997).

Asch v Austria (1993) 15 EHRR 597 91/28

[Application lodged 22.8.1986; Commission report 3.4.1990; Court Judgment 26.4.1991]

On the night of 5/6 July 1985 a dispute broke out between Mr Johann Asch and the woman with whom he lived. She attended hospital and reported the incident to the police. On 10 July she informed the police that she wished to withdraw her complaint as she and the applicant had reconciled. On 7 August 1985 the public prosecutor's office committed the applicant for trial before the Regional Court on charges of intimidation and causing actual bodily harm. At the hearing on 15 November, Mr Asch protested his innocence. The witness refused to give evidence and an officer recounted the statement she had made on 6 July. On 15 November 1985 Mr Asch was convicted of intimidation and causing actual bodily harm and sentenced to a fine. His appeal before the Court of Appeal was unsuccessful.

Comm found by majority (12–5) V 6(1)+6(3)(d).

Court found by majority (7–2) NV 6(1)+6(3)(d).

Judges: Mr R Ryssdal, President, Mr F Matscher, Sir Vincent Evans (jd), Mr R Macdonald, Mr C Russo, Mr R Bernhardt (jd) Mr A Spielmann, Mr J De Meyer, Mr N Valticos.

Although the complainant had refused to testify at the hearing she could, for the purposes of A 6(3)(d), be regarded as a witness, a term to be given an autonomous interpretation, because her statements, as taken down in writing by the officer and then related orally by him at the hearing, were before the Court, which took account of them. The admissibility of evidence was primarily a matter for regulation by national law and, as a rule, it was for the national courts to assess the evidence before them. The Court's task was to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair. All the evidence should normally be produced in the presence of the accused at a public hearing with a view to adversarial argument. That did not mean that the statement of a witness always had to be made in court and in public if it was to be admitted in evidence; that could prove impossible in certain cases. The use of statements in this way, obtained at the pre-trial stage, was not in itself inconsistent with A 6(3)(d) and A 6(1) provided that the rights of the defence had been respected. As a rule, those rights required that the defendant be given an adequate and proper opportunity to challenge and question a witness against him, either when he was making his statements or at a later stage of the proceedings. The applicant had had the opportunity to discuss the complainant's version of events and to put his own, first to the police and later to the court. He had chosen not to question the officer or to call other witnesses. The complainant's statement was not the only item of evidence on which the first-instance court based its decision; it also had regard to the personal assessment made by that officer as a result of his interviews with the complainant and the applicant, to two concurring medical certificates, to the police investigation and to other evidence. The fact that it was impossible to question the complainant at the hearing did not, in the circumstances of the case, violate the rights of the defence; it did not deprive the accused of a fair trial.

Cited: Delta v F (19.12.1990), Unterpertinger v A (24.11.1986).

Ashingdane v UK (1985) 7 EHRR 528 85/6

[Application lodged 26.10.1977; Commission report 12.5.1983; Court Judgment 28.5.1985]

In November 1970, Mr Leonard John Ashingdane was convicted of dangerous driving and offences of unlawful possession of firearms. Medical evidence was submitted to the effect that he was suffering from mental illness and his mental disorder was of a nature or degree which warranted his detention in a psychiatric hospital. He was placed in a secure hospital but in 1978, when his mental condition sufficiently improved, his transfer was authorised to a local psychiatric hospital. As no suitable accommodation for him could be found he remained at the 'special

hospital'. He complained under A 5(1) of his prolonged detention in a 'special hospital' after he had been declared fit for transfer and under A 5(4) and 6(1) of his inability to challenge before the courts the lawfulness of the relevant authorities refusal to transfer him.

Comm found by majority NV 5(1), 5(4), 6(1).

Court found unanimously NV 5(4), by majority (6–1) NV 5(1) and NV 6(1).

Judges: Mr G Wiarda, President, Mr Thór Vilhjálmsson, Mrs Bindschedler-Robert, Mr G Lagergren (c), Mr L-E Pettiti (d), Mr B Walsh, Sir Vincent Evans.

There was no reason to doubt the objectivity and reliability of this unanimous medical judgment that the applicant's detention has been justified throughout the relevant period. A5(1) was not concerned with restrictions on liberty of movement but with detention. The conditions under which he was held at the secure and the local hospitals amounted to detention and thus failure to move the applicant was not unlawful in depriving him of his liberty. Failure to move him was not a wrongful continuation of his detention. The differences between the hospitals were not such as to change the character of his deprivation of liberty as a mental patient. His continued detention was not arbitrary or effected for an ulterior purpose. He had had to endure the stricter regime at the special hospital for longer than his mental state required. The problem of transfer from the 'special' hospitals in England and Wales, which lay at the root of the present case, was undoubtedly a serious one for those affected, however, the injustice suffered by the applicant was not a mischief against which A 5(1)(e) protected. Dismissal by domestic courts of the applicant's claimed entitlement to accommodation and treatment in more appropriate conditions of a different category of psychiatric hospital did not fall within the scope of judicial determination of 'lawfulness' that A 5(4) guaranteed.

Even if A 6(1) were applicable, its requirements were not violated. The right of access to the courts was not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature called for State regulation which could vary in time and in place according to the needs and resources of the community and of individuals. States also enjoyed a certain margin of appreciation. The applicant's actions against the relevant State authorities were barred by operation of the law which limited the responsibility of those authorities but did not impair the applicant's right of access to the courts.

Cited: Axen v D (18.12.1983), 'Belgian Linguistic' case (9.2.1967), Engel and Others v NL (8.6.1976), Golder v UK (21.2.1975), Guzzardi v I (6.11.1980), Klass v D (6.9.1978), Le Compte Van Leuven and De Meyere v B (23.6.1981), Sporrong and Lönnroth v S (23.9.1982), Van Droogenbroeck v B (24.6.1982), Winterwerp v NL (24.10.1979), X v UK (5.11.1981).

Assenov and Others v Bulgaria (1999) 28 EHRR 652 98/88

[Application lodged 6.9.1993; Commission report 10.7.1997; Court Judgment 28.10.1998]

The applicants are a family of Bulgarian Roma; Mrs Fidanka Ivanova and Mr Stefan Ivanov and their son Mr Anton Assenov. On 19 September 1992, while gambling in the market square, Mr Anton Assenov (then aged 14) was arrested by an off-duty policeman. His parents arrived and asked for their son's release. Mr Stefan Ivanov, as a way of showing that he would administer any necessary punishment, took a strip of plywood and hit his son. The applicants allege that other officers arrived and hit the boy with truncheons. A dispute ensued between the boy's parents and the police, father and son were handcuffed and taken to the police station where they were detained for approximately two hours before being released without charge. Mr Assenov alleged he had been beaten with a toy pistol and with truncheons and pummelled in the stomach by officers at the police station. Medical evidence showed that both Mr Assenov and his mother suffered bruising which could have been inflicted as alleged. Complaints were filed with the District Directorate of Internal Affairs and the regional military prosecution office requesting the prosecution of the officers. After inquiry it was decided that criminal proceedings would not be opened against the officers. Further complaints by the applicants proved unsuccessful. In January 1995, Mr Assenov was questioned by the prosecuting authorities in connection with an

investigation into a series of thefts and robberies. He was arrested on 27 July 1995 and further questioned and charged. Mr Assenov admitted most of the burglaries but denied having committed the robberies. He was detained on remand. He attended identification parades at which he was identified by some victims. A lawyer was present on all occasions. Between 27 July 1995 and 25 March 1996, Mr Assenov was detained at the Shoumen police station. There was a dispute between the parties as regards the conditions of his detention there. The applicant submitted numerous requests for release to the prosecuting authorities which were refused. He was transferred to the juvenile penitentiary on 25 March 1996. In July 1997 Mr Assenov was convicted of four street robberies and sentenced to thirty months' imprisonment. After the applicants lodged their complaint with the Commission two daily newspapers published articles about the case suggesting that Roma activists had pushed the case and misled Amnesty International. The applicants were also questioned about their application by the prosecuting authorities.

Comm found by majority (16–1) NV 3, V 13, unanimously NV 6 in relation to events of September 1992, unanimously NV 5(1) and 3, V 5(3) and V 5(4) in relation to events since 1995 and unanimously that Bulgaria had not complied with its obligations under 25.

Court unanimously dismissed the Government's preliminary objections, found by majority (8–1) NV 3 regarding ill-treatment by the police, unanimously V 3 regarding failure to carry out an effective official investigation of allegations of ill-treatment by the police, unanimously NV 6(1) and 13, by majority (8–1) NV 3 regarding the conditions of his detention from July 1995 onwards, unanimously NV 5(1), unanimously V 5(3) regarding prompt appearance before a judge or other officer, unanimously V 5(3) regarding trial within a reasonable time or release pending trial, unanimously V 5(4), unanimously V 25(1).

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mrs E Palm, Mr AB Baka, Mr G Mifsud Bonnici (pd), Mr J Makarczyk, Mr Gotchev, Mr P Van Dijk, Mr V Toumanov.

Under Bulgarian law it was not possible for a complainant to initiate a criminal prosecution in respect of offences allegedly committed by agents of the State in the performance of their duties. The applicants had made numerous appeals to the prosecuting authorities at all levels. Having exhausted all the possibilities available to him within the criminal justice system, the applicant was not required, in the absence of a criminal prosecution in connection with his complaints, to embark on another attempt to obtain redress by bringing a civil action for damages. Government's preliminary objection regarding non-exhaustion had to be rejected. The Court found no grounds that the present case was brought before the Commission in abuse of the right of petition. Therefore the preliminary objection regarding abuse of process was also rejected.

A 3 enshrined one of the fundamental values of a democratic society, it was prohibited in absolute terms. In respect of a person deprived of his liberty, recourse to physical force which had not been made strictly necessary by his own conduct diminished human dignity and was in principle an infringement of the right in A 3. The degree of bruising found by the doctor on Mr Assenov indicated that the injuries, whether caused by his father or by the police, were sufficiently serious to amount to ill-treatment within A 3. However, on the available evidence, it was impossible to establish whether or not the applicant's injuries were caused by the police as he alleged. Nevertheless, the evidence raised a reasonable suspicion that the injuries may have been caused by the police and where an individual raised an arguable claim that he had been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of A 3, that provision, read in conjunction with the State's general duty under A 1 of the Convention, required by implication that there should be an effective official investigation. That investigation should be capable of leading to the identification and punishment of those responsible. Although the authorities carried out some investigation into the applicant's allegations, that investigation was not sufficiently thorough and effective to meet the requirements of A 3.

Bulgarian law provided the applicant with causes of action which would have enabled him to commence proceedings in the civil courts. Although the applicant argued that the Code of Civil Procedure would have resulted in the stay of any proceedings, that was a matter of speculation as he did not attempt to bring civil proceedings. In those circumstances, it could not be said that he

was denied access to a court or deprived of a fair hearing in the determination of his civil rights. There had therefore been no violation of A 6(1).

Where an individual had an arguable claim that he had been ill-treated in breach of A 3, the notion of an effective remedy entailed, in addition to a thorough and effective investigation, effective access for the complainant to the investigatory procedure and the payment of compensation where appropriate. The Court having found that Mr Assenov had an arguable claim that he had been ill-treated by agents of the State and that the domestic investigation of this claim was not sufficiently thorough and effective, it followed that there had also been a violation of A 13.

Events of and following July 1995: the applicants had made numerous requests for Mr Assenov's release to the prosecuting authorities and the District Court. He had satisfied the requirements of A 26 and it followed that the Government's preliminary objection of non-exhaustion must be rejected. Since the Government's preliminary objection concerning an alleged abuse of process was not raised before the Commission at the admissibility stage of the proceedings, the Government was estopped from raising it before the Court. There was no evidence of abuse of process in connection with the complaints in question.

Mr Assenov was detained on remand for a total of almost eleven months at Shoumen police station when he was 17. Apart from the assertions of the parties, no objective evidence relating to the applicant's conditions of detention was presented to the Court. In the circumstances it had not been established that the conditions of Mr Assenov's detention were sufficiently severe as to give rise to a violation of A 3.

The expressions 'lawful' and 'in accordance with a procedure prescribed by law' in A 5(1) essentially referred to national law and stated the obligation to conform to the substantive and procedural rules thereof; but they required in addition that any deprivation of liberty should be in conformity with the purpose of A 5, which was to prevent persons from being deprived of their liberty in an arbitrary fashion. There was no evidence that the applicant's detention was unlawful under Bulgarian law. Moreover, it was clear that Mr Assenov was detained on reasonable suspicion of having committed an offence, as permitted by A 5(1)(c). Therefore there was no violation of A 5(1).

Judicial control of interferences by the executive with the individual's right to liberty was an essential feature of the guarantee embodied in A 5(3). Before an 'officer' could be said to exercise 'judicial power' within the meaning of this provision, he or she had to satisfy certain conditions providing a guarantee to the person detained against any arbitrary or unjustified deprivation of liberty. The 'officer' had to be independent of the executive and the parties. In this respect, objective appearances at the time of the decision on detention were material: if it appeared at that time that the 'officer' may later intervene in subsequent criminal proceedings on behalf of the prosecuting authority, his independence and impartiality may be open to doubt. The 'officer' must hear the individual brought before him in person and review, by reference to legal criteria, whether or not the detention is justified. If it is not so justified, the 'officer' must have the power to make a binding order for the detainee's release. The application for release was not considered by a judge until three months into the detention. That was not sufficiently 'prompt' for the purposes of A 5(3).

The investigator who questioned, formally charged and took the decision to detain Mr Assenov on remand, was not sufficiently independent properly to be described as an 'officer authorised by law to exercise judicial power' within the meaning of A 5(3). He was not heard in person by the prosecutors who approved the investigator's decision and any of the prosecutors could subsequently have acted against the applicant in criminal proceedings, they were not sufficiently independent or impartial for the purposes of A 5(3). There had therefore been a violation of A 5(3) on the ground that the applicant was not brought before an 'officer authorised by law to exercise judicial power'.

The period to be taken into consideration commenced on 27 July 1995 when Mr Assenov was arrested and continued until an unspecified day in July 1997, when he was convicted and sentenced. His pre-trial detention therefore lasted approximately two years. In the circumstances

of the case, Mr Assenov having being charged with more burglaries and robberies, some involving violence and shortly before his arrest, the national authorities were not unreasonable in fearing that he might re-offend if released. However, he was a minor and, according to Bulgarian law, should have been detained on remand only in exceptional circumstances. It was, therefore, more than usually important that the authorities displayed special diligence in ensuring that he was brought to trial within a reasonable time. It took two years, but during one of those years virtually no action was taken in connection with the investigation. In that case he was denied a 'trial within a reasonable time', in violation of A 5(3).

Although it was not always necessary that the procedure under A 5(4) be attended by the same guarantees as those required under A 6(1), it had to have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question. Detention under A 5(1)(c) required a hearing. In addition, the person detained on remand had to be able to take proceedings at reasonable intervals to challenge the lawfulness of the detention. In view of the assumption under the Convention that such detention was to be of strictly limited duration, periodic review at short intervals was called for. In view in particular of the impossibility for the applicant, during his two years of pre-trial detention, to have the continuing lawfulness of this detention determined by a court on more than one occasion, and the failure of the court to hold an oral hearing on that occasion, there had been a violation of A 5(4).

It was of the utmost importance for the effective system of individual petition that applicants or potential applicants were able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. The expression 'any form of pressure' covered not only direct coercion and flagrant acts of intimidation of applicants, but also other improper indirect acts or contacts designed to dissuade or discourage individuals from pursuing a Convention remedy. Mr Assenov was detained on remand at the time of his complaints to the Commission. The applicants were members of a minority group and had been the subject of comment in the press, further contributing to their susceptibility to pressure brought to bear on them. The questioning of Mr and Mrs Ivanov by a representative of the authorities, which led the applicants to deny in a sworn declaration that they had made any application to the Commission amounted to a form of improper pressure in hindrance of the right of individual petition. There had therefore been a breach of A 25(1).

Non-pecuniary damages (BGL 6,000 to first applicant) costs and expenses (GBP 14,860 plus GBP 7,600, less FF 38,087 to all three applicants).

Cited: A v UK (23.9.1998), Akdivar and Others v TR (16.9.1996), Aksoy v TR (18.12.1996), Bezicheri v I (25.10.1989), Brincat v I (26.11.1992), Brogan and Others v UK (29.11.1988), Erkalo v NL (2.9.1998), Findlay v UK (25.2.1997), Guerra and Others v I (19.2.1998), Huber v CH (23.10.1990), Ireland v UK (18.1.1978), Kampanis v GR (13.7.1995), Kaya v TR (19.2.1998), Kurt v TR (25.5.1998), Loizidou v TR (*preliminary objections*) (23.3.1995), McCann and Others v UK (27.9.1995), Megyeri v D (12.6.1992), Ribitsch v A (4.12.1995), Sanchez-Reisse v CH (21.10.1986), Schiesser v CH (4.12.1979), Tekin v TR (9.6.1998), Toth v A (12.12.1991), Yasa v TR (2.9.1998).

Athanassoglou and Others v Switzerland 00/124

[Application lodged 9.6.1995; Commission report 15.4.1998; Court Judgment 6.4.2000]

The applicants, Mr Andy Athanassoglou, Mrs Ursula Athanassoglou, Mr Martin Schlumpf, Mrs Antoinette Schweickhardt, Mr Claudius Fischer, Mrs Ursula Brunner, Mr Ernst Haeberli, Mrs Helga Haeberli, Mr Pius Bessire, Mrs Katharina Bessire, Mr Hans Vogt-Gloor and Mrs Claudia Rüegsegger lived near a nuclear power plant. On 18 December 1991, the private company which had operated the nuclear power plant since 1971 applied to the Swiss Federal Council for an extension of its operating licence for an indefinite period. A large number of objections were lodged on the grounds that the plant did not meet current safety standards. The Federal Council dismissed all the objections and granted the company a limited operating licence expiring on 31 December 2004. No appeal lay against the decisions of the Federal Council. The applicants complained that they were denied effective access to a court and an effective remedy.

Comm found by majority (15–15 with the casting vote of the Acting President) NV 6(1), (16–14) NV 13.

Court unanimously struck out of the list the complaints of Mrs Ursula Brunner, Mr Ernst Haeberli, Mrs Helga Haeberli and Mr Hans Vogt-Gloor, unanimously found not necessary to rule on the Government's preliminary objection of failure to exhaust domestic remedies, by majority (12–5) NA 6(1) and NA 13.

Judges: Mrs E Palm, President, Mr L Wildhaber, Mr A Pastor Ridruejo, Mr J Makarczyk, Mr P Kûris, Mr R Türmen, Mr J-P Costa (d), Mrs F Tulkens (jd), Mrs V Stráznická, Mr M Fischbach (jd), Mr V Butkevych, Mr J Casadevall (jd), Mr B Zupancic, Mrs HS Greve, Mr AB Baka, Mr R Maruste (jd), Mrs S Botoucharova.

The applicants Mrs Ursula Brunner, Mr Ernst Haeberli, Mrs Helga Haeberli and Mr Hans Vogt-Gloor indicated that they did not intend to pursue the proceedings before the Court and their complaints were struck out of the list.

The Government's preliminary objection of non-exhaustion was so closely linked to the substance of the applicants' complaints under A 6(1) that the Court joined it to the merits.

The domestic legislation and the nature of the grievance were the same as in the Balmer-Schafroth and Others case. The rights relied on by the applicants (life, physical integrity, property) were recognised under Swiss law. There was a genuine and serious dispute of a justiciable nature between the applicants and the decision-making authorities as to whether the licence for the operation of the nuclear power plant should be extended. However, for the outcome to be directly decisive for those rights, there had to be a specific and imminent risk. Having regard to the safety reports, there was no material difference between the present case and the Balmer-Schafroth case as regards the personal circumstances of the applicants. They had not suffered any loss, economic or other, for which they intended to seek compensation. The report did not show that they were exposed to a danger that was serious, specific and imminent. Therefore, the connection between the Federal Council's decision and the domestic-law rights invoked by the applicants was too tenuous and remote. The applicants were seeking to derive from A 6(1) a remedy to contest the very principle of the use of nuclear energy, or at the least a means for transferring from the government to the courts the responsibility for taking, on the basis of the technical evidence, the ultimate decision on the operation of individual nuclear power stations. The best way to regulate the use of nuclear power was a policy decision for each Contracting State to take according to its democratic processes. A 6(1) could not be read as dictating any one scheme rather than another. What A 6(1) required was that individuals be granted access to a court whenever they had an arguable claim that there has been an unlawful interference with the exercise of one of their (civil) rights recognised under domestic law. It was not for the Court to examine the hypothetical question whether, if the applicants had been able to demonstrate a serious, specific and imminent danger in their personal regard as a result of the operation of the Beznau II power plant, the Civil Code remedies would have been sufficient to satisfy these requirements of A 6(1), as the Government contended in the context of their preliminary objection. There was therefore no necessity for the Court to rule on the Government's preliminary objection. The outcome of the procedure before the Federal Council was decisive for the general question whether the operating licence of the power plant should be extended, but not for the 'determination' of any 'civil right', such as the rights to life, to physical integrity and of property, which Swiss law conferred on the applicants in their individual capacity. A 6(1) was therefore not applicable in the present case.

A 13 had been consistently interpreted by the Court as requiring a remedy only in respect of grievances which could be regarded as 'arguable' in terms of the Convention. The applicants' complaint under A 13, like that under A 6(1), was directed against the denial under Swiss law of a judicial remedy to challenge the Federal Council's decision. The Court found that the connection between that decision and the domestic-law rights to protection of life, physical integrity and property invoked by the applicants was too tenuous and remote to attract the application of A 6(1). The reasons for that finding also led to the conclusion, on grounds of remoteness, that in relation to the Federal Council's decision as such, no arguable claim of violation of A 2 or A 8 and, consequently, no entitlement to a remedy under A 13 had been made out by the applicants. In sum, A 13 was inapplicable.

Cited: Balmer-Schafroth and Others v CH (26.8.1997), Boyle and Rice v UK (27.4.1988), Editions Périscope v F (26.3.1992), Fayed v UK (21.9.1994), Golder v UK (21.2.1975), Kremzow v A (21.9.1993), Le Calvez v F (29.7.1998), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Masson and Van Zon v NL (28.9.1995).

Ausiello v Italy (1997) 24 EHRR 568 96/20

[Application lodged 21.2.1992; Commission report 24.5.1995; Court Judgment 21.5.1996]

Mr Pasquale Ausiello was formerly a member of the revenue police. On 24 November 1989 he had served a writ instituting proceedings in the Court of Audit in Rome. He complained that the amount of pension awarded to him two years before had been incorrectly calculated. On 2 January 1991 the Ministry of Finance sent the application to the general command of the revenue police, which communicated it to the Court of Audit on 22 January. The Court of Audit received the applicant's administrative file on 19 October 1991. On 21 September 1995 his applications were dismissed by the Judicial Division on the ground that they were without foundation. The text of the decision was deposited in the registry on 17 January 1996. He complained about the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr C Russo, Mr J De Meyer, Mr I Foighel, Mr L Wildhaber, Mr D Gotchev, Mr K Jungwiert, Mr U Lôhmus.

The period to be taken into consideration began on 24 November 1989, when the writ instituting proceedings in the Court of Audit was served at the Ministry of Finance and ended on 17 January 1996, when the judgment against Mr Ausiello was deposited in the registry. The period to be considered therefore lasted just under six years and two months. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the parties. The case had remained dormant from 19 October 1991 to the beginning of 1994 and the Government had not produced any valid explanation for that lengthy delay. There was nothing to suggest that the case was complex. Nearly three months elapsed before the judgment was made public on being deposited in the registry. There was no reason to believe that any steps taken by the applicant to expedite consideration of his case would have had the desired effect. Accordingly there had been a breach of A 6(1).

Present judgment constituted sufficient just satisfaction for non-pecuniary damage.

Cited: Terranova v I (4.12.1995).

Autronic AG v Switzerland (1990) 12 EHRR 485 90/12

[Application lodged 9.1.1987; Commission report 8.3.1989; Court Judgment 22.5.1990]

The applicant was a company specialising in electronics and selling aerials for home use. It applied for permission to show a television programme it had received from a Soviet satellite by a private dish, in order to show the technical capabilities of the equipment and promote sales. The Soviet Embassy did not reply to the request and the Swiss telecommunications authority refused the application in the absence of consent from the broadcasting State.

Comm found by majority (11–2, one abstention) V 10.

Court held by majority (16–2) V 10.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert (d), Mr F Gölcüklü, Mr F Matscher (d), Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer (c), Mr JA Carrillo Salcedo, Mr SK Martens, Mrs E Palm, Mr I Foighel.

Neither the legal status of the applicant (limited company) nor the fact that its activities were commercial nor the intrinsic nature of freedom of expression could deprive the applicants of the

protection of A 10. The article applied to 'everyone', whether natural or legal persons. It covered not only the content of information but also the means of transmission or reception. The administrative and judicial decisions prevented the applicant receiving transmissions and therefore amounted to an interference by a public authority. It was unnecessary to rule on the third sentence of A 10(1) in the present case. The legal basis of the interference was to be found in the Federal Act 1922 and its Ordinance as well as the International Telecommunications Convention and Radio Regulations. The interference was in pursuance of the legitimate aims of preventing disorder in telecommunications and preventing the disclosure of confidential information. States enjoyed a margin of appreciation but the necessity for restricting rights had to be convincingly established. Later developments could be taken into account: Several other telecommunication satellites broadcasting television programmes had come into service, other States allowed reception of uncoded television broadcasts from satellites without requiring the consent of the authorities of the transmitting country, the broadcasts were intended for public viewing, there was no risk of obtaining secret information from dish aerials receiving broadcasts from telecommunication satellites. For those reasons the interference was not necessary in a democratic society and there had been a breach of A 10.

No damages sought. Costs and expenses (CHF 25,000) awarded.

Cited: Barthold v D (25.3.1985), Groppera Radio AG v CH (28.3.1990), Markt Intern Verlag GmbH and Beermann v D (20.11.1989), Sunday Times v U (24.4.1979).

Averill v United Kingdom 00/157

[Application lodged 24.3.1997; Court Judgment 6.6.2000]

Mr Liam Averill was arrested by police in Northern Ireland shortly after an armed attack in which two people were killed and another wounded. He was taken to barracks and questioned. Access to a solicitor was deferred for 24 hours. He was cautioned that adverse inferences could be drawn from his failure to mention facts later relied on in his defence but he remained silent throughout 37 interviews which took place between 24 and 30 April 1994. He was denied access to legal advice during police interviews. He was also cautioned that adverse inferences could be drawn from any failure to account for a number of fibres found on him. He was charged with the murder, attempted murder and possession of two loaded AKM assault rifles with intent and was tried before a judge sitting without a jury. The prosecution case was based on forensic evidence linking the applicant to a balaclava and gloves found in the car which had been used in the attack. The applicant's case was that he had been working with sheep and had worn black gloves and a rolled up balaclava as protective clothing. On 20 December 1995 he was convicted of the charges. The judge relied on the forensic evidence and the 'very strong adverse inference' which he drew from the applicant's failure to provide explanations during questioning. The applicant's appeal was dismissed by the Court of Appeal of Northern Ireland. He complained that he had been denied a fair hearing on account of the facts that the trial judge drew an adverse inference from his silence when questioned by the police and that he had been refused access to his solicitor during the first 24 hours of his interrogation in custody.

Court found by majority (6–1) NV 6(1) in respect of drawing of adverse inferences from the applicant's silence, NV 6(2), unanimously V 6(1)+6(3)(c) as regards the applicant's lack of access to a lawyer during the first 24 hours of his police detention.

Judges: Mr J-P Costa, President, Mr L Loucaides (pc/pd), Mr P Kûris, Mrs F Tulkens, Mr K Jungwiert, Sir Nicolas Bratza, Mrs HS Greve.

The question whether the right to silence was an absolute right had to be answered in the negative. Whether the drawing of adverse inferences from an accused's silence infringed A 6 was a matter to be determined in the light of all the circumstances of the case, having regard to the situations where inferences might be drawn, the weight attached to them by the national courts in their assessment of the evidence and the degree of compulsion inherent in the situation. Since the right

to silence, like the privilege against self-incrimination, lay at the heart of the notion of a fair procedure under A 6, particular caution was required before a domestic court could invoke an accused's silence against him. It would be incompatible with the right to silence to base a conviction solely or mainly on the accused's silence or on a refusal to answer questions or to give evidence himself. Nevertheless, the right could not and should not prevent the accused's silence, in situations which clearly called for an explanation from him, being taken into account in assessing the persuasiveness of the evidence adduced by the prosecution. The extent to which adverse inferences could be drawn from an accused's failure to respond to police questioning had to be necessarily limited. There might be reasons why, in a specific case, an innocent person would not be prepared to co-operate with the police. In particular, an innocent person may not wish to make any statement before he had had the opportunity to consult a lawyer. Considerable caution was therefore required when attaching weight to the fact that a person arrested for a serious criminal offence and having been denied access to a lawyer during the first 24 hours of his interrogation, did not provide detailed responses when confronted with incriminating evidence against him. Nor was the need for caution removed simply because an accused was eventually allowed to see his solicitor but continued to refuse to answer questions. The trial judge was not obliged to draw adverse inferences from the applicant's silence; he exercised a discretion and provided detailed reasons for his decision which were scrupulously reviewed and endorsed by the Court of Appeal. The applicant was not convicted solely or mainly on account of his silence. There was a considerable body of forensic evidence against the applicant and his oral testimony did not advance his alibi defence having regard to the fact that the trial judge found him to be a dishonest and unreliable witness and dismissed his witnesses evidence as lies. The decision to draw adverse inferences was only one of the elements upon which the trial judge found that the charges against the applicant had been proved beyond reasonable doubt. In drawing adverse inferences, the trial judge had not exceeded the limits of fairness since he could properly conclude that, when questioned, the applicant could have been expected to provide the police with explanations. The presence of incriminating fibres in the applicant's hair and clothing called for an explanation from him and his failure to provide one allowed the drawing of an adverse inference, all the more so since he did have daily access to his lawyer after the first 24 hours. The applicant was fully apprised of the implications of remaining silent and was therefore aware of the risks which a policy-based defence could entail for him at his trial. There had therefore been no violation of A 6(1) in respect of the adverse inferences drawn at the applicant's trial from his silence during police questioning.

The issue raised by the applicant under A 6(2) was a restatement of his argument under A 6(1) and having found that the latter article had not been breached, the Court considered that for the same reasons there has been no violation of A 6(2).

The scheme permitting the drawing of adverse inferences made it of paramount importance for an accused to have access to a lawyer at the initial stages of police interrogation: An accused was confronted at the beginning of police interrogation with a fundamental dilemma relating to his defence of whether or not to remain silent. The concept of fairness in A 6 required that the accused had the benefit of the assistance of a lawyer at the initial stages of police interrogation. A refusal to allow an accused under caution to consult a lawyer during the first 24 hours of police questioning had to be considered incompatible with the rights guaranteed to him by A 6. In that period, the rights of the defence might be irretrievably prejudiced. The fact that the applicant maintained his silence after he had seen his solicitor could not justify the denial. Nor did the Court's conclusion as to the drawing of adverse inferences from the applicant's silence serve to legitimate the authorities' refusal to provide him with access to a solicitor during the first 24 hours of his interrogation. The trial judge invoked the applicant's silence during the first 24 hours of his detention against him. As a matter of fairness, access to a lawyer should have been guaranteed to the applicant before his interrogation began. The denial of access to his solicitor during the first 24 hours of detention failed to comply with the requirements of A 6(3)(c). There had therefore been a breach of that provision taken in conjunction with A 6(1). Having regard to that conclusion it was not necessary to consider

the applicant's complaint concerning the refusal to allow his solicitor to be present during interview.

Finding of a violation constituted sufficient just satisfaction for non-pecuniary damage. Costs and expenses (GBP 5,000).

Cited: John Murray v UK (8.2.1996).

Avis Enterprises v Greece 98/61

[Application lodged 15.11.1995; Commission report 28.10.1997; Court Judgment 30.7.1998]

Avis Hotel, Tourist and Rural Industry Enterprises owned land on the island of Santorini, a popular tourist destination in Greece. On 15 February 1978, the State expropriated some of the applicant's land with a view to installing floodlights for Santorini Airport. The applicant company refused to accept the compensation offered on the ground that it was substantially less than the value of the land that had been expropriated from it. On 6 July 1984 the Court of Appeal assessed the final amount of compensation, the State appealed on 8 March 1985 to the Court of Cassation which upheld the Court of Appeal's judgment regarding compensation. The Court of Cassation dismissed the applicant company's claim for special compensation. On 20 March 1991 the Court of Appeal of the Aegean Sea dismissed the further application as unfounded. On 29 May 1991 compensation was paid to the Bank for Official Deposits. The applicant company, which had not yet accepted that sum, alleges that it was not at any stage advised that it had been deposited. A further appeal to the Court of Cassation was dismissed on 20 June 1995 and the applicant company ordered to pay the costs. At an earlier hearing there had been a set-off between the parties in respect of costs.

Comm found unanimously V 6(1) regarding the fairness and length of the proceedings, V P1A1 regarding reasonable compensation not having been paid within the time by law and the system for 'setting off' costs, and by majority (14–3) no separate issue under 14+P1A1.

Court unanimously found merits could not be considered.

Judges: Mr R Bernhardt, President, Mr F Gölcüklü, Mr F Matscher, Mr C Russo, Mr N Valticos, Mr I Foighel, Mr R Pekkanen, Mr J Makarczyk, Mr V Butkevych.

The Court noted that the Greek Government referred the case to it on 7 March 1998 whereas the Commission's report was communicated to the Committee of Ministers on 3 December 1997. The Court noted that the Government's application was received by facsimile transmission at the registry on 7 March 1998 at 10.29 pm and that the version allegedly sent by express Greek post on 23 February 1998 was never received by the registry or any other department of the Council of Europe. The explanations put forward by the Government did not disclose any special circumstance of a nature to suspend the running of time or justify its starting to run afresh. It followed that the application bringing the case before the Court was inadmissible as it was out of time and cognisance could not be taken of the merits.

Cited: Figus Milone v I (22.9.1993), Goisis v I (22.9.1993), Halford v UK (25.6.1997), Istituto di Vigilanza v I (22.9.1993), Morganti v F (13.7.1995).

Axen v Germany (1983) 6 EHRR 195 83/8

[Application lodged 1.9.1977; Commission report 14.12.1981; Court Judgment 8.12.1983]

On 6 August 1950 Mr Karl-Heinz Axen was driving his car when he collided with an unlit lorry trailer which a garage had undertaken to tow to the side of the road. As a result of the accident the applicant's mother, who was a passenger in the car, died of her injuries. The applicant sued the driver and owners of the lorry, the garage and filling-station assistant at different times. The initial hearings at first instance and subsequent appeals were heard in open court and the judgments delivered in open court. The final appeal on points of law was dismissed without a hearing and the applicant informed by letter. The applicant complained that because the Federal Court of

Justice had dismissed his appeal without previously holding a public hearing and had not pronounced its judgment publicly there had been a violation of A 6(1).

Comm found by majority (12–3) NV 6(1).

Court held unanimously NV 6(1)

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr W Ganshof van Meersch (c), Mrs D Bindschedler-Robert, Mr L Liesch, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr R Bernhardt, Mr J Gersing.

The public character of proceedings before the judicial bodies referred to in A 6(1) protected litigants against the administration of justice in secret with no public scrutiny; it was also one of the means whereby confidence in the courts, superior and inferior, could be maintained. However, the Federal Court only decided points of law, and, under domestic law, was only required to hear oral argument in public if it intended to reverse the judgment of the lower appeal court. The lower courts, the Regional Court and Court of Appeal had heard the case in public before giving their decisions. The terms used in the second sentence of A 6(1), 'judgment shall be pronounced publicly', might suggest that a reading out aloud of the judgment was required. The Court did not feel bound to adopt a literal interpretation. In each case the form of publicity to be given to the 'judgment' under the domestic law of the respondent State had to be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of A 6(1). In the present case, the Federal Court of Justice had informed the parties and offered them the opportunity of submitting observations on the possible application of the German Act. It then made final the Court of Appeal's judgment which had been pronounced in open court. In the particular circumstances, the absence of public pronouncement of the Federal Court of Justice's judgment did not contravene the Convention; the object pursued by A 6(1) in this context, namely, to ensure scrutiny of the judiciary by the public with a view to safeguarding the right to a fair trial, was achieved during the course of the proceedings taken as a whole. Therefore, in all the circumstances, taking all the proceedings as a whole, there was no violation of A 6(1) as the Federal Court of Justice was confirming issues that had been litigated in public and an appeal judgment which had previously been pronounced in public.

Cited: Adolf v A (26.3.1982); Corigliano v I (10.12.1982); Delcourt v B (17.1.1970); Golder v UK (21.2.1975); Lawless v IRL (14.11.1960); Minelli v CH (25.3.1983); Pakelli v D (25.4.1983); Silver v UK (25.3.1983).

Aydin v Turkey (1998) 25 EHRR 251 97/71

[Application lodged 21.12.1993; Commission report 7.3.1996; Court Judgment 25.9.1997]

The applicant, Mrs Aydin, was 17 years old at the time of the incident. On 29 June 1993, village guards and a gendarme questioned the family about recent visits to the house by PKK members. The applicant, members of her family and other villagers were taken to the gendarmerie headquarters. She alleged that while detained she was stripped of her clothes, put into a car tyre and spun round and round, beaten and sprayed with cold water from high-pressure jets, blindfolded and raped. The Government challenged the credibility of the applicant's account of the events. The Commission found the facts of treatment as detailed by the applicant.

Comm found by majority (26–1) V 3, (19–8) V 6(1), (19–8) no separate issue under 13 and (25–2) that Turkey had failed to comply with its obligations under 25(1).

Court dismissed by majority (18–3) preliminary objection concerning the exhaustion of domestic remedies and unanimously preliminary objection concerning abuse of process; found by majority (14–7) V 3, (16–5) V 13, (25–1) not necessary to consider 6(1), unanimously NV 25(1) and not necessary to examine 28(1) and 53.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr Thór Vilhjálmsson, Mr F Gölcüklü (jd3, jd13, id), Mr F Matscher (pc/pd, jd3), Mr L-E Pettiti (pc/pd, jd3, jd13), Mr B Walsh, Mr C Russo, Mr J De Meyer (jd3, jd13, id), Mr N Valticos, Mrs E Palm, Mr R Pekkanen, Mr A N Loizou, Sir J Freeland, Mr AB Baka, Mr MA Lopes Rocha (jd3, jd13), Mr L Wildhaber, Mr Makarczyk (jd3), Mr D Gothev (jd3, jd13), Mr K Jungwiert, Mr P Kûris.

The Court noted that the Government had failed to submit any observations on the question of admissibility and was therefore estopped from raising objections to it. Regarding the issue of abuse of process the Court found that the Government had failed to assert the argument at the admissibility stage of the proceedings before the Commission. The Government's preliminary objections were therefore dismissed.

The establishment and verification of the facts were primarily a matter for the Commission. The Commission had reached its conclusions on the basis of the appropriate evidentiary requirement, namely proof beyond reasonable doubt, and the Court accepted the Commission's findings of facts. A 3 enshrined one of the fundamental values of democratic societies and as such it prohibited in absolute terms torture or inhuman or degrading treatment or punishment, it admitted of no exceptions to that fundamental value and no derogation from it was permissible under A 15 even having regard to the imperatives of a public emergency threatening the life of the nation or to any suspicion, however well-founded, that a person may be involved in terrorist or other criminal activities. The distinction in A3 between torture and inhuman treatment or degrading treatment was embodied in the Convention to allow the special stigma of 'torture' to attach only to deliberate inhuman treatment causing very serious and cruel suffering. The accumulation of acts of physical and mental violence inflicted on the applicant and the especially cruel act of rape to which she was subjected amounted to torture in breach of A3. There had therefore been a violation of A 3.

A 13 guaranteed the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Contracting States were afforded some discretion as to the manner in which they conform to their obligations under that provision. The scope of the obligation under A 13 varied depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by A 13 had to be 'effective' in practice as well as in law, in particular in the sense that its exercise should not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State. Where an individual had an arguable claim that he or she has been tortured by agents of the State, the notion of an 'effective remedy' entailed, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure. A requirement to proceed to a 'prompt and impartial' investigation whenever there is a reasonable ground to believe that an act of torture has been committed was implicit in the notion of an 'effective remedy' under A13. The requirement of a thorough and effective investigation into an allegation of rape in custody at the hands of a State official also implied that the victim be examined, with all appropriate sensitivity, by medical professionals who were independent and had particular competence in the area. The medical examinations ordered by the public prosecutor could not be said to have fulfilled that requirement. On the facts no thorough and effective investigation was conducted into the applicant's allegations and that failure undermined the effectiveness of any other remedies which may have existed given the centrality of the public prosecutor's role to the system of remedies as a whole, including the pursuit of compensation. There had therefore been a violation of A 13.

It was of the utmost importance for the effective operation of the system of individual petition under A 25 that applicants or potential applicants were able to communicate freely with the Commission without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. The applicant had not adduced any concrete and independent proof of acts of intimidation or harassment calculated to hinder the conduct by her of the proceedings which she brought before the Convention institutions. In the circumstances there was insufficient factual basis to conclude that there had been a breach of A 25(1). Having regard to that conclusion it was unnecessary to examine the applicant's other complaints.

Non-pecuniary damage (GBP 25,000), costs and expenses (GBP 34,360 less FF 19,145 for UK lawyers and GBP 3,000 for Turkish lawyers).

Cited: Akdivar and Others v TR (16.9.1996), Aksoy v TR (18.12.1996), The Holy Monasteries v GR (9.12.1994), Ireland v UK (18.1.1978), Loizidou v TR (23.3.1995).

Aytekin v Turkey 98/79

[Application lodged 22.10.1993; Commission report 18.9.1997; Court Judgment 23.9.1998]

The applicant, Mrs Gülten Aytekin, alleged that her husband, Mr Ali Aytekin, a 27 year old building contractor and partner in a construction company, was unlawfully killed by a soldier on 24 April 1993 at a checkpoint outside a gendarmerie headquarters. He had been travelling with colleagues, all of them unarmed. He was shot in the back of the head by a bullet which had entered from the rear of the vehicle. The soldier, a 21 year old conscript on military service, was convicted of manslaughter on 2 October 1997. He claimed that he had fired after the vehicle failed to stop in response to signs, his whistle and a warning shot.

Commission found by majority (29–1) V 2 and no separate issue under 13.

Court unanimously upheld preliminary objection (domestic remedies not exhausted).

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr F Matscher, Mr G Mifsud Bonnici, Mr B Repik, Mr U Lôhmus, Mr E Levits, Mr M Voicu.

The Government had informed the Commission that the investigation into the death of the applicant's husband was proceeding without providing any details. The applicant was aware of the state of the proceedings against the Private by the date of the Commission's admissibility decision. She had applied to the Military Tribunal on 10 May 1994 to join the proceedings as a civil party and she had requested the tribunal on the same day to hear evidence of witnesses. The applicant did not appear to have informed the Commission of the true extent of her involvement in the domestic proceedings against the Private. Accordingly the Government could not be considered estopped, as the applicant requested, from raising their objection of non-exhaustion and from relying on the outcome of the criminal proceedings against the accused soldier. The investigation into the killing of the applicant's husband had resulted in the conviction of the Private on a count of unintentional homicide. Despite the applicant's criticism of the conduct of the official investigation and the trial of the gendarme, she had not been deterred from taking an active part in the proceedings. Regarding the possibility of instituting compensation proceedings in respect of the death of her husband, a violation of A 2 could not be remedied exclusively through an award of damages to the relatives of the victim. However, having regard to the measures taken by the authorities to prosecute the Private and his subsequent trial and conviction by an ordinary court on a charge of unintentional homicide, it had to be concluded that the applicant had reasonable prospects of successfully suing the convicted soldier or his superiors in a tort action, including with respect to any alleged deficiency in the way the checkpoint was manned and operated. As an alternative to a civil action in damages, it was open to the applicant to lodge a claim for compensation against the accused soldier when she declared herself a civil party in the proceedings. She had not done so nor explained why she had not done so. Nor had she lodged a compensation claim with the Ministry of Defence relying on the principle of the strict liability of the authorities for the acts of their officials. Her failure to make such a claim within the prescribed time limit had not been explained. Having regard to those considerations and to the particular circumstances of this case, the Court concluded that the applicant had failed to exhaust domestic remedies in respect of her Convention grievances. The Government's preliminary objection was accordingly upheld.

Cited: Akdivar and Others v TR (16.9.1996), Aksoy v TR (18.12.1996), Ergi v TR (28.7.1998), Kaya v TR (19.12.1998), Kurt v TR (25.5.1998), Mentes and Others v TR (28.11.1997).

B

B v Austria (1991) 13 EHRR 20 90/7

[Application lodged 10.1.1986; Commission report 14.13.1988; Court Judgment 28.3.1990]

The applicant, who was an insurance broker and financial consultant, was arrested on 1 July 1980. The investigation was completed on 8 May 1981 and his trial began on 9 November 1981 but following an adjournment on 12 November did not re-open until 15 November 1982. On 16 November he was sentenced to 8 years' imprisonment for professional aggravated fraud offences. He appealed and his sentence was reduced from eight to six years by the Supreme Court on 19 December 1985. He complained of the length of his detention on remand and the duration of proceedings.

Comm found unanimously V 6(1), by majority NV 5(3).

Court found unanimously V 6(1), NV 5(3).

Judges: Mr J Cremona, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr B Walsh, Sir Vincent Evans, Mr C Russo, Mrs E Palm.

The period to be taken into consideration regarding the alleged A 5(3) violation was 2 years 4 months 15 days (1 July 1980 to 16 November 1982). 'Conviction' in A5(1)(a) signified both a finding of guilt and the imposition of a penalty. The word 'after' required both a chronological (detention must follow conviction in time) and causal (detention must result from, follow and depend upon or occur by virtue of conviction) condition. The cause of the continuation of the applicant's detention on remand lay in the conviction: if there had been no conviction he would have been released. A person convicted and detained pending appeal could not be considered to be detained 'for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence'. There are differences between Contracting States on the question of whether a person convicted has started serving his sentence while an appeal is pending and therefore the guarantees of A 5(3) should not be made dependent on any one particular national situation. The persistence of reasonable suspicion that the person arrested committed the offence is a condition *sine qua non* for the validity of continued detention. However, after a certain lapse of time it was no longer sufficient and the Court had to examine the grounds which persuaded the judicial authorities to decide detention should be continued. The case was complex and the judge had showed diligence, the length of detention was not unreasonable.

Regarding the length of the proceedings (A 6), the period was from the date of arrest, 1 July 1980, to the final decision, five years, five months, 18 days. Although the case was complex, all evidence had been gathered and a decision made, yet the judge did not complete his judgment until 33 months after the pronouncement. Although the judge's workload had been lightened and disciplinary proceedings taken against him, those measures were insufficient and too belated to ensure proceedings were concluded in a reasonable time.

Costs and expenses (ATS 150,000).

Cited: Ciulla v I (22.2.1989), Foti v I (10.12.1982), Matznetter v A (10.11.1969), Milasi v I (25.6.1987), Monell and Morris v UK (2.3.1987), Ringeisen v A (22.6.1972), Stogmüller v A (10.11.1969), Union Alimentaria Sanders SA v E (7.7.1989), Van Droogenbroeck v B (24.6.1982), Wemhoff v D (27.6.1968).

B v France (1993) 16 EHRR 1 92/40

[Application lodged 28.9.1987; Commission report 6.9.1990; Court Judgment 25.3.1992]

The applicant, a French citizen born in 1935 in Algeria, was registered as a male but adopted female behaviour from a very early age. She received treatment and underwent a surgical operation in Morocco in 1972, consisting of the removal of the external genital organs and the creation of a vaginal cavity. The applicant met a man with whom she lived and whom she wished to marry. She brought proceedings, asking the court to find that although registered at birth as a male she was in reality a female and seeking rectification of her birth certificate. The court dismissed her action and her subsequent appeals were also dismissed.

Comm found by majority (17–1) V 8, (15–3) NV 3.

Court unanimously rejected Government's preliminary objections, found by majority (15–6) V 8 and unanimously not necessary to examine 3.

Judges: Mr J Cremona, President, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher (d), Mr J Pinheiro Farinha (d), Mr L-E Pettiti (d), Mr B Walsh, Mr R Macdonald, Mr C Russo, Mr R Bernhardt (jd), Mr A Spielmann, Mr N Valticos (d), Mr SK Martens, Mrs E Palm, Mr R Pekkanen (jd), Mr AN Loizou (d), Mr JM Morenilla (jd, d), Mr F Bigi, Sir John Freeland, Mr AB Baka (jd).

The Court recalled its previous case-law and considered that it had jurisdiction to examine the Government's preliminary objections. The Court dismissed the objections of non-exhaustion of domestic remedies and application out of time. The Court noted that the notion of 'respect' in A 8 was not clear-cut. Attitudes had changed, science had progressed and increasing importance was attached to the problem of transsexualism. However, there still remained some uncertainty as to the essential nature of transsexualism and that the legitimacy of surgical intervention in such cases was sometimes questioned. The legal situations which resulted were extremely complex and there was no sufficiently broad consensus between the Member States of the Council of Europe to persuade the Court to reach opposite conclusions to those in its *Rees* and *Cossey* judgments. However, there were noticeable differences between France and England with reference to their law and practice on civil status, change of forenames, the use of identity documents, etc. There were factors in the case which distinguished it from the Rees and Cossey cases, such as the inability to change her name and the inconveniences complained of by the applicant regarding documentation, which reached a sufficient degree of seriousness to be taken into account for the purposes of A 8. Even having regard to the State's margin of appreciation, the fair balance which had to be struck between the general interest and the interests of the individual had not been attained, and there had therefore been a violation of A 8. The respondent State had several means to choose from for remedying this state of affairs and it was not the Court's function to indicate which was the most appropriate. The applicant had not repeated her complaints under A 3, and the Court did not consider it necessary to examine the question of its own motion.

Non-pecuniary damage (FF 100,000), costs and expenses (FF 35,000).

Cited: Airey v IRL (9.10.1979), Brozicek v I (19.12.1989), Cardot v F (19.3.1991), Cossey v UK (27.9.1990), De Wilde, Ooms and Versyp v B (18.6.1971), Guzzardi v I (6.11.1980), Marckx v B (13.6.1979), Rees v UK (17.10.1986), Van Oosterwijck v B (6.11.1980).

B v United Kingdom (1988) 10 EHRR 87 87/15

[Application lodged 26.4.1982; Commission report 4.12.1985; Court Judgment 8.7.1987 (merits), 9.6.1988 (A 50)]

The applicant was brought up by her father and attended a special school for the mentally abnormal until the age of 15. Her child, P, was born on 17 July 1977; she had two more children in 1979 and 1983. She was divorced from the father of P on 26 May 1980. The applicant received social work support and the child was subject to various orders in favour of the local authority, namely a place of safety order, interim orders and a full care order from 5 December 1978. In April 1978, P was placed with foster parents. The applicant had access to the child, although she visited him erratically. On 19 September 1979, the juvenile court rejected an application by the applicant to have the care order discharged, but recommended increased access. At a statutory review meeting on 2 May 1980, the local authority decided to terminate the applicant's access to P forthwith. Subsequent court proceedings by the applicant to have the care order discharged or to obtain restoration of her access to him were unsuccessful.

Comm found by majority (12–2) V 6(1), unanimously V 8 and by majority (12–1) no separate issue under A 13.

Court found unanimously V 6(1), V 8, not necessary to examine 13.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr G Lagergren, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr J Gersing, Mr A Spielmann, Mr J De Meyer, Mr N Valticos.

The mutual enjoyment by parent and child of each other's company constituted a fundamental element of family life and the natural family relationship was not terminated by reason of the fact that the child was taken into public care. The Authority's decisions amounted to interferences with the applicant's right to respect for her family life. The applicant did not assert that the Authority's decisions were not 'in accordance with the law' or lacked a legitimate aim. Neither was there any evidence that the measures taken were not designed to achieve a legitimate purpose, namely the protection of health or of the rights and freedoms of others. In reaching decisions in so sensitive an area, local authorities are faced with a task that is extremely difficult. This was accordingly a domain in which there was an even greater call than usual for protection against arbitrary interferences. A 8 contained no explicit procedural requirements, but this was not conclusive of the matter. The Court could have regard to that process to determine whether it had been conducted in a manner that, in all the circumstances, was fair and afforded due respect to the interests protected by A 8. In the Court's view, what therefore had to be determined was whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests. If they had not, there would have been a failure to respect their family life and the interference resulting from the decision would not be capable of being regarded as 'necessary' within the meaning of A 8. The procedure of the local authority revealed an insufficient involvement of the applicant in the local authority's decision-making process. In the circumstances and notwithstanding the State's margin of appreciation in the area, there had been a violation of A 8. In view of that conclusion, it was not necessary to examine the remedies available to the applicant.

The existence of a power on the part of the authority to decide questions of access to a child by his parent did not necessarily mean that there were no longer any parental rights. Judicial review and wardship proceedings provided valuable safeguards against exercise by the authority of its discretion in an improper manner but were confined to ensuring that the authority had not acted illegally, unreasonably or unfairly and did not allow for a review of the merits of the decision. There was therefore no possibility of a 'determination' in accordance with the requirements of A 6(1) unless the local authority's decision could be reviewed by a tribunal having jurisdiction to examine the merits of the matter. There was no evidence before the Court that the powers of the English courts were of sufficient scope to satisfy fully this requirement during the currency of the care orders. Accordingly there had been a violation of A 6(1).

Having regard to the decision on A 6(1), it was not necessary to examine the case under A 13 as its requirements were less strict than, and were here absorbed by, those of A 6(1).

Non-pecuniary damage (GBP 12,000), costs and expenses (GBP 10,500+VAT).

Cited: Gillow v UK (24.11.1986), Johnston and Others v IRL (18.12.1986), Leander v S (26.3.1987), Malone v UK (2.8.1984), Marckx v B (13.6.1979), Pauwels v B (26.5.1988), Sporrong and Lönnroth v S (23.9.1982).

BB v France 98/75

[Application lodged 2.4.1996; Commission report 9.3.1998; Court Judgment 7.9.1998]

Mr B B, a national of the Democratic Republic of Congo, was born in Kinshasa in 1954. He arrived in France in 1983. He was given leave to remain that was successively renewed until 1988. He returned to Zaire in December 1988, but came back to France in December and applied for asylum. In September 1995 he was convicted of drugs and immigration offences and sentenced to two years' imprisonment with an order permanently excluding him from French territory. He was found to be suffering from the Aids virus compounded by Kaposi's syndrome and presented signs of acute immunosuppression. He complained that if he was deported to the former Zaire that would amount to treatment contrary to A 3 as it would reduce his life expectancy because he

would not receive the medical treatment his condition demanded. He also argued that his deportation would infringe his right to respect for his family life as guaranteed by A 8 as he would be deprived of the moral support afforded by the presence of his family and friends.

Comm found by majority (29–2) there would be a breach of 3 and no separate issue under 8.

Court unanimously struck the case from the list.

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr R MacDonald, Mr JM Morenilla, Sir John Freeland, Mr AB Baka, Mr D Gotchev, Mr K Jungwiert, Mr M Voicu.

There had been no friendly settlement or arrangement in the case. A compulsory residence order made on 9 April 1998 was unilateral in character and issued by the French authorities after the Commission had adopted its report. That order constituted an 'other fact of a kind to provide a solution of the matter'. The order reflected the French authorities' intention to allow the applicant to receive the treatment his condition required and to guarantee him, for the time being, the right to remain in France. The risk of a potential violation had therefore ceased, at least until any new factors emerged. The complaint under A8 did not raise any independent issue requiring separate examination. There was no reason of public policy to proceed with the case. Accordingly, it was appropriate to strike the case out of the list with the power reserved to restore it to the list if new circumstances arose justifying such a measure.

Cited: D v UK (2.5.1997), Pressos Compania Naviera SA and Others v B (A 50, 20.11.1995), Rubinat v I (12.2.1985).

Baegen v Netherlands 95/42

[Application lodged 6.4.1990; Commission report 20.10.1994; Court Judgment 27.10.1995]

Mr Wilhelmus Elisabert Baegen was charged with rape on the basis of a statement made by Ms X to the Utrecht municipal police to the effect that she had been raped by two men. She chose to remain anonymous in the subsequent criminal proceedings on the ground that she feared reprisals from the men who had raped her. Before the Regional Court the applicant denied the charge. At no point in the proceedings before the Regional Court did either the applicant or his lawyer request the Regional Court to hear any witnesses. He was convicted of rape and sentenced to twelve months' imprisonment. In his pleadings on appeal his counsel requested the Court of Appeal to suspend its hearing or else refer the case back to the investigating judge so that Ms X might be subjected to further interrogation. In its judgment of 20 September 1988 the Court of Appeal rejected counsel's submissions, quashed the judgment of the Regional Court for technical reasons, convicted the applicant of rape and sentenced him to twelve months' imprisonment. An appeal on points of law filed by the applicant on 20 September 1988 was rejected by the Supreme Court on 10 October 1989, one month and ten days before the European Court of Human Rights delivered its judgment in the case of *Kostovski v NL*.

Comm found by majority (14–12) NV 6(1) and 6(3)(d).

Court struck case out of the list.

Judges: Mr R Ryssdal, President, Mr B Walsh, Mr R Macdonald, Mr J De Meyer, Mr SK Martens, Mrs E Palm, Mr R Pekkanen, Mr AB Baka, Mr P Kûris.

Because of the failure of the applicant to come forward despite repeated reminders by the Registrar, further examination of the case was not justified. The Court noted, in addition, the position adopted by the Government and the Commission. Furthermore, the Court observed that in a number of previous cases it had had occasion to express itself on the rights of the defence in cases involving anonymous prosecution witnesses and that another case against the same Contracting State raising related issues was currently before it. In those circumstances it could not be said that there was any reason of public policy for continuing the present proceedings. Accordingly, it was appropriate to strike the case out of the list.

Cited: Kostovski v NL (20.11.1989).

Baggetta v Italy (1987) 10 EHRR 325 87/10

[Application lodged 25.1.1983; Commission report 4.12.1985; Court Judgment 25.6.1987]

Mr Giuseppe Baggetta, the applicant, was arrested on 27 November 1971. After investigation, he was released on 28 January 1972. He was committed for trial on 9 January 1973 on charges of possession of dangerous weapons, criminal damage and arson. Following hearings and appeals the final decision was given by the Court of Cassation on 19 December 1986. That judgment was filed with the registry on 17 February 1987. The applicant complained, *inter alia*, about the length of the proceedings.

Comm found unanimously V 6(1).

Court unanimously rejected the Government's application for case to be struck out and found V 6(1).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mrs D Bindschedler-Robert, Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr J Gersing.

Application for case to be struck out of the list, on the basis that the applicant was no longer a victim, rejected because the new facts were not of a kind to provide a solution to the matter.

The period to be considered began on 1 August 1973, when the Italian declaration recognising the right of individual petition took effect. The period ended on 19 December 1986, the day on which the Court of Cassation's judgment was given. The period to be considered amounted to more than thirteen years and four months.

The reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case, taking into account the complexity of the case, conduct of the applicant and of the competent authorities. The case was not complex and the applicant's conduct did not call for any particular comment. The Convention placed the Contracting States under a duty to organise their legal systems so as to enable the courts to comply with the requirements of A 6(1), including that of trial within a 'reasonable time'; nonetheless, a temporary backlog of business does not involve liability on the part of the Contracting States provided that they take, with the requisite promptness, remedial action to deal with an exceptional situation of this kind. However, a period of more than nine years before the judgment of 22 November 1982 could not be justified. The respondent State's endeavours to improve the working conditions of the Calabria courts began only in 1978, roughly seven years after the institution of the proceedings against the applicant, who had been waiting for his case to be set down for trial since 9 January 1973, when the judicial investigation was concluded. Despite the expeditiousness of the Court of Appeal, the proceedings did not end until December 1986.

Costs and expenses awarded (ITL 15 million).

Cited: Buchholz v D (6.5.1981), Corigliano v I (10.12.1982), Foti v I (10.12.1982), Guzzardi v I (6.11.1980), Zimmermann and Steiner v CH (13.7.1983).

Baghli v France 99/93

[Application lodged 26.12.1996; Commission report 9.9.1998; Court Judgment 30.11.1999]

Mr Mohamed Baghli, an Algerian national, came to France in 1967, at the age of two. Apart from military service in Algeria between January 1984 and December 1985, he remained in France. All his close family lived in France, including his seven brothers and sisters, who had French nationality. He did his schooling in France and gained an occupational diploma. In 1987 he began a stable relationship with Miss L. In 1990 he was arrested and charged with drug-trafficking offences and following conviction was sentenced to 15 months' imprisonment, of which 12 were suspended, and he was banned from French territory for 10 years. On his appeal, the Lyon court of appeal increased his sentence of imprisonment and upheld the exclusion order. The Court of Cassation dismissed his appeal on 6 September 1993. In December 1992, the applicant started a relationship with Miss I following the death of his previous girlfriend. His appeal against the exclusion order was dismissed. His appeal to the Court of Cassation was dismissed by a judgment

of 19 December 1995. The judgment was not served on the applicant and his lawyer claimed to have received a copy only in September 1996. In May 1994 the applicant had been deported to Algeria after serving his prison sentence. He claimed a violation of A 8.

Comm found by majority (11–3) V 8.

Court found by majority (5–2) NV 8.

Judges: Mr L Loucaides, President, Mr J-P Costa (jd), Mr P Kûris, Mrs F Tulkens (jd), Mrs HS Greve, Mr K Traja, Mr M Ugrekhelidze.

The six months could not begin to run until there was effective knowledge of the decision. The Government did not deny that the Court of Cassation's judgment of 19 December 1995 had not been served on the applicant but argued that it was his own lack of diligence that prevented him from finding out about it before June 1996. The applicant was in Algeria at the time in trying conditions that in all likelihood made it very difficult for him to obtain information on the outcome of his case in France. In addition, the judgment had not been served on his representative either, even though it was he who had lodged the appeal to the Court of Cassation and the registry of the court had his name and address. For those reasons, in the absence of irrefutable evidence to the contrary from the Government, the preliminary objection of six month limit was dismissed.

There had been an interference with the applicant's private and family life. The interference was provided for by law and pursued the legitimate aim of protection of public health and prevention of disorder. The applicant, who was single and had no children, had not shown that he was in close contact with his family in France and his relationship with Miss I had not started until after the exclusion order had been made and at a time when he must have known that his situation was precarious. Unlike other members of his family, he had kept his Algerian nationality and had shown no desire to become a French national when he was entitled to do so. He had not said that he did not speak Arabic, had done his military service in Algeria and returned there on holiday several times. Thus, he had retained links with his country of birth that went beyond mere nationality. His drug-trafficking offence was a serious breach of public order which endangered the health of others. The authorities were entitled to take a firm line with drug-traffickers. The 10 year exclusion order was not disproportionate to the legitimate aims pursued. Accordingly, there had been no violation of A 8.

Cited: Bouchelkia v F (29.1.1997), Boujlifa v F (21.10.1997), Dalia v F (19.2.1998), Deweer v B (27.2.1980), El Boujaïdi v F (26.9.1997), Papachelas v GR (25.3.1999).

Bahaddar v Netherlands (1998) 26 EHRR 278 98/9

[Application lodged 2.12.1994; Commission report 13.9.1996; Court Judgment 19.2.1998]

Mr Shammsuddin Bahaddar, the applicant, was a Bangladeshi national resident in The Netherlands. He arrived in The Netherlands on 7 July 1990 and applied for refugee status or, in the alternative, a residence permit on humanitarian grounds the basis of his claim being his membership of the illegal organisation *Shanti Bahini* (Peace Troops), the military wing of the *Jana Samhati Samiti* (People's Solidarity Association, an organisation seeking autonomy for the inhabitants of the Chittagong Hill Tracts), and to be in danger of persecution on that ground. His application was refused and his appeals were unsuccessful. He claimed that the decision of the Netherlands authorities to expel him to Bangladesh would, if put into effect, expose him to a serious risk of being killed or ill-treated.

Comm found in respect of applicant's expulsion to Bangladesh, unanimously NV 2, by majority (26–5) V 3.

Court found by majority (7–2) that as domestic remedies had not been exhausted it could not consider the merits of the case.

Judges: Mr Bernhardt, President, Mr Thór Vilhjálmsson, Mr L-E Pettiti, Mr I Foighel (d), Mr JM Morenilla (d), Mr D Gotchev, Mr P Kûris, Mr P Van Dijk (c), Mr T Pantiru.

The Court noted its previous case-law. Although A 3 was absolute in expulsion cases, as in other cases applicants were not for that reason dispensed from exhausting domestic remedies that were available and effective. Whether there are special circumstances which absolve an applicant from the obligation to comply with such rules will depend on the facts of each case. In applications for refugee status it could be difficult or impossible for the person concerned to supply evidence within a short time. Accordingly, time limits should not be so short, or applied so inflexibly, as to deny an applicant for recognition of refugee status a realistic opportunity to prove his or her claim. However, those considerations did not apply in the present case. The applicant was able to lodge fresh applications to the Netherlands authorities, either for refugee status or for a residence permit on humanitarian grounds, even after the expiry of the time limit. He had not been refused an interim injunction against his expulsion. Consequently he was in no imminent danger of treatment contrary to A 3. It was still open to the applicant to lodge a further such application, and if necessary to apply for an interim measure restraining the respondent Government from expelling him pending the outcome of the ensuing proceedings. It had not been argued that such a remedy would necessarily be ineffective. In those circumstances the applicant failed to exhaust the available domestic remedies before applying to the Commission and accordingly the merits of the case could not be considered.

Cited: Ahmed v A (17.12.1996), Akdivar and Others v TR (16.9.1996), Chahal v UK (15.11.1996).

Balmer-Schafroth and Others v Switzerland (1998) 25 EHRR 598 97/43

[Application lodged 14.6.1993; Commission report 18.4.1996; Court Judgment 26.8.1997]

The applicants lived in the village within a 4–5 kilometre radius from the nuclear power station at Mühleberg, Canton of Berne. On 9 November 1990 the company which had operated the power station since 1971 applied to the government for an extension of its operating licence for an indefinite period and for permission to increase production by 10%. The application was published in the Official Gazette of 4 December 1990 together with a notice inviting persons satisfying the requirements laid down by s 48 of the Federal Administrative Proceedings Act to file an objection. More than 28,000 objections in all were sent, 21,000 of which came from Germany and Austria. On 14 December 1992 the Federal Council dismissed all the objections as being unfounded and, subject to compliance with various specified safeguards, granted an operating licence until 31 December 2002 and authorised a 10% increase in production.

Comm found by majority (16–12) V 6(1) and (27–1) no separate issue under 13.

Court unanimously dismissed the Government's preliminary objection that the applicants were not victims and unnecessary to rule on preliminary objection of failure to exhaust domestic remedies, found by majority (12–8) NA 6 and NA 13.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr F Gölcüklü (jd), Mr L-E Pettiti (jd), Mr B Walsh (jd), Mr C Russo (jd), Mr A Spielmann, Mr N Valticos (jd), Mr I Foighel (d), Mr AN Loizou, Sir John Freeland, Mr AB Baka, Mr MA Lopes Rocha (jd), Mr L Wildhaber, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr P Jambrek (jd), Mr K Jungwiert, Mr U Lôhmus, Mr E Levits.

Under the Court's case-law, for the purposes of A 25 the word 'victim' meant the person directly affected by the act or omission in issue, the existence of a violation of the Convention being conceivable even in the absence of prejudice, which was relevant only in the context of A 50. The fact that the Federal Council declared admissible the objections the applicants wished to raise before a tribunal justified regarding them as victims. The first preliminary objection must therefore be dismissed. In view of its conclusion on the applicability of A 6(1) the Court did not consider it necessary to decide the issue of exhaustion of remedies.

Under the Court's case-law, for A 6(1) in its 'civil' limb to be applicable, there must be a dispute over a 'right' which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the actual existence of a right

but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question. Mere tenuous connections or remote consequences are not sufficient to bring A 6(1) into play. The applicants had not claimed to have suffered any loss, economic or other, for which they intended to seek compensation. The right on which they relied before the Federal Council was the right to have their physical integrity adequately protected from the risks entailed by the use of nuclear energy. That right was recognised in Swiss law. The dispute was genuine and serious. However, the applicants did not establish a direct link between the operating conditions of the power station which were contested by them and their right to protection of their physical integrity, as they failed to show that the operation of the power station exposed them personally to a danger that was not only serious but also specific and, above all, imminent. In the absence of such a finding, the effects on the population of the measures which the Federal Council could have ordered to be taken in the instant case therefore remained hypothetical. Consequently, neither the dangers nor the remedies were established with a degree of probability that made the outcome of the proceedings directly decisive within the meaning of the Court's case-law for the right relied on by the applicants. In the Court's view, the connection between the Federal Council's decision and the right invoked by the applicants was too tenuous and remote. Accordingly, A 6(1) was not applicable in the instant case. In that case, A 13 was also not applicable.

Cited: Amuur v F (23.6.1996), Fayed v UK (21.9.1994), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Masson and Van Zon v NL (28.9.1995), Van Marle and Others v NL (26.6.1986).

Baranowski v Poland 00/108

[Application lodged 24.5.1994; Commission report 28.5.1998; Court Judgment 28.3.2000]

Mr Janusz Baranowski was arrested on 1 June 1993. He was charged with fraud and detained on remand. The Regional Court prolonged the detention until 31 December 1993 and then until 31 January 1994. After completion of the investigation, the Regional Prosecutor lodged a bill of indictment with the Regional Court. As a result, an appeal which the applicant lodged on 7 January 1994 was treated as a request for release, as the practice was to consider it unnecessary for any decision prolonging detention to be taken once the bill of indictment had been lodged. The Court of Appeal referred the matter back to the Regional Court, which did not examine it. The applicant had notified the prosecutor on 1 February that the order for his detention had expired on 31 January 1994, so that his continued detention had become unlawful and unfounded, but his two requests for release (7 February and 28 March) were rejected on 24 May and confirmed on appeal on 5 July. The applicant complained that his detention on remand, in so far as it had been effected under the bill of indictment and after the expiry of the detention order of 30 December 1993, had not been lawful within the meaning of A 5(1) and of the length of the proceedings.

Comm found unanimously V 5(1) in that the applicant's detention under the bill of indictment had been unlawful, V 5(4) in view of the length of the proceedings relating to the lawfulness of the applicant's detention.

Court found unanimously V 5(1) and V 5(4).

Judges: Mrs E Palm, President, Mr L Ferrari Bravo, Mr J Makarczyk, Mr R Türmen, Mr B Zupancic, Mr T Pantîru, Mr R Maruste.

The practice of keeping a person in detention under a bill of indictment was not based on any specific legislative provision or case-law, but stemmed from the fact that Polish criminal legislation at the material time lacked clear rules governing the situation of a detainee in court proceedings, after the expiry of the term of his detention fixed in the last detention order made at the investigation stage. The relevant legislation therefore did not satisfy the test of forseeability of a law for the purposes of A 5(1). In addition, the practice whereby a person was detained for an unlimited and unpredictable time and without his detention being based on a concrete legal provision or on any judicial decision was contrary to the principle of legal certainty, a principle which was implied in the Convention and which constituted one of the basic elements of the rule

of law. Detention which had not been ordered by a court or by a judge or any other person authorised to exercise judicial power could not be considered 'lawful'. Detention which was prolonged beyond the initial period foreseen in A 5(3) necessitated judicial intervention as a safeguard against arbitrariness. Therefore, the applicant's detention was not lawful within the meaning of A 5(1) and there had been a breach of that provision.

The proceedings relating to the first application for release lasted from 7 February to 5 July 1994, that is, approximately five months. The proceedings relating to the second started on 28 March 1994 and ran concurrently, lasting a little more than three months. The complexity of medical issues involved could be a factor to be taken into account when assessing the compliance with the requirement of 'speediness' laid down in A 5(4). However, that complexity did not absolve the national authorities from their essential obligations. There were rather lengthy intervals between the decisions to take evidence which did not appear to be consistent with 'special diligence' in the conduct of the proceedings. The proceedings were not conducted speedily, as required by A 5(4). As the applicant's appeal of 7 January 1994 was not examined, all the issues concerning the lawfulness of his detention were, in effect, determined by the Court of Appeal in its decision of 5 July 1994 and that decision could be seen as having addressed the arguments made by the applicant in his appeal of 7 January 1994. Therefore, the determination of the lawfulness of the prolongation of the applicant's detention until 31 January 1994 lasted from 7 January to 5 July 1994, that is, nearly six months. Such a long delay, which resulted in the applicant's appeal being of no legal or practical effect, amounted to a denial of the applicant's right to take proceedings by which the lawfulness of his detention shall be decided speedily and there had been a violation of A 5(4).

Non-pecuniary damage (PLN 30,000), costs and expenses, (PLN 10,000).

Cited: Douiyeb v NL (4.8.1999), Erkalo v NL (2.9.1998), Musial v PL (25.3.1999), Öztürk v TR (28.9.1999), Steel and Others v UK (23.9.1998), Winterwerp v NL (24.10.1979).

Baranoa v Portugal (1991) 13 EHRR 329 87/17

[Application lodged 6.9.1982; Commission report 8.10.1985; Court Judgment 8.7.1987]

Mr Joachim Baranoa, a businessman, learned that he was about to be arrested in 1975 following an attempted coup, and fled to Brazil. He did not return to Portugal until 1978, after the warrant for arrest had been revoked. In his absence his employees had taken over his company, which a court later declared insolvent, and took over other assets. On 31 July 1981 he brought a civil action in the Administrative Court seeking damages from the State, claiming that the arrest warrant was illegal. The applicant complained about the length of proceedings which were still pending at first instance.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

A dispute existed, namely whether the applicant had a right to recover financial compensation for damage flowing from the arrest warrant. He could claim to have a right recognised under Portuguese law as he understood it (the Court further noted that the Administrative Court had given a preliminary decision that the case was admissible). The right to compensation was a private one as it embodied a personal and property interest and was founded on an infringement of rights of this kind, notably the right of property. Accordingly A 6(1) applied. The proceedings had already lasted 6 years and were continuing. The reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the Court's case-law. The case was of some complexity (the interlocutory appeal raised a difficult question of equality of arms which had been dealt with at 3 levels of jurisdiction over nearly 3 years). The applicant's appeal, although justified, complicated the proceedings to some extent. The fact that domestic legislation allowed State Counsel to seek an extension of time did not exclude the State's responsibility for resultant delays. Neither the complexity of the case nor the applicant's behaviour had any marked influence on the length of the proceedings, which resulted mainly from the way in which the relevant authorities had conducted the case. The reasonable time in A 6(1) had been exceeded.

Pecuniary damage did not flow from failure to hear the case within a reasonable time but from the subject matter of the domestic proceedings, namely the impossibility of resettling in Portugal. Non-pecuniary damage (PTE 500,000). Costs and expenses awarded.

Cited: Bönisch v A (6.5.1985), Capuano v I (25.6.1987), Guincho v P (10.7.1984), James v UK (21.2.1986), König v D (28.6.1978), Ringeisen v A (22.6.1972), Sporrong and Lönnroth v S (23.9.1982), Zimmermann and Steiner v CH (13.7.1983).

Barbagallo v Italy 92/29

[Application lodged 27.6.1987; Commission report 15.1.1991; Court Judgment 27.2.1992]

On 18 November 1980 Mrs Emilia Barbagallo, the applicant, instituted enforcement proceedings against her former husband in order to recover property owing to her. On 11 December 1980 her former husband's wife, Mrs C, lodged an objection on the ground that she was sole owner of the property concerned. The first hearing before the deputy magistrate took place on 15 December 1980. The final decision of the District Court was lodged with the registry on 24 July 1989 and became final on 25 October 1989. She complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 11 December 1980 when Mrs C entered her objection to the enforcement proceedings instituted by the applicant. It ended on 25 October 1989, when the judgment of the District Court became final. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law. The case was a simple one although it had come before two first-instance courts. It took the deputy magistrate approximately one and a half years and eight hearings to find that he lacked jurisdiction. The District Court took more than five years to establish that the former husband's summons was not in due form and six years and five months to allow Mrs C's objection. The proceedings remained dormant from 5 June 1984 to 16 October 1985, and then from 16 June 1986 to 20 January 1988. A 6(1) imposed on Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. The respondent State could not be held responsible for the delays in instituting proceedings (approximately five months) or renewing the summons or the time which elapsed before the judgment became final. However, taking the proceedings as a whole, the lapse of time in the present case could not be regarded as reasonable.

Costs and expenses (ITL 1,734,430).

Cited: Vocaturo v I (24.5.1991).

Barberà, Messegué and Jabardo v Spain (1989) 11 EHRR 360 88/18

[Application lodged 22.7.1983; Commission report 16.10.1986; Court Judgment 6.12.1988 (merits), 13.6.1989 (JS)]

On 9 May 1977 a Catalan businessman was killed after an explosive device, fixed to his chest with a ransom demand exploded. On 14 October 1980 the three applicants were arrested with other persons and charged with belonging to the terrorist organisation EPOCA (Catalan People's Army), murder, criminal damage and other offences. They were held incommunicado and not allowed to have the assistance of a lawyer. They confessed to the murder of the Catalan businessman, but retracted the confessions before the investigating judge complaining of being subjected to physical and psychological torture while in police custody. They were committed for trial to the Criminal Division of the Audiencia Nacional. Applications for the trial to be transferred from Madrid to Barcelona on account of the needs of the defence and witnesses' travel difficulties were rejected. The applicants were moved from Barcelona to Madrid on the night before the trial, arriving at four o'clock in the morning, when the hearing was due to commence at 10.30 on 12 January 1982. On

the same morning the presiding judge had to be substituted because of the sudden illness of his brother-in-law. The trial lasted one day. On 15 January 1982 the applicants were sentenced to imprisonment. They appealed to the Supreme Court. They complained that the change in the membership of the bench without notice, the political persuasion of the substitute presiding judge (insignia on his tie and cuff links) and his hostility and attitude towards the applicants and witnesses during the hearing were factors which made the Audiencia Nacional's impartiality open to doubt. Their appeals were dismissed.

Comm found unanimously V 6(1) and by majority (12–0 with one abstention) no need for separate examination of 6(2).

Court rejected Government's preliminary objections, found by majority (10–8) V 6(1) and unanimously NV 6(2).

Judges (merits): Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson (jd), Mrs D Bindschedler-Robert (jd), Mr G Lagergren (jc), Mr F Gölcüklü (jd), Mr F Matscher (jd), Mr J Pinheiro Farinha, Mr L-E Pettiti (jc), Mr B Walsh (jd), Sir Vincent Evans, Mr R Macdonald (jc), Mr C Russo (jd), Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer, Mr N Valticos (jd), Mr L Torres Boursault (jd), ad hoc judge.

Judges (A 50): Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer, Mr L Torres Boursault, ad hoc judge.

The Government's preliminary objection that domestic remedies had not been exhausted in respect of the complaint concerning the change of membership of the Audiencia Nacional without notice was rejected on the ground of estoppel and because it was raised out of time. The applicants had not exhausted domestic remedies in respect of their complaints concerning the substitute presiding judge of the Audiencia Nacional and therefore the Government's preliminary objection on that issue was allowed. The Government's preliminary objection that domestic remedies had not been exhausted in that the applicants did not apply to the Audiencia Nacional for an adjournment of the trial was rejected on the grounds of estoppel and raised out of time.

Having regard to the belated transfer of the applicants from Barcelona to Madrid, the unexpected change in the court's membership immediately before the hearing opened, the brevity of the trial and the fact that very important pieces of evidence were not adequately adduced and discussed at the trial in the applicants' presence and under the watchful eye of the public, the proceedings in question, taken as a whole, did not satisfy the requirements of a fair and public hearing. Consequently, there was a violation of A 6(1).

There was no evidence on the facts of the case that there had been a violation of A 6(2).

Damages (ESP 8,000,000 to Mr Barberà, ESP 8,000,000 to Mr Messegué and ESP 4,000,000 to Mr Jabardo), costs and expenses (ESP 4,500,000 to the three applicants jointly, less FF 5,876).

Cited: Bönisch v A (6.5.1985), Bozano v F (18.12.1986), Colozza v I (12.2.1985), Milasi v I (25.6.1987), Olsson v S (24.3.1988), Unterpertinger v A (24.11.1986).

Barfod v Denmark (1989) 13 EHRR 493 89/2

[Application lodged 22.3.1985; Commission report 16.7.1987; Court Judgment 22.2.1989]

Mr Bjørn Barfod was a precious-stone cutter residing in Greenland. Government new taxation measures were challenged in the High Court where a professional judge sat with two lay judges employed by the Local Government. The High Court unanimously found for the Local Government. The applicant wrote an article on the judgment, expressing his opinion that the two lay judges were disqualified under the Danish Constitution and questioning their ability and power to decide impartially in a case brought against their employer. The applicant was subsequently charged with defamation of character. He was found guilty by the District Court and fined 2,000 Danish Crowns. His appeal to the High Court was unsuccessful and his application for leave to appeal to the Supreme Court was rejected.

Comm found by majority (14–1) V 10.

Court found by majority (6–1) NV 10.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mrs D Bindschedler-Robert, Mr F Gölcüklü (d), Mr F Matscher, Mr B Walsh, Mr B Gomard, ad hoc judge.

The applicant's conviction amounted to an interference by a public authority with his right to freedom of expression. He did not contest that the interference was 'prescribed by law' and that its aims were the protection of the reputation of others and, indirectly, the maintenance of the authority of the judiciary. The sole issue was whether the interference was 'necessary in a democratic society' for achieving the above-mentioned aims. Contracting States had a certain margin of appreciation in assessing the existence and extent of such a necessity, but that margin was subject to a European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. Proportionality implied that the pursuit of the aims mentioned in A 10(2) had to be weighed against the value of open discussion of topics of public concern. It was important not to discourage members of the public, for fear of criminal or other sanctions, from voicing their opinions on issues of public concern. In this case the interference with the applicant's freedom of expression did not aim at restricting his right to criticise publicly the composition of the High Court, nor could his conviction be considered to have had the result of effectively limiting that right. It was quite possible to question the composition of the High Court without at the same time attacking the two lay judges personally. The High Court's finding that there was no proof of the accusations against the lay judges remained unchallenged; the applicant must accordingly be considered to have based his accusations on the mere fact that the lay judges were employed by the Local Government, the defendant in the tax case. Although that fact may have given rise to a difference of opinion as to whether the court was properly composed, it was not proof of actual bias. The State's legitimate interest in protecting the reputation of the two lay judges was not in conflict with the applicant's interest in being able to participate in free public debate on the question of the structural impartiality of the High Court. The Court did not accept the applicant's argument that, having regard to the political background to the tax case, his accusations against the lay judges should be seen as part of political debate, with its wider limits for legitimate criticism. The lay judges exercised judicial functions. The impugned statement was not a criticism of the reasoning in the judgment, but rather, a defamatory accusation against the lay judges personally, which was likely to lower them in public esteem and was put forward without any supporting evidence. In view of those considerations, the political context in which the tax case was fought could not be regarded as relevant for the question of proportionality. Accordingly there had been no breach of A 10.

Cited: Lingens v A (8.7.1986), Müller and Others v CH (24.5.1988).

Barfuss v Czech Republic 00/199

[Application lodged 5.2.1997; Court Judgment 31.7.2000]

On 19 May 1994 the applicant was arrested and charged with fraud and remanded in detention. His detention was extended on several occasions; his requests for release were rejected. On 7 November 1997 the Regional Court convicted him of fraud and sentenced him to nine years' imprisonment. On 26 March 1998 the High Court upheld that judgment. The applicant complained of the length of his detention on remand.

Court found unanimously V 5(3) and V 6(1).

Judges: Mr J-P Costa, President, Mr W Fuhrmann, Mr L Loucaides, Mr P Kûris, Mr K Jungwiert, Sir Nicolas Bratza, Mr K Traja.

The period of the applicant's detention to be taken into account under A 5(3) lasted from the moment when he was remanded in custody until the delivery of the Regional Court's judgment (19 May 1994 to 7 November 1997), a period of three years, five months, 19 days. There existed a reasonable suspicion that the applicant had committed an offence. On the grounds for continued detention the national courts relied on the complexity of the investigation, the seriousness of the

charges and the danger that the proceedings would be obstructed if the applicant were released due to the risk of his absconding. The reasoning of the national courts (that the applicant was charged with a serious offence, that he risked a lengthy prison sentence and that, if he absconded to Germany and obtained German citizenship, his extradition to the Czech Republic for trial would be impossible, he had been convicted in the past, had numerous contacts abroad and was greatly in debt in the Czech Republic) was sufficient and relevant to justify the deprivation of liberty. However, as regards the conduct of the proceedings by the national authorities, there were a number of delays of several months and, having regard to the circumstances of the case as a whole, special diligence was not displayed. Accordingly, there had been a violation of A 5(3) as a result of the length of the applicant's detention on remand.

The criminal proceedings against the applicant were brought on 19 May 1994, when he was charged with fraud, and ended on 26 March 1998 when the High Court delivered the final decision. Accordingly, the period to be taken into consideration lasted three years, ten months and seven days. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities. The case was of some complexity and the applicant had contributed to the length of the proceedings. However, there were delays on the part of the authorities for which the Government had provided no convincing explanation. In these circumstances, the period of three years, ten months and seven days, considering the case as a whole, failed to satisfy the reasonable time requirement and breached A 6(1).

Non-pecuniary damage (CZK 100,000), costs and expenses (CZK 100,000).

Cited: Cesky v CZ (6.6.2000), Contrada v I (24.8.1998), Eckle v D (15.7.1982), IA v F (23.9.1998), Ledonne v I (12.5.1999), Nikolova v BG (25.3.1999), Pélissier and Sassi v F (25.3.1999), Philis v GR (No 2) (27.6.1997), Portington v GR (23.9.1998), Punzelt v CZ (25.4.2000), W v CH (26.1.1993), Wemhoff v D (27.6.1968), Zana v TR (25.11.1997).

Bargagli v Italy 99/83

[Application lodged 12.9.1996; Commission report 15.9.1998; Court Judgment 9.11.1999]

Mr Massimo Bargagli complained, *inter alia*, of the length of civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1), NV P7A5.

Judges: Mr M Fischbach, President, Mr L Ferrari Bravo, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mr AB Baka, Mr E Levits.

The period to be taken into consideration began on 17 June 1991 and was still pending. It had lasted more than eight years, four months.

The complaint under P7A5, equality between spouses, was premature given that the case was still pending before the national courts.

Non-pecuniary damage (ITL 20,000,000), costs and expenses (ITL 5,000,000).

Cited: Bottazzi v I (28.7.1999).

Barthold v Germany (1985) 7 EHRR 383, (1991) 13 EHRR 431 85/3

[Application lodged 13.7.1979; Commission report 13.7.1983; Court Judgment 25.3.1985 (merits), 31.1.1986 (JS)]

Dr Barthold, a veterinary surgeon, was director and proprietor of a clinic and a member of the Hamburg Veterinary Surgeons' Council, whose task, among other things, was to ensure that its members complied with their professional obligations. On 24 August 1978, an article in a newspaper complained about the inadequacy of emergency veterinary services. The applicant, who provided a round-the-clock emergency service, had been interviewed for the article, which

contained his photograph and details of his practice. The veterinary surgeons' professional body accused the applicant of, *inter alia*, advertising in breach of the profession's ethics. An injunction was issued against the applicant which was upheld by the Regional Court and the Court of Appeal. A further application to the Constitutional Court was dismissed. The applicant complained that the prohibitory injunctions against him and the rule of professional conduct were contrary to A 10.

Comm found unanimously V 10.

Court found by majority (5–2) V 10, unanimously no jurisdiction to consider 11.

Judges (merits and A 50): Mr G Wiarda, President, Mr Thór Vilhjálmsson (d), Mrs D Bindschedler-Robert (d), Mr L-E Pettiti (c), Mr C Russo, Mr R Bernhardt, Mr J Gersing.

Freedom of expression included freedom to hold opinions and to impart information and ideas, A 10 applied. There had been an interference by public authority with the exercise of the applicant's freedom of expression, namely the interference resulting from the judgment. The legal basis of the interference was provided by domestic laws emanating from parliament and the Rules of Professional Conduct which could be regarded as a 'law' within the meaning of A 10(2). The competence of the Veterinary Surgeons' Council in the sphere of professional conduct derived from the independent rule-making power that the veterinary profession enjoyed by parliamentary delegation in the Federal Republic of Germany. In addition, it was a competence exercised by the Council under the control of the State. The injunctions complained of were 'prescribed by law'. The interference had a legitimate aim. The final injunction was issued in order to prevent the applicant from acquiring a commercial advantage over professional colleagues prepared to conduct themselves in compliance with the rule of professional conduct that required veterinary surgeons to refrain from advertising. Whilst the adjective 'necessary', in A 10(2), was not synonymous with 'indispensable', neither did it have the flexibility of such expressions as 'admissible', 'ordinary', 'useful', 'reasonable' or 'desirable'; rather, it implied a 'pressing social need'. The Contracting States enjoyed a power of appreciation in this respect, but that power of appreciation went hand in hand with a European supervision. The article concerned the absence in Hamburg of a night service operated by the entirety of veterinary surgeons. The newspaper indicated to readers the telephone number of the emergency service where they could obtain the name and address of practitioners available at the weekend. The article was thus pursuing a specific object, that is to say, informing the public about the situation obtaining in Hamburg, at a time when, according to the two practitioners interviewed, the enactment of new legislation on veterinary surgeons was under consideration. The problem discussed in the article was a genuine one. Freedom of expression held a prominent place in a democratic society. The necessity for restricting that freedom for one of the purposes listed in A 10(2) had to be convincingly established. When considered from that viewpoint, the interference complained of went further than the requirements of the legitimate aim pursued. The article had the effect of giving publicity to the applicant's own clinic, thereby providing a source of complaint for his fellow veterinary surgeons, but in the particular circumstances this effect was secondary having regard to the principal content of the article and to the nature of the issue being put to the public at large. The injunction did not achieve a fair balance between the two interests at stake. A strict criterion regarding anti-competition conduct in the area of advertising and publicity in the liberal professions was not consonant with freedom of expression. Its application risked discouraging members of the liberal professions from contributing to public debate on topics affecting the life of the community if there was the slightest likelihood of their utterances being treated as entailing, to some degree, an advertising effect. In addition it was liable to hamper the press in the performance of its task of purveyor of information and public watchdog. The injunctions were not proportionate to the legitimate aim pursued and, accordingly, were not 'necessary in a democratic society' 'for the protection of the rights of others', with the result that they violated A 10.

The complaint under A 11 had been declared inadmissible by the Commission and therefore fell outside the ambit of the case referred to the Court.

Partial friendly settlement therefore A 50 struck out of the list.

Cited: Airey v IRL (9.10.1979), Abdulaziz, Cabales and Balkandali v UK (28.5.1985), 'Belgian Linguistic' case (9.2.1967), Handyside v UK (7.12.1976), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Malone v UK (2.8.1984), Silver and Others v UK (25.3.1983), Sunday Times v UK (26.4.1979), Winterwerp v NL (24.10.1979), X v UK (5.11.1981).

Baskaya and Okçuoglu v Turkey 99/35

[Applications lodged 22.2.1994 and 9.6.1994; Commission report 13.1.1998; Court Judgment 8.7.1999]

The first applicant, Mr Fikret Baskaya, was a journalist whose book was published by the second applicant, Mr Mehemet Selim Okçuoglu, the owner of a publishing house. After publication in May 1991, the applicants were charged under the Prevention of Terrorism Act 1991 with disseminating propaganda against the indivisibility of the State. They were acquitted by a court which found the book to be an academic work containing no elements of propaganda. The Istanbul National Security Court subsequently found the applicants guilty and sentenced them to two years' imprisonment and a fine of TKL 50 m and to six months' imprisonment and a fine of TRL 50 m respectively. Those sentences were subsequently reduced to one year and eight months' imprisonment and five months' imprisonment respectively and a fine of TRL 41,666,666 each. The applicants' appeal to the Court of Cassation was dismissed. The first applicant was subsequently dismissed from his post as lecturer at the University of Ankara. On 3 October 1997 the National Security Court granted a request by the prosecution for an order of seizure in respect of the sixth edition of the impugned book.

Comm found unanimously V 10, by majority (31–1) V 6(1), (31–1) NV 7 regarding first applicant and unanimously V 7 regarding second applicant, unanimously not necessary to examine 6 and no separate issue 10+14.

Court found unanimously no jurisdiction to examine the first applicant's complaints under 3 and 14, NV 7 regarding first applicant, V 7 regarding second applicant, V 10 regarding both applicants, rejects Government's preliminary objection concerning the exhaustion of domestic remedies in relation to the applicants' complaint under 6(1), by majority (16–1) V 6(1) regarding independence and impartiality of the Istanbul National Security Court, unanimously not necessary to examine the applicants' further complaints under respectively 6(1 and 2 and 14 taken in conjunction with 10.

Judges: Mr Wildhaber, President (declaration), Mrs E Palm (jc), Mr A Pastor Ridruejo, Mr G Bonello, Mr J Makarczyk, Mr P Kûris, Mr J-P Costa, Mrs F Tulkens (jc), Mrs V Stráznická, Mr M Fischbach (jc), Mr V Butkevych, Mr J Casadevall (jc), Mrs HS Greve (jc), Mr AB Baka, Mr K Traja, Mr Gölcüklü (pd).

A 7 embodied, *inter alia,* the principle that only the law could define a crime and prescribe a penalty and the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy. An offence and the sanctions provided for it had to be clearly defined in the law. That requirement was satisfied where the individual could know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him criminally liable. The Court recognised that in the area under consideration it may be difficult to frame laws with absolute precision and that a certain degree of flexibility may be called for to enable the national courts to assess whether a publication should be considered separatist propaganda against the indivisibility of the State. However clearly drafted a legal provision may be, there was an inevitable element of judicial interpretation. The applicant's conviction did not breach the principle *nullum crimen sine lege* embodied in A 7. The imposition of a prison sentence on the second applicant was incompatible with the principle *nulla poena sine lege* embodied in A 7. As regards the first applicant there had been no violation of A 7 with respect to his conviction and sentence. As regards the second applicant, there had been no violation of A 7 on account of his conviction but there had been a violation of A 7 on account of his sentence to a term of imprisonment.

There had been an interference with the applicants' right to freedom of expression on account of their conviction and sentence. The first applicant's conviction and sentence were prescribed by law

but the conviction and sentence of the second applicant were not. Having regard to the sensitivity of the security situation in south-east Turkey and to the need for the authorities to be alert to acts capable of fuelling additional violence, the measures taken against the applicants could be said to have been in furtherance of certain of the aims of the protection of national security and territorial integrity and the prevention of disorder and crime. Freedom of expression constituted one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. It was applicable not only to 'information' or 'ideas' that were favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offended, shocked or disturbed. That freedom was subject to exceptions which had to be construed strictly. 'Necessary', in A 10(2), implied a 'pressing social need'. The Contracting States had a certain margin of appreciation in assessing whether such a need existed. There was little scope under A 10(2) for restrictions on political speech or on debate on questions of public interest. In addition, the limits of permissible criticism were wider with regard to the government than in relation to a private citizen, or even a politician. In a democratic system the actions or omissions of the government had to be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion. The dominant position which the government occupied made it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries. Nevertheless it remained open to the State authorities to adopt, in their capacity as guarantors of public order, measures, even of a criminal-law nature, intended to react appropriately and without excess to such remarks. Where such remarks incited violence against an individual or a public official or a sector of the population, the State enjoyed a wider margin of appreciation when examining the need for an interference with freedom of expression. The views expressed in the book could not be said to incite to violence. Although the authorities were concerned about words or deeds which had the potential to exacerbate the security situation in the region, they had not had sufficient regard to the freedom of academic expression and to the public's right to be informed of a different perspective on the situation in south-east Turkey, irrespective of how unpalatable that perspective may be for them. The reasons adduced for convicting and sentencing the applicants, although relevant, could not be considered sufficient to justify the interference with their right to freedom of expression. In addition the penalty had been severe, copies of the book had been seized by the authorities and the first applicant was dismissed from his post as a university professor. The conviction and sentencing of the applicants was disproportionate to the aims pursued and therefore not 'necessary in a democratic society'. Accordingly, there had been a violation of A 10.

Regarding A 6(1) the Government's preliminary objection of non-exhaustion was rejected, the Court noting that there was no obligation for an applicant to have recourse to remedies which were inadequate or ineffective. The Court recalled its previous case-law where it had noted that, although the status of military judges sitting as members of National Security Courts did provide certain guarantees of independence, some aspects of these judges' status made their independence and impartiality questionable: for example, the fact that they were servicemen who still belonged to the army, which in turn took its orders from the executive; or that they remained subject to military discipline; and the fact that decisions pertaining to their appointment were to a great extent taken by the administrative authorities and the army. There was no reason to reach a different conclusion from those other cases. The applicants' fears as to that court's lack of independence and impartiality could be regarded as objectively justified. The proceedings in the Court of Cassation were not able to dispel those fears since that court did not have full jurisdiction. For those reasons, the Court found that there had been a breach of A 6(1).

Further complaints raised by the applicants before the Commission were not mentioned before the Court, which in the circumstances did not consider it necessary to examine them of its own motion.

Pecuniary damage (FF 67,400 and FF 17,400 respectively), non-pecuniary damage (FF 40,000 and FF 45,000 respectively) and costs (FF 22,000 and FF 15,000 respectively).

Cited: Akdivar and Others v TR (16.9.1996), Aytekin v TR (23.9.1998), Cantoni v F (15.11.1996), Çiraklar v TR (28.10.1998), Fressoz and Roire v F (21.1.1999), Huvig and Kruslin v F (24.4.1990), SW and CR v UK (22.11.1995), Wingrove v UK (25.11.1996), Zana v TR (25.11.1997).

Battistelli v Italy 00/35

[Application lodged 25.10.1997; Court Judgment 25.1.2000]

Mrs Lucia Battistelli complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 11 March 1983 and ended on 31 October 1997. It had lasted more than 14 years, seven months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 44,000,000), costs and expenses (ITL 3,000,000).

Cited: Bottazzi v I (28.7.1999).

Beaumartin v France (1995) 19 EHRR 485 94/39

[Application lodged 19.7.1989; Commission report 29.6.1993; Court Judgment 24.11.1994]

Mr Pierre Beaumartin and his sisters held shares in a Moroccan company and a French company. Following nationalisation of land by the Moroccan Government, the applicants were awarded compensation in respect of the Moroccan company only under a Protocol between the Moroccan and French Governments making provision for the financial consequences of the nationalisation of French citizens' assets. On 26 September 1980 the applicants challenged the decision in the Paris Administrative Court. On 15 June 1981 the Vice-President of the Administrative Court held that the dispute fell outside that court's jurisdiction and forwarded the application and the file to the Conseil d'Etat. On 3 October 1986 the Conseil d'Etat deferred its decision on the application until the relevant Protocol had been interpreted by the Minister for Foreign Affairs. In a judgment of 27 January 1989 the Conseil d'Etat dismissed the application stating that the interpretation given by the Minister for Foreign Affairs was binding on the Conseil d'Etat.

Comm found by majority (10–5) V 6(1).

Court found unanimously V 6(1) regarding length of the proceedings and lack of independent 'tribunal' having full jurisdiction.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Mr A Spielmann, Mr AN Loizou, Mr F Bigi, Sir John Freeland, Mr G Mifsud Bonnici, Mr J Makarczyk.

The entitlement to compensation was a pecuniary right and consequently a civil one, notwithstanding the origin of the dispute and the fact that the administrative courts had jurisdiction. The expropriation measure and extent of reparation directly affected the applicants' property right, a civil right; the outcome of the dispute, which depended on the interpretation of the treaty, was directly decisive for a right of that nature. A 6 was applicable. The period to be taken into consideration began on 26 September 1980, when the application was filed in the Paris Administrative Court and ended on 27 January 1989 when the Conseil d'Etat delivered its judgment dismissing the appeal; eight years and four months. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law. The applicants had caused some of the delays, the case was a difficult one and the proceedings had stagnated at times, there were delays with the respondent ministry and the court dealing with the case took over five years to hold its first hearing. Nevertheless, a lapse of time of more than eight years could not be regarded as reasonable.

The Conseil d'Etat had referred to a representative of the executive for a solution to the legal problem before it. The applicants were not able to give their opinion on the referral procedure or

the wording of the question. The minister's involvement was decisive for the outcome of the case and was not open to challenge by the applicants. The Conseil d'Etat did not have full jurisdiction and nor was it independent of the executive and of the parties, it could not be designated a 'tribunal'. Accordingly there had been a violation of A 6(1).

Non-pecuniary damage (FF 100,000), costs and expenses (FF 80,000).

Cited: Belilos v CH (29.4.1988), Editions Périscope v F (26.3.1992), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Neves e Silva v P (27.4.1989), Ringeisen v A (22.6.1972).

Beer and Regan v Germany 99/5

[Application lodged 13.9.1995; Commission report 2.12.1997; Court Judgment 18.2.1999]

Mr Karlheinz Beer and Mr Philip Regan worked for foreign companies and were placed at the disposal of the European Space Agency (ESA) to perform services at the European Space Operations Centre in Darmstadt. When their contracts were not renewed they brought proceedings in the Labour Court against the ESA, arguing that, under the German Provision of Labour (Temporary Staff) Act, they had acquired the status of employees of the ESA. The ESA relied on its immunity from jurisdiction. The Labour Court declared the applicants' actions inadmissible. They claimed that they had been denied access to a court.

Comm found by majority (17–15) NV 6(1).

Court found unanimously NV 6(1).

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr L Ferrari Bravo, Mr L Caflisch, Mr J-P Costa, Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach, Mr B Zupancic, Mrs N Vajic, Mr J Hedigan, Mrs W Thomassen, Mrs M Tsatsa-Nikolovska, Mr T Pantiru, Mr E Levits, Mr K Traja, Mr E Klein, ad hoc judge.

A 6(1) embodied the 'right to a court', of which the right of access, that is, the right to institute proceedings before courts in civil matters, constituted only one aspect. The applicants' action had been declared inadmissible. The Labour Court had concentrated on the question of whether or not ESA could validly rely on its immunity from jurisdiction. According to its constituent instrument, ESA enjoyed immunity from jurisdiction and execution. The Labour Court's decision to give effect to the immunity from jurisdiction of ESA could not be regarded as arbitrary. The right of access to the courts secured by A 6(1) was not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. Contracting States enjoyed a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rested with the Court. The attribution of privileges and immunities to international organisations was an essential means of ensuring the proper functioning of such organisations free from unilateral interference by individual governments. The rule of immunity from jurisdiction, which the German courts applied to ESA in the present case, had a legitimate objective. Where States established international organisations in order to pursue or strengthen their co-operation in certain fields of activities, and where they attributed to those organisations certain competences and accorded them immunities, there might be implications as to the protection of fundamental rights. It would be incompatible with the purpose and object of the Convention if the Contracting States were thereby absolved from their responsibility under the Convention in relation to the field of activity covered by such attribution. The Convention was intended to guarantee not theoretical or illusory rights, but rights that were practical and effective. A material factor in determining whether granting ESA immunity from German jurisdiction was permissible under the Convention was whether the applicants had available to them reasonable alternative means to protect effectively their rights under the Convention. As the applicants argued an employment relationship with ESA, they could and should have had recourse to the ESA Appeals Board which was independent of the Agency and had jurisdiction to hear disputes relating to any explicit or implicit decision taken by the Agency and arising between it and a staff member. It was open to temporary workers to seek redress from the firms that employed them and hired them out. The test of proportionality could not be applied in such a way as to compel an

international organisation to submit itself to national litigation in relation to employment conditions prescribed under national labour law. Such a reading of A 6(1) would thwart the proper functioning of international organisations and run counter to the current trend towards extending and strengthening international co-operation. In view of all those circumstances, in giving effect to the immunity from jurisdiction of ESA, the German courts did not exceed their margin of appreciation. Taking into account in particular the alternative means of legal process available to the applicants, it could not be said that the limitation on their access to the German courts with regard to ESA impaired the essence of their 'right to a court' or was disproportionate for the purposes of A 6. Accordingly, there had been no violation of A 6.

Cited: Airey v IRL (9.10.1979), Aït-Mouhoub v F (28.10.1998), Fayed v UK (21.9.1994), Golder v UK (21.2.1975), Osman v UK (28.10.1998), Pérez de Rada Cavanilles v E (28.10.1998), Waite and Kennedy v D (18.2.1999).

Beïs v Greece (1998) 25 EHRR 335 97/18

[Application lodged 18.3.1993; Commission report 5.12.1995; Court Judgment 20.3.1997]

Konstantinas Beïs was a professor of the law of civil procedure in the University of Athens. In March 1992 the head of the Legal Service of the Greek Chamber of Technology (TEE) instructed the applicant to draw up two expert reports for a fee of GRD 7,500,000. On 22 April 1992 the applicant submitted his reports but the agreed fees were not paid. On 5 October 1992 the applicant made a successful *ex parte* application to a single judge of the Athens Court of First Instance for an order to pay. Although the order was served on the TEE, they made no payment. The TEE issued payment warrants, but the auditor in charge of the file at the Court of Audit refused to authorise payment. He complained that the fact that there was no means of compelling TEE to pay infringed A6 and P1A1.

Comm found unanimously V 6(1), V P1A1 and no separate issue arose under 13.

Court found by majority (8–1) domestic remedies not exhausted.

Judges: Mr R Ryssdal (d), President, Mr F Gölcüklü, Mr L-E Pettiti, Mr J De Meyer, Mr N Valticos, Mr JM Morenilla, Mr L Wildhaber, Mr D Gotchev, Mr P Jambrek.

The applicant was the author of a book on civil procedure and a professor of the law and was well placed to assess whether an application for an order to pay was sufficient and appropriate to ensure that he received his remuneration. He had admitted that he could have brought a civil action in the ordinary courts. In the circumstances the applicant had not made use of an adequate and effective remedy such as would have afforded the Greek authorities the opportunity of putting right the alleged violations. Accordingly the objection of failure to exhaust domestic remedies was well-founded; it was unnecessary to consider the other matters.

Cited: Akdivar and Others v TR (16.9.1996), Melin v F (22.6.1993).

Beldjoudi v France (1992) 14 EHRR 801 92/42

[Application lodged 28.3.1986; Commission report 6.9.1990; Court Judgment 26.3.1992]

Mr Mohand Beldjoudi was an Algerian citizen who had lost his French citizenship as his parents had failed to comply with the relevant legislation. He lived and worked in France and married a French citizen. He was convicted of numerous criminal offences and served periods of imprisonment. A deportation order was made against him on the grounds that his presence in France was a threat to public order. He appealed unsuccessfully. He complained that the deportation order infringed his and his family's right to respect for private and family life, that the probable refusal of the Algerian authorities to issue him with a passport to leave Algeria would amount to inhuman and degrading treatment, discrimination on the grounds of his religious beliefs or ethnic origin, and interference with his A 9 and A 12 rights.

Comm found by majority (12–5) V 8, unanimously NV 3, unanimously NV 14+8 and NV 9, 12.

Court held by majority (7–2) that deportation would result in V 8, by majority (8–1) that not necessary to consider 14+8, 3, 9 and 12.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti (d), Mr C Russo, Mr A Spielmann, Mr J De Meyer (s), Mr N Valticos (d), Mr SK Martens (c), Mr R Pekkanen.

The Court noted that enforcement of the deportation order would constitute interference with the applicant's right to respect for family life. The deportation order was based on a provision relating to entry and residence of aliens. The legitimate aim was prevention of disorder and crime. It was for States to maintain public order and control entry, residence and expulsion of aliens, but the decisions of States had to be necessary in a democratic society, that is, justified by a pressing social need and proportionate to the legitimate aim pursued. The applicant's bad criminal record had to be weighed against other factors. He and his wife had been married for over 20 years but had no children; his periods in prison did not terminate his family life. He had made attempts over the years to regain his French nationality and had been declared by the military authorities to be fit for national service. His close relatives were all resident in France. He had lived in France all his life, over 40 years, and did not seem to have any links with Algeria. There would be great difficulty for his wife to uproot to Algeria, those may include legal obstacles as well as practical difficulties. The deportation could imperil the unity or existence of the marriage. If the decision to deport were effected it would not be proportionate to the legitimate aim pursued therefore and would violate A 8. Having reached that conclusion it was not necessary to examine the other complaints.

Present judgment constituted sufficient just satisfaction for non-pecuniary damage. Costs and expenses (FF 60,000).

Cited: Abdulaziz, Cabales and Balkandali v UK (28.5.1995), Berrehab v NL (21.6.1988), Moustaquim v B (18.2.1991), Soering v UK (7.7.1989).

In the case 'relating to certain aspects of the laws on the use of languages in education in Belgium' v Belgium (1979–80) 1 EHRR 241 68/1

[Judgment 9.2.1967 (preliminary issues), 23.7.1968 (merits)]

The applicants, who were Belgian parents, complained on their own behalf and on behalf of their children, of whom there were more than 800, that Belgian linguistic legislation relating to education infringed their rights under the Convention. They complained that the law in the Dutch speaking regions in which they lived did not provide any or any adequate French-language education.

Comm found by majority and unanimously V and NV of P1A1, P1A2+14 regarding the various Belgian law and by majority (10–2) NV 8, 8+14.

Court rejected unanimously the Government's preliminary objections, found by majority (8–7) V 14+P1A2 with regard to the Belgian legislation, unanimously NV 8, 14, P1A2.

Judges (preliminary issues): Mr R Cassin, President, Mr A Holmbäck, Mr A Verdross, Mr G Maridakis, Mr E Rodenbourg, Mr A Ross, Mr T Wold, Mr G Balladore Pallieri, Mr H Mosler, Mr M Zekia, Mr A Favre, Sir Humphrey Waldock, Mr S Bilge, Mr G Wiarda, Mr A Mast, ad hoc judge.

Judges (merits): Mr R Cassin, President, Mr A Holmbäck (d), Mr A Verdross, Mr G Maridakis (c/d), Mr E Rodenbourg (d), Mr A Ross (d), Mr T Wold (c/d), Mr G Balladore Pallieri, Mr H Mosler, Mr M Zekia, Mr A Favre, Mr J Cremona, Sir Humphrey Waldock, Mr G Wiarda (d), Mr A Mast (d), ad hoc judge.

The Court rejected unanimously the Government's preliminary submissions, that right to education in one's own language was not included in the Convention and the Protocol, that the applicants did not belong to a national minority within A 14.

In spite of its negative formulation, the first sentence of P1A2 used the term 'right' and spoke of a 'right to education'. Likewise the preamble to the Protocol specified that the object of the Protocol lay in the collective enforcement of 'rights and freedoms'. There was therefore no doubt that P1A2 enshrined a right. It could not be concluded that the State had no positive obligation to ensure respect for such a right as was protected by P1A2. As a 'right' existed, it was secured, by virtue of A1 of the Convention, to everyone within the jurisdiction of a Contracting State. P1A2 did not

specify the language in which education must be conducted in order that the right to education should be respected. However, the right to education would be meaningless if it did not imply in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case might be. The right to education guaranteed by the first sentence of P1A2 called for regulation by the State. The second sentence of P1A2 did not guarantee a right to education. There was no provision in the area of education that parents' linguistic preferences should be respected, only their religious and philosophical convictions. Neither did A 8 guarantee either a right to education or a personal right of parents relating to the education of their children: its object was essentially that of protecting the individual against arbitrary interference by the public authorities in his private family life. A 14 did not forbid every difference in treatment in the exercise of the rights and freedoms recognised. The principle of equality of treatment was violated if the distinction had no objective and reasonable justification. The existence of such a justification had to be assessed in relation to the aim and effects of the measure under consideration, regard being had to the principles which normally prevailed in democratic societies. A difference of treatment in the exercise of a right laid down in the Convention had not only to pursue a legitimate aim, A 14 required a reasonable relationship of proportionality between the means employed and the aim sought to be realised. A 14 in conjunction with P1A2 did not have the effect of guaranteeing to a child or to his parent the right to obtain instruction in a language of his choice. The object was more limited: it was to ensure that the right to education should be secured by each Contracting Party to everyone within its jurisdiction without discrimination on the ground, for instance, of language. To interpret the two provisions as conferring on everyone within the jurisdiction of a State a right to obtain education in the language of his own choice would lead to absurd results, for it would be open to anyone to claim any language of instruction in any of the territories of the Contracting Parties.

After considering the particular questions referred to it the Court concluded that s 7(3) of the Belgian Act of 2 August 1963 did not comply with the requirements of A 14 read in conjunction with the first sentence of P1A2 in so far as it prevented certain children, solely on the basis of the residence of their parents, from having access to the French-language schools existing in the six communes on the periphery of Brussels invested with a special status. The Court also concluded that with regard to the other points at issue there was no breach of any of the Articles of the Convention (8, 14) and the Protocol (P1A2) invoked by the applicants.

Belilos v Switzerland (1988) 10 EHRR 466 88/4

[Application lodged 24.3.1983; Commission report 7.5.1986; Court Judgment 29.4.1988]

Mrs Marlène Belilos, a student, was reported by the Lausanne police for taking part in a demonstration for which permission had not been sought in advance. The municipal Police Board fined her 200 Swiss francs (CHF) in her absence. Following application the Board allowed the applicant a further hearing and also heard evidence from her former husband as a witness. She denied having taken part in the demonstration and her ex-husband provided evidence of alibi. The Board was satisfied that the applicant had participated in the demonstration but concluded that she had not played an active role and reduced the fine to 120 CHF and costs. Her appeals to the Criminal Cassation Division of the Vaud Cantonal Court and the Federal Court were dismissed. She complained that she had not been tried by an independent and impartial tribunal with full jurisdiction to determine questions both of law and of fact.

Comm found unanimously V 6(1).

Court unanimously rejected Government's preliminary objection, found V 6(1).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha (c), Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer (c) , Mr N Valticos.

The Court rejected the Government's preliminary objection noting that the declaration on the reservations on which they relied did not satisfy two of the requirements of A 64, and therefore

had to be held to be invalid. Switzerland regarded itself as bound by the Convention irrespective of the validity of the declaration. Moreover, the Swiss Government recognised the Court's competence to determine the latter issue, which they argued before it. The Government's preliminary objection therefore had to be rejected.

The offence of which the applicant was accused was a 'criminal' one. A 'tribunal' was characterised in the substantive sense of the term by its judicial function, that is to say determining matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner. It also had to satisfy a series of further requirements – independence, in particular of the executive; impartiality; duration of its members' terms of office; guarantees afforded by its procedure – several of which appeared in the text of A 6(1). The Police Board was a 'municipal authority', the Federal Court in its judgment mentioned 'administrative authorities'. Even if the terms were not decisive, they provided an important indication as to the nature of the body in question. The Police Board had been given a judicial function, its single member was appointed by the municipality, but that was not sufficient to cast doubt on the independence and impartiality of the person concerned, especially as in many Contracting States it was the executive which appointed judges. The appointed member, a lawyer from police headquarters, was a municipal civil servant but sat in a personal capacity and was not subject to orders in the exercise of his powers, he took a different oath from the one taken by policemen, although the requirement of independence did not appear in the text of it; in principle he could not be dismissed during his term of office, which lasted four years. Moreover, his personal impartiality had not been called into question in the instant case. Nonetheless, a number of considerations relating to the functions exercised and to internal organisation were relevant. In Lausanne the member of the Police Board was a senior civil servant whom citizens would tend to see as a member of the police force subordinate to his superiors and loyal to his colleagues. A situation of that kind could undermine the confidence which must be inspired by the courts in a democratic society. Therefore, the applicant could legitimately have doubts as to the independence and organisational impartiality of the Police Board, which accordingly did not satisfy the requirements of A 6(1). The Court recalled its previous case-law in which it had stated that conferring the prosecution and punishment of minor offences on administrative authorities was not inconsistent with the Convention, provided that the person concerned was able to take any decision made against him before a tribunal that offered the guarantees of A 6. In this case neither the jurisdiction of the Criminal Cassation Division of the Vaud Cantonal Court nor that of the Federal Court was sufficient for the purposes of A 6. There had therefore been a violation of A 6(1).

Costs and expenses (CHF 11,750 less FF 8,822).

Cited: Albert and Le Compte v B (10.2.1983), Colozza v I (12.2.1985), De Cubber v B (26.10.1984), Ettl and Others v A (23.4.1987), F v CH (18.12.1987), H v B (30.11.1987), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Lutz v D (25.8.1987), Marckx v B (13.6.1979, Öztürk v D (21.2.1984).

Bellet v France 95/53

[Application lodged 24.3.1994; Commission report 19.1.1995; Court Judgment 4.12.1995]

Mr Daniel Bellet was a haemophiliac requiring frequent blood transfusions. On 26 October 1983 he was diagnosed as having been infected with HIV. On 19 May 1990 he applied to the Paris Administrative Court for damages from the State on account of his infection. The court dismissed his action on the ground that he had been shown to be HIV-positive outside the period of the State's liability for negligent failure to act, which began on 12 March 1985, when the ministerial authorities were fully apprised that the blood products prepared from groups of donors in Paris were dangerous. He appealed to the civil courts and to the Compensation Fund. The Court of Appeal held his subsequent appeal inadmissible. He complained that he had not had access to a court, for the purposes of asserting his right to compensation.

Comm found by majority (24–2) V 6(1).

Court found by majority (8–1) V 6(1).

Judges: Mr R Bernhardt, President, Mr L-E Pettiti (d), Mr B Walsh (c), Mr C Russo, Mr J De Meyer, Mr R Pekkanen (c), Mr J Makarczyk, Mr D Gotchev, Mr P Jambrek (c).

The Court referred to its previous case-law on the principle of the right of access to a court. The right of access to the courts was not absolute but may be subject to limitations as the right called for regulation by the State. States enjoyed a certain margin of appreciation in that regulation. The limitation would not be compatible with A 6(1) if it did not pursue a legitimate aim and if there was not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.' It was not for the Court to assess France's compensation system. While the Court was not empowered to substitute its own assessment for that of the national authorities as regards the application of domestic law, it was its duty to rule at last instance on compliance with the requirements of the Convention. For the right of access to be effective, an individual had to have a clear, practical opportunity to challenge an act that was an interference with his rights. In the present case the applicant could reasonably believe that he was entitled to begin or continue actions in parallel with his application to the Compensation Fund, even after accepting the Fund's offer. Having regard to the legislation, the system was not sufficiently clear or sufficiently attended by safeguards to prevent a misunderstanding as to the procedures for making use of the available remedies and the restrictions stemming from the simultaneous use of them. The applicant did not have a practical, effective right of access to the courts in the proceedings before the Paris Court of Appeal. There had accordingly been a breach of A 6(1).

Damages (FF 1,000,000), costs and expenses (FF 50,000).

Cited: Ashingdane v UK (28.5.1985), De Geouffre de la Pradelle v FR (16.12.1992), Fayed v UK (21.9.1994), Golder v UK (21.2.1975), Lithgow and Others v UK (8.7.1986), Philis v GR (27.8.1991).

Belvedere Alberghiera Srl v Italy 00/155

[Application lodged 2.5.1996; Court Judgment 30.5.2000]

The applicant company was the owner of the Belvedere Hotel at Monte Argentario and also owned 1,375 square metres of land that gave patrons of the hotel direct access to the sea. On 19 May 1987 the Monte Argentario Municipality passed a resolution approving a road-building scheme which would pass over the applicant company's land. On 25 May 1987 the Mayor of Monte Argentario issued an order, under an expedited procedure, for the possession of the applicant company's land. The applicant company appealed to the Tuscany Regional Administrative Court which on 2 December 1987 allowed the appeal. The Municipality took no action to reinstate and return the land. The applicant company's enforcement proceedings were dismissed on 26 June 1991 by the Administrative Court on the ground that the judgment of 2 December 1987 could not be enforced as there had been a constructive expropriation. By the constructive-expropriation rule, where the authorities took possession of land under an expedited procedure and performed building work on it in the public interest, the land could not be returned to the applicant; the land became the property of the Municipality following completion of the road-building works, and the fact that the authorities had completed the works meant that title to the land had been transferred. Consequently, restitution was impossible but the applicant company was entitled to claim damages in the civil courts. The applicant company's appeal to the Consiglio di Stato was dismissed on 7 February 1996. The applicant company complained that it had become impossible for it to recover its land as a result of the constructive-expropriation rule, which had been applied despite the Tuscany Administrative Court's decision to quash the building scheme and that the possession order was unlawful and not in the public interest.

Court found unanimously V P1A1.

Judges: Mr CL Rozakis (c), President, Mr Ab Baka (jc), Mr B Conforti, Mr G Bonello (c), Mrs V Strásnická, Mr P Lorenzen (c), Mrs M Tsatsa-Nikolovska.

There had been a deprivation of possessions. By applying the constructive-expropriation rule, the Consiglio di Stato deprived the applicant company of the possibility of obtaining restitution of its land. The effect of the judgment was to deprive the applicant company of its possessions within

the meaning of the second sentence of the first paragraph of P1A1. In order to be compatible with the general rule set forth in the first sentence of the first paragraph of A 1, such an interference had to be in the public interest, subject to the conditions provided by law and by the general principles of international law and had to strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. Furthermore, the issue of whether a fair balance has been struck became relevant only once it has been established that the interference in question satisfied the requirement of lawfulness and was not arbitrary. The first and most important requirement of P1A1 was that any interference by a public authority with the peaceful enjoyment of possessions should be lawful. The requirement of lawfulness meant that rules of domestic law had to be sufficiently accessible, precise and foreseeable. The case-law on constructive expropriations had evolved in a way that had led to the rule being applied inconsistently, a factor which could result in unforeseeable or arbitrary outcomes and deprive litigants of effective protection of their rights and was, as a consequence, inconsistent with the requirement of lawfulness. Under the rule established by the Court of Cassation every constructive expropriation followed the unlawful taking of possession of the land. The Court had reservations as to the compatibility with the requirement of lawfulness of a mechanism which, generally, enabled the authorities to benefit from an unlawful situation in which the landowner was presented with a fait accompli. In the present case, on 2 December 1987 the Tuscany Administrative Court quashed with retrospective effect the resolution passed by the authorities as being unlawful and not in the public interest. However, that finding did not result in restitution of the land, since the Consiglio di Stato held that the transfer of property to the authorities had become irreversible. The interference in question was not compatible with P1A1. It was therefore unnecessary to examine whether a fair balance was struck between the requirements of the general interest of the community and the need to protect individual rights. Consequently, there had been a violation of P1A1.

A 41, costs and expenses reserved.

Cited: Beyeler v I (5.1.2000), Brumãrescu v RO (28.10.1999), Hentrich v F (22.9.1994), Holy Monasteries v GR (9.12.1994), Iatridis v GR (25.3.1999), James and Others v UK (21.2.1986), Lithgow and Others v UK (8.7.1986), Papamichalopoulos v GR (31.10.1995), Sporrong and Lönnroth v S (23.9.1982).

Belzuik v Poland 98/17

[Application lodged 31.5.1993; Commission report 26.2.1997; Court Judgment 25.3.1998]

Mr Antoni Belzuik was arrested on 31 May 1992 on suspicion of having attempted to steal a car and was remanded in custody. Following a trial in Tarnów District Court at which the applicant was present, he was convicted on 25 November 1992 and sentenced to three years' imprisonment. The applicant appealed. On 21 April 1993 the Regional Court refused the applicant's request to be brought before it, considering that his presence was unnecessary, since he had already given a detailed account of the events at his trial before the District Court. In addition, in his written statement of appeal he had set out at length his complaints in respect of the contested conviction. The Regional Court further considered that the applicant had sufficient time to submit further observations in writing, if he wished to do so. On 10 May 1993, after a hearing at which the public prosecutor, but not the applicant, was present, the Regional Court dismissed the applicant's appeal. The applicant complained of lack of fair trial.

Comm found unanimously V 6(1)+(3)(c).

Court unanimously dismissed the Government's preliminary objections, found V 6(1)+(3)(c).

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr C Russo, Mr JM Morenilla, Mr J Makarczyk, Mr P Jambrek, Mr U Lôhmus, Mr J Casadevall.

Poland had accepted the Court's jurisdiction from 1 May 1993. The central fact giving rise to the applicant's complaint in the case was not the decision of the Tarnów Regional Court of 21 April 1993, but the appeal hearing of 10 May 1993 at which the public prosecutor and not the applicant

was present. Accordingly, this preliminary objection must be dismissed. The rule of exhaustion of domestic remedies in A 26 obliged applicants to use first the remedies provided by the national legal system. The applicant's complaint related to the refusal of the Regional Court to grant his request to be present at his appeal hearing and to defend himself in person. In those circumstances he had exhausted available and sufficient remedies. The Government's preliminary objection of non-exhaustion of domestic remedies was therefore dismissed.

The Court recalled its previous case-law. The protection afforded to criminal proceedings by A 6 did not cease with the decision at first instance. A State was required to ensure the guarantees were also enjoyed before courts of appeal. A person charged with a criminal offence should be entitled to be present at the first-instance trial hearing. However, the personal attendance of the defendant did not necessarily take on the same significance for an appeal hearing. Even where an appellate court had full jurisdiction to review the case on both fact and law, A 6 did not always entail rights to a public hearing and to be present in person. Regard had to be had, *inter alia*, to the special features of the proceedings involved and the manner in which the defence's interests are presented and protected before the appellate court, particularly in the light of the issues to be decided by it and their importance for the appellant. The principle of equality of arms was only one feature of the wider concept of a fair trial, which also included the fundamental right that criminal proceedings should be adversarial, meaning that both prosecution and defence had to be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. The Tarnów Regional Court was empowered to consider questions of both fact and law. The applicant, who was not allowed to be present at the hearing on his appeal, intended to contest his conviction and to adduce evidence in support thereof. The issues to be determined by the Tarnów Regional Court when adjudicating on the appeal could not properly have been examined without a direct assessment of the evidence given by the applicant in person. The applicant's interests were not represented at the appeal, it was immaterial that he had chosen not to be legally represented. Under A 6(1) and 3(c) he had the right to be present at his appeal and to defend himself in person. The public prosecutor was present at the appellate hearing as a traditional prosecutor. Respect for the principle of equality of arms and the right to adversarial proceedings required that the applicant be allowed to attend the hearing and to contest the submissions of the public prosecutor. Nor could the resulting inequality have been redressed by the applicant presenting written submissions to the Regional Court, having regard both to the presence of the public prosecutor in the courtroom and to the forcefulness of his oral statements. Having regard to the prominent place held in a democratic society by the right to a fair trial, there had been a violation of A 6(1) taken in conjunction with A 6(3)(c).

Finding of violation constituted sufficient just satisfaction for any non-pecuniary damage.

Cited: Akdivar and Others v TR (16.9.1996), Botten v N (19.2.1996), Brandstetter v A (28.8.1991), Bulut v A (22.2.1996), De Cubber v B (26.10.1984), Ekbatani v S (26.5.1988), Helmers v S (29.10.1991), K-F v D (27.11.1997), Kremzow v A (21.9.1993), Lobo Machado v P (20.2.1996), Monnell and Morris v UK (2.3.1987), Van Orshoven v B (25.6.1997), Zana v TR (25.11.1997), Zimmermann and Steiner v CH (13.7.1983).

Ben Yaacoub v Belgium (1991) 13 EHRR 418 87/24

[Application lodged 30.6.1982; Commission report 7.5.1985; Court Judgment 27.11.1987]

The applicant, a Tunisian living in Brussels, was charged with several offences of aggravated theft. He was remanded in custody, committed for trial, convicted and sentenced to three years' imprisonment for robbery with violence or threats. He appealed, complaining that the same judge had taken the decisions regarding his detention on remand and directed that he be committed for trial, and then presided over the court which convicted him at first instance. His appeal was dismissed by the Court of Appeal, as was a further appeal to the Court of Cassation. The applicant was expelled from Belgium and now lives in Geneva. He complained that his case was not heard by an impartial tribunal.

Comm found by majority (6–4) V 6(1).

Court noted the friendly settlement and struck the case from the list.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr J Pinheiro Farinha, Sir Vincent Evans, Mr B Walsh, Mr R Bernhardt, Mr J De Meyer.

The Court took formal note of the friendly settlement reached by the Government and the applicant, a settlement which the latter regarded as being in accordance with his interests. The Belgian Court of Cassation had recently reversed its case-law in relation to its decision in the applicant's case. The case was therefore struck from the list.

FS (lifting of expulsion order, BEF 100,000 damages, costs and fees) therefore case struck out of the list.

Cited: De Cubber v B (26.10.1984), Piersack v B (1.10.1982).

Bendenoun v France (1994) 18 EHRR 54 94/7

[Application lodged 9.9.1986; Commission report 10.12.1992; Court Judgment 24.2.1994]

Mr Michel Bendenoun, the applicant, formed a public limited company under French law for the purpose of dealing in old coins, objets d'art and precious stones. As a result of his activities, three sets of proceedings, customs, tax and criminal proceedings, were brought against him. He complained that he had not had a fair trial in the criminal and administrative courts, that he had not had access to the whole of the customs file, whereas the Revenue had sent to the administrative courts certain evidence against him. He also alleged that there had been a breach of his right to the peaceful enjoyment of his possessions in that, as a result of the various national decisions, he had had to pay substantial sums to the French State.

Comm found by majority (10–2) V 6, unanimously that it was unnecessary to consider the case under P1A1.

Court unanimously found NV 6, unnecessary to examine P1A1.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr L-E Pettiti, Mr R Macdonald, Mr SK Martens, Mr I Foighel, Mr AN Loizou, Mr MA Lopes Rocha, Mr L Wildhaber.

In considering the applicability of A 6 the Court noted that the offences with which the applicant was charged came within the General Tax Code, that tax surcharges were intended not as pecuniary compensation for damage but essentially as a punishment to deter re-offending, that they are imposed under a general rule, whose purpose was both deterrent and punitive and that the surcharges were very substantial and carried committal to prison by the criminal courts in the event of failure to pay. Those factors had a predominantly criminal connotation. None of them was decisive on its own, but taken together and cumulatively they made the 'charge' in issue a 'criminal' one within the meaning of A 6(1) which was therefore applicable.

The documents whose production the applicant complained he had sought were not among those relied on by the tax authorities. The complaint therefore related to documents that were not in the file produced to the administrative courts and were not ones on which the applicant's adversary relied. Although in some circumstances the concept of a fair trial might entail an obligation on the Revenue to agree to supply the litigant with certain documents from the file on him or even with the file in its entirety, it was necessary, at the very least, that the person concerned should have given, even if only briefly, specific reasons for his request. The applicant sought production in full of a fairly bulky file. The evidence before the Court did not show that he ever put forward any precise argument to support his contention that, notwithstanding his admission of the customs offences and his admissions during the criminal investigation, he could not counter the charge of tax evasion without having a copy of that file. That omission was all the more detrimental to his case as he was aware of the existence and content of most of the documents and he and his counsel had had access to the complete file, at any rate during the criminal investigation. From the information available to the Court it did not appear that the failure to produce documents infringed the rights of the defence or the principle of equality of arms. There had therefore not been a breach of A 6(1).

Before the Court the applicant made no further reference to P1A1 and accordingly the Court did not consider that it had to deal with the issue of its own motion.

Cited: Öztürk v D (21.2.1984), Schuler-Zgraggen v CH (24.6.1993).

Benham v United Kingdom (1996) 22 EHRR 293 96/21

[Application lodged 20.9.1991; Commission report 29.11.1994; Court Judgment 10.6.1996]

On 1 April 1990 Mr Stephen Andrew Benham was liable to pay a community charge of GBP 325. Since he did not pay, enforcement proceedings commenced against him. At a hearing on 25 March 1991 magistrates concluded that his failure to pay the community charge was due to his culpable neglect and committed him to prison for 30 days. He was unrepresented at the magistrates' hearing. He appealed to the Divisional Court which held that the magistrates had been mistaken in their decision. The applicant was not able to apply for compensation in respect of the time he spent in prison, because he was unable to show bad faith on the part of the magistrates. He complained that his detention between 25 March 1991 and 5 April 1991 was unlawful and violated A 5(1), that domestic legislation deprived him of an enforceable right to compensation in respect of it, and that the fact that full legal aid was not available to him for the committal hearing before the magistrates constituted a violation of A 6.

Comm found by majority (12–6) V 5(1), (17–1) V 5(5), (15–3) V 6(3)(c).

Court found by majority (17–4) NV 5(1) and 5(5) not applicable, unanimously V 6(3)(c).

Judges: Mr R Ryssdal, President, Mr R Bernhardt (pd), Mr Thór Vilhjálmsson (pd), Mr F Gölcüklü, Mr F Matscher, Mr B Walsh, Mr R Macdonald, Mr J De Meyer (pd), Mrs E Palm, Mr I Foighel (pd), Mr R Pekkanen, Mr AN Loizou, Sir John Freeland, Mr AB Baka, Mr MA Lopes Rocha, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr D Gotchev, Mr B Repik, Mr P Jambrek, Mr K Jungwiert.

The case fell to be examined under A 5(1)(b). A period of detention would in principle be lawful if it was carried out pursuant to a court order. A subsequent finding that the court erred under domestic law in making the order would not necessarily retrospectively affect the validity of the intervening period of detention. The evidence before the Court had not established that the order for detention was invalid and thus that the detention which resulted from it was unlawful under national law. The mere fact that the order was set aside on appeal did not in itself affect the lawfulness of the detention. Nor did the Court find that the detention was arbitrary. It had not been suggested that the magistrates who ordered the applicant's detention acted in bad faith, nor that they neglected to attempt to apply the relevant legislation correctly. Accordingly, no violation of A 5(1). In view of the finding that there was no violation of A 5(1), A 5(5) was not applicable.

The criteria for deciding whether a person was 'charged with a criminal offence' were the classification of the proceedings under national law, the nature of the proceedings and the nature and degree of severity of the penalty. The domestic authority indicated that, under English law, the proceedings in question were regarded as civil rather than criminal in nature. However, that factor was of relative weight and served only as a starting point. The nature of the proceedings carried more weight. The law concerning liability to pay the community charge and the procedure for non-payment was of general application to all citizens, the proceedings in question were brought by a public authority under statutory powers of enforcement. In addition, the proceedings had some punitive elements, the magistrates' power of committal to prison. The applicant had faced a relatively severe maximum penalty of three months' imprisonment and was detained for 30 days. Having regard to those factors, the applicant was 'charged with a criminal offence' for the purposes of A 6(1) and 6(3). The applicant lacked sufficient means to pay for legal assistance himself. In considering whether the interests of justice required that he be provided with free legal representation at the hearing regard had to be had to the severity of the penalty at stake and the complexity of the case. The penalty was severe and the law was complex, the interests of justice demanded therefore that in order to receive a fair hearing, the applicant ought to have benefited from free legal representation during the proceedings before the magistrates. There had therefore been a violation of A 6(1) and 3(c) taken together.

Finding of violation constituted adequate satisfaction for non-pecuniary damage. Costs and expenses (GBP 10,000 less FF 25,510).

Cited: Bendenoun v F (24.2.1994), Bouamar v B (29.2.1988), Bozano v F (18.12.1986), Quaranta v CH (24.5.1991), Quinn v F (22.3.1995), Ravnsborg v S (23.3.1994), Wassink v NL (27.9.1990), Weber v CH (22.5.1990).

Benkessiouer v France 98/68

[Application lodged 6.9.1995; Commission report 28.5.1997; Court Judgment 24.8.1998]

Mr Ahmed Benkessiouer, a civil servant working for the Post Office, complained about the length of proceedings for judicial review of the Post Office's decisions to refuse him extended sick-leave, to suspend payment of his salary for failure to perform his duties and to put him on notice to return to work or face dismissal.

Comm found unanimously V 6(1).

Court found by majority (7–2) V 6(1).

Judges: Mr Gölcüklü (jd), President, Mr L-E Pettiti (jd), Mr A Spielmann, Mr N Valticos, Mr R Pekkanen (c), Mr J Makarczyk, Mr K Jungwiert, Mr E Levits, Mr V Butkevych.

The Court drew attention to its settled case-law, according to which disputes relating to the recruitment, careers and termination of service of civil servants were as a general rule outside the scope of A 6(1). That provision was applicable where the claim related to a 'purely economic' right such as payment of salary or pension or an 'essentially economic' one. The applicants' claims in the Paris Administrative Court were intended mainly to secure the quashing of the decisions to refuse him extended sick-leave and suspend payment of his salary; a grant of such leave would have enabled the applicant to enjoy salary benefits. The Court thus found that the applicant was claiming an essentially economic right which did not mainly put in issue the authorities' special rights. The applicant's claims were therefore civil ones within the meaning of A 6(1) which therefore applied in the case. The first set of proceedings in the Paris Administrative Court began on 29 August 1991, when the application was made to it, and ended on 15 February 1996, when that court gave judgment. It therefore lasted four years, five months and fifteen days. The second set of proceedings, for an interim order, began on 9 June 1993 with the application to the Paris Administrative Court and ended on 19 May 1995, when the Conseil d'Etat gave judgment. It therefore lasted one year, eleven months and ten days. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law. The Court noted that the proceedings for an interim order were completed within a reasonable time. However, there was a long period of inactivity attributable to the judicial authorities in connection with the proceedings, which began on 29 August 1991. A reasonable time was exceeded and there had therefore been a violation of A 6(1).

Non-pecuniary damage (FF 30,000).

Cited: Abenavoli v I (2.9.1997), Ceteroni v I (15.11.1996), De Santa v I (2.9.1997), Huber v F (19.2.1998), Lapalorcia v I (2.9.1997), Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993), Neigel v F (17.3.1997), Nicodemo v I (2.9.1997).

Benthem v Netherlands (1986) 8 EHRR 1 85/10

[Application lodged 21.12.1979; Commission report 8.10.1983; Court Judgment 23.10.1985.]

Mr Albert Benthem used to own and run a garage. In 1976 he applied for a licence to install a surface storage tank for the delivery of liquid petroleum gas to motor vehicles. The municipal authorities granted the licence, subject to fifty-six conditions which they considered would counter the dangers of fire and explosions. The Regional Health Inspector, who had advised refusal of a licence due to the excessive risks to proximate housing, lodged an appeal with the Crown. After a hearing in the presence of the parties, during which the applicant was heard, the Chairman of the Administrative Litigation Division asked the Director General for additional information. On the

basis of further evidence, the Director General concluded that the licence sought by the applicant should be refused. There were further hearings and an appeal by the applicant which was unsuccessful. The installation was eventually closed down and the applicant declared bankrupt. The applicant claimed that, contrary to the requirements of A 6(1), his case had not been heard by an independent and impartial tribunal.

Comm found by majority (9–8) NV 6(1).

Court found by majority (11–6) V 6(1).

Judges: Mr R Ryssdal, President, Mr W Ganshof van der Meersch, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert (jd), Mr G Lagergren, Mr F Gölcüklü (jd), Mr F Matscher (jd), Mr J Pinheiro Farinha (jd), Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans (jd), Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr J Gersing, Mr CW Dubbink (declaration, jd), ad hoc judge.

A 'genuine and serious' dispute as to the 'actual existence' of the right to a licence claimed by the applicant arose between him and the Netherlands authorities. In addition, the result of the proceedings complained of, which could – and in fact did – lead to a reversal of the decision under appeal, was directly decisive for the right at issue. The grant of the licence to which the applicant claimed to be entitled was one of the conditions for the exercise of part of his activities as a businessman. It was closely associated with the right to use one's possessions in conformity with the law's requirements. In addition, a licence of this kind had a proprietary character. In consequence, what was at stake was a 'civil' right, within the meaning of A 6(1), and that provision was therefore applicable to the proceedings in the appeal to the Crown. In order to determine whether the proceedings complained of were in conformity with A 6(1) it was necessary to consider the two institutions: the Administrative Litigation Division of the Council of State and the Crown. A power of decision was inherent in the notion of 'tribunal' within the meaning of the Convention. However, the Division tendered only an advice. Although that advice was followed in the great majority of cases, this was only a practice of no binding force, from which the Crown could depart at any moment. The proceedings before the Administrative Litigation Division of the Council of State thus did not provide the 'determination by a tribunal of the matters in dispute' which was required by A 6(1). The Crown, unlike the Administrative Litigation Division, was empowered to determine the dispute. However, the Royal Decree by which the Crown, as head of the executive, rendered its decision constituted an administrative act and it emanated from a Minister who was responsible to Parliament. In addition, the Minister was the hierarchical superior of the Regional Health Inspector, who had lodged the appeal, and of the Ministry's Director General, who had submitted the technical report to the Division. Moreover, the Royal Decree was not susceptible to review by a judicial body as required by A 6(1). There was therefore a violation of A 6(1).

Finding of breach sufficient: just satisfaction.

Cited: Albert and Le Compte v A (10.2.1983), De Jong, Baljet and van den Brink v NL (22.5.1984), De Wilde, Ooms and Versyp v B (18.6.1971), König v D (28.6.1978), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Ringeisen v A (22.6.1972), Sporrong and Lönnroth v S (23.9.1982), Sramek v A (2.10.1984), Sunday Times v UK (26.4.1979), Van Droogenbroeck v B (24.6.1982).

Bergens Tidende and Others v Norway 00/144

[Application lodged 13.9.1994; Court Judgment 2.5.2000]

The first applicant, Bergens Tidende, was a daily newspaper, the second applicant, Mr Einar Eriksen, was its former editor-in-chief and the third applicant, Mrs Berit Kvalheim, was a journalist employed by the newspaper. Dr R was a specialist in cosmetic surgery. On 5 March 1986, following the opening of a new clinic by Dr R, Bergens Tidende published an article, prepared by the third applicant, which described Dr R's work and the advantages of cosmetic surgery. Subsequently, the newspaper was contacted by a number of women who had undergone such operations by Dr R and who were dissatisfied with the treatment received. In May 1986 the newspaper published an

article about three women who claimed to have been disfigured by operations performed by Dr R and complained about the poor after-care. The newspaper subsequently published an article from another doctor and an interview with Dr R and further articles including some in which women stated that they were satisfied with the work of Dr R. As a result of the publications, Dr R received fewer patients, experienced financial difficulties and had to close down his business in April 1989. On 22 June 1987, he instituted defamation proceedings against the applicants, claiming damages. By judgment of 12 April 1989, the Bergen City Court ordered the applicants to pay him damages and costs. The High Court, on appeal, found in favour of the applicants. Dr R appealed to the Supreme Court which, on 23 March 1994, found in his favour and ordered the applicants to pay him damages and costs. The applicants complained that the Supreme Court's judgment unjustifiably interfered with their right to freedom of expression under A 10.

Court found unanimously V 10.

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja, Mr S Evju, ad hoc judge.

The impugned measure constituted an interference by a public authority with the applicants' right to freedom of expression, that interference was prescribed by law, namely the Damage Compensation Act 1969, and pursued the legitimate aim of protecting the reputation or rights of others. The articles concerned an important aspect of human health and thus raised serious issues affecting the public interest, and the Court could not accept the Government's submission that the grievances of a few patients concerning the standard of health care afforded by a particular surgeon were private matters between the patient and surgeon themselves and were not matters in which the community at large has an interest, nor could it agree that the fact that the articles were not published as part of an ongoing general debate on the issues attached to cosmetic surgery, but were specifically focused on the standard of treatment provided at a single clinic, meant that the articles did not relate to matters of general public interest. The articles concerned allegations of unacceptable health care provided at a private cosmetic surgery clinic by Dr R. Their publication had to be seen against the background of an earlier article which described Dr R's work and the advantages of cosmetic surgery. A 10 did not guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern: 'duties and responsibilities', which also applied to the press and assumed significance when there was question of attacking the reputation of private individuals and undermining the rights of others. The safeguard afforded by A 10 to journalists in relation to reporting on issues of general interest was subject to the proviso that they were acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism. To a large extent the criticisms of Dr R. which were expressed in the articles were found to be justified by the national courts, which also found that this justified criticism had significantly and adversely affected his professional reputation. Considering the articles as a whole, the statements were not excessive or misleading. The reporting of the accounts of the women did not show a lack of any proper balance. The newspaper had printed other articles including an interview with Dr R as well as subsequent articles defending him. The publication of the articles had serious consequences for his professional practice. However, as expressly recognised by the national courts, given the justified criticisms relating to his post-surgical care and follow-up treatment, it was inevitable that substantial damage would in any event be done to his professional reputation. Dr R's role was not limited to surgery in the narrow sense, but encompassed all aspects of cosmetic surgery. The undoubted interest of Dr R in protecting his professional reputation was not sufficient to outweigh the important public interest in the freedom of the press to impart information on matters of legitimate public concern. The reasons relied on by the respondent State, although relevant, were not sufficient to show that the interference complained of was necessary in a democratic society. There was no reasonable relationship of proportionality between the restrictions placed by the measures applied by the Supreme Court on the applicants' right to freedom of expression and the legitimate aim pursued. Accordingly, there had been a violation of A 10.

Pecuniary damage (NOK 4,848,589 to the first applicant, NOK 44,383 each to the second and third applicants), costs and expenses (NOK 878,945 to the applicants together), additional interest (NOK 740,000 to the first applicant, NOK 5,700 each to the second and third applicants).

Cited: Bladet Tromsø and Stensaas v N (20.5.1999), De Haes and Gijsels v B (24.2.1997), Fressoz and Roire v F (21.1.1999), Goodwin v UK (27.3.1996), Hertel v CH (25.8.1998), Jersild v DK (23.9.1994), Nilsen and Johnsen v N (25.11.1999), Prager and Oberschlick v A (26.4.1995), Sunday Times v UK (No 1) (26.4.1979).

Bernard v France 98/29

[Application lodged 29.5.1993; Commission report 22.10.1996; Court Judgment 23.4.1998]

In the course of a judicial investigation into a charge brought against Mr Jean-Paul Bernard on a number of counts of armed robbery, an investigating judge at Nevers ordered two expert opinions on him: a psychiatric report and a medical and psychological report. Following receipt of those reports the applicant requested a second opinion, which the investigating judge commissioned. Following service of that report the applicant requested a third opinion, but on 25 July 1989 the investigating judge refused this request. In the course of a separate investigation concerning an attempted escape the same judge ordered a psychiatric report. After this report had been filed, Mr Bernard requested a second opinion, but this request was refused by the investigating judge. The applicant appealed unsuccessfully. After the experts had given evidence at his trial, the applicant's lawyer requested in his submissions that a formal note be entered in the record to the effect that the experts had stated an opinion on the question of the applicant's guilt. The Assize Court dismissed the applicant's lawyer's request for the evidence of two experts examined during the trial to be ruled inadmissible. On 12 June 1992 the Assize Court sentenced the applicant to ten years' imprisonment for armed robbery. He complained of an infringement of his right to a fair trial.

Comm found by majority (7–7 with the President's casting vote) V 6(1) and not necessary to consider 6(2).

Court unanimously dismissed the Government's preliminary objection, found by majority (8–1) NV 6(1), 6(2).

Judges: Mr R Bernhardt (c), President, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mrs E Palm, Mr R Pekkanen, Mr G Mifsud Bonnici, Mr P Jambrek, Mr U Lôhmus (d).

The Court observed that the Government's submission that the appellant had failed to request independent expert reports referred to the expert reports filed during the investigation conducted by the investigating judge, whereas the applicant challenged the comments made by the experts at his trial on 9 June 1992 in the Rhône Assize Court. In addition, the applicant raised the complaint in question before the Assize Court, by means of an interlocutory application, and later by appealing to the Court of Cassation. Domestic remedies were therefore exhausted. In any event any further request for an independent opinion would have been bound to fail.

It was not the Court's task to substitute its own assessment of the facts and the evidence for that of the domestic courts and, as a general rule, it was for those courts to assess the evidence before them. The Court's task was to ascertain whether the proceedings considered as a whole, including the way in which the evidence was taken, were fair. The purpose of the psychiatric examinations was to obtain, *inter alia*, an answer to the question whether he was suffering from some mental or psychological disorder and, if so, whether there was a link between the disorders found and the offences of which he stood charged. They were also intended to assess how dangerous he was. The two specialists appointed by the investigating judge logically had to start from the working hypothesis that the applicant had committed the crimes which had given rise to the prosecution. The applicant had himself requested the second expert opinion and his request for a third had been refused. At the hearing before the Lyons Court of Appeal the applicant had the opportunity to challenge the expert reports but he did not appear to have done so. The domestic court had noted that the experts had always taken care to specify that they were stating their conclusions concerning offences which the applicant denied committing. In addition, the record of the hearings showed that all the witnesses called by the applicant were heard and that his counsel had the

opportunity to make observations after each witness had given evidence. The file showed that the applicant's conviction was based on all the charges preferred and on the evidence obtained during the investigation and discussed at the hearings in the Assize Court. That being so, the Court could not regard the statements in issue, which formed only one part of the evidence submitted to the jury, as contrary to the requirements of a fair trial and the presumption of innocence. There had therefore been no breach of A 6(1) and (2).

Cited: Allenet de Ribemont v F (10.2.1995), Deweer v B (27.2.1980), Edwards v UK (16.12.992), Mantovanelli v F (18.3.1997), Minelli v CH (25.3.1983).

Berrehab v Netherlands (1989) 11 EHRR 322 88/9

[Application lodged 14.11.1983; Commission report 7.10.1986; Court Judgment 21.6.1988]

Mr Abdellah Berrehab was a Moroccan citizen permanently resident in Amsterdam. After marrying a Netherlands national in 1977 he was granted permission to remain for the purpose of enabling him to live with his Dutch wife. That permission was renewed until 8 December 1979. Following their divorce his ex-wife was appointed guardian of their daughter; the applicant, who was auxiliary guardian, maintained frequent contact. His application for renewal of his residence permit was refused on the ground that it would be contrary to the public interest as the marriage was no longer subsisting. The applicant's appeals to the Minister of Justice and thereafter to the Raad van State were rejected. The applicant was arrested on 28 December 1983 for the purpose of his deportation. In 1984 his daughter and ex-wife visited him in Morocco. He returned to The Netherlands on 27 May 1985 on a short visa. On 14 August 1985 he remarried his ex-wife in Amsterdam. On 9 December 1985, the Ministry of Justice granted him permission to reside in The Netherlands 'for the purpose of living with his Dutch wife and working during that time'. He complained that the deportation amounted to treatment that was inhuman and degrading and infringed the right to respect for privacy and family life.

Commission found by majority (11–2) V8 and unanimously NV 3.

Court found by majority (6–1) V 8 and unanimously NV 3.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson (d), Mr G Lagergren, Mr C Russo, Mr A Spielmann, Mr J De Meyer, Mr SK Martens, ad hoc judge.

Cohabitation was not a *sine qua non* of family life between parents and minor children. The relationship created between spouses by a lawful and genuine marriage had to be regarded as 'family life'. It followed from the concept of family on which A 8 was based that a child born of such a union was *ipso jure* part of that relationship; hence, from the moment of the child's birth and by the very fact of it, there existed between him and his parents a bond amounting to 'family life', even if the parents were not then living together. The applicant saw his daughter frequently and regularly and the ties of family life had not been broken in this case. The disputed measures prevented Mr Berrehab and his daughter from maintaining regular contact with each other, although such contact was essential, as the child was very young. The measures accordingly amounted to interferences with the exercise of a right under A 8(1). The measures in question were based on The Netherlands1965 Act. The legitimate aim pursued was the preservation of the country's economic well-being within the meaning of paragraph 2 of A 8(2): the Government were concerned, because of the population density, to regulate the labour market. In determining whether an interference was 'necessary in a democratic society', allowance had to be made for the margin of appreciation left to the Contracting States. The Convention did not in principle prohibit the Contracting States from regulating the entry and length of stay of aliens. However, 'necessity' implied that the interference corresponded to a pressing social need and, in particular, that it was proportionate to the legitimate aim pursued. The present case did not concern an alien seeking admission to The Netherlands for the first time but a person who had already lawfully lived there for several years, who had a home and a job there, and against whom the Government did not claim to have any complaint. Furthermore, the applicant already had real family ties there – he had married a Dutch woman, and a child had been born of the marriage. There had been very close ties

between Mr Berrehab and his daughter for several years and the refusal of an independent residence permit and the ensuing expulsion threatened to break those ties. The effect of the interferences in issue was the more serious as his daughter needed to remain in contact with her father, particularly because of her youth. Having regard to those particular circumstances, the Court considered that a proper balance was not achieved between the interests involved and there was therefore a disproportion between the means employed and the legitimate aim pursued. Therefore the disputed measures could not be considered as being necessary in a democratic society. There had been a violation of A 8.

The facts of the case did not show that either of the applicants underwent suffering of a degree corresponding to the concepts of 'inhuman' or 'degrading' treatment. There had therefore been no violation of A 3.

Damages and expenses (NLG 20,000).

Cited: Abdulaziz, Cabales and Balkandali v UK (28.5.1985), Olsson v S (24.3.1988), W v UK (8.7.1987).

Berrettari v Italy 00/53

[Application lodged 10.6.1997; Court Judgment 8.2.2000]

Genni, Marzia and Vanda Berrettari and Mr Marco Berrettari complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska.

The period to be taken into consideration began on 8 September 1979 and ended on 9 September 1998. It had lasted around 19 years at two levels of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 35,000,000), costs and expenses (ITL 1,250,000).

Cited: Bottazzi v I (28.7.1999).

Bertozzi v Italy 00/136

[Application lodged 14.5.1997; Commission report 4.3.1999; Court Judgment 27.4.2000]

Mr Guido Bertozzi complained of the length of civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr L Ferrari Bravo, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska, Mr AB Baka.

The period to be taken into consideration began on 6 May 1983 and ended on 13 May 1998. It had lasted more than 15 years at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 40,000,000), costs and expenses (ITL 5,000,000).

Cited: Bottazzi v I (28.7.1999).

Beyeler v Italy 00/1

[Application lodged 5.9.1996; Commission report 10.9.1998; Court Judgment 5.1.2000]

Mr Ernst Beyeler was an art gallery owner. In 1977 he bought the painting, 'Portrait of a Young Peasant' by the painter Vincent Van Gogh, for ITL 600 million through an intermediary, Mr Pierangeli, without disclosing that the painting was being purchased on his behalf. On 1 December 1983 the intermediary made a declaration to the Ministry of Cultural Heritage stating that he had purchased the painting on behalf of the applicant. On 2 May 1988 the applicant sold the painting to

the Peggy Guggenheim collection in Venice for USD 8,500,000. In an order of 24 November 1988 the Ministry exercised its right of pre-emption in respect of the 1977 sale at the 1977 sale price. The applicant's appeals to the Regional Administrative Court, Consiglio di Stato, Court of Cassation and Constitutional Court were unsuccessful. During the night of 19/20 May 1998 the painting, which was still in the Rome Gallery of Modern and Contemporary Art, was stolen in an armed robbery along with two other paintings. It was found by the carabinieri and Italian police on 6 July 1998. The applicant complained that the Ministry of Cultural Heritage's exercise of a right of pre-emption violated his rights under P1A1, 14 and 18.

Comm found by majority (20–10) NV P1A1, (23–7) NV 14, unanimously NV 18.

Court unanimously dismissed the Government's preliminary objection, found by majority (16–1) V P1A1, unanimously no need to give a separate ruling on 14, unanimously that no separate issue arose under 18.

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr A Pastor Ridruejo, Mr L Ferrari Bravo (D), Mr G Bonello, Mr P Kûris, Mr R Türmen, Mr J-P Costa, Mrs F Tulkens, Mrs V Stráznická, Mr M Fischbach, Mr V Butkevych, Mr J Casadevall, Mrs HS Greve, Mr AB Baka, Mr R Maruste, Mrs S Botoucharova.

The Government's preliminary objection of non-exhaustion of domestic remedies, as the applicant could have applied to the civil courts for the amount paid in 1977 to be revised, had not been raised before the Commission and accordingly they were estopped from relying on that objection.

The applicant had a proprietary interest from the time the work was purchased until the right of pre-emption was exercised and he was paid compensation. That interest therefore constituted a possession for the purposes of P1A1, which was therefore applicable to the present case. The measure complained of, namely the exercise by the Ministry of Cultural Heritage of its right of pre-emption, amounted to an interference with the applicant's right to the peaceful enjoyment of his possessions. The essential condition for an interference to be deemed compatible with P1A1 was that it should be lawful. The Court had limited power to review compliance with domestic law, especially as there was nothing in the instant case from which it could conclude that the Italian authorities applied the legal provisions in question manifestly erroneously or so as to reach arbitrary conclusions. However, the principle of lawfulness also presupposed that the applicable provisions of domestic law be sufficiently accessible, precise and foreseeable. In certain respects the statute lacked clarity, particularly in that it left open the time-limit for the exercise of a right of pre-emption in the event of an incomplete declaration without indicating how such an omission could subsequently be rectified. The element of uncertainty in the statute and the considerable latitude it afforded the authorities were material considerations to be taken into account in determining whether the measure complained of struck a fair balance. The control by the State of the market in works of art was a legitimate aim for the purposes of protecting a country's cultural and artistic heritage. The national authorities enjoyed a certain margin of appreciation in determining what was in the general interest of the community. In relation to works of art lawfully on the territory of a State and belonging to the cultural heritage of all nations, it was legitimate for a State to take measures designed to facilitate in the most effective way wide public access to them, in the general interest of universal culture. At the time of the 1977 sale, the applicant did not disclose to the vendor that the painting had been purchased on his behalf. He had then waited six years before declaring his purchase, contrary to the relevant provisions of Italian law of which he was deemed to be aware. He did not approach the authorities until December 1983 when he was intending to sell the painting to the Peggy Guggenheim Collection in Venice for USD 2,000,000. Thus the applicant had not acted openly and honestly, especially as there was nothing to prevent him from informing the authorities of the true position before 2 December 1983 in order to comply with the statutory requirements. The Court did not question either the right of pre-emption over works of art in itself or the State's interest in being informed of all the details of a contract, including the identity of the end purchaser on a sale through an agent, so that the authorities could decide in the full knowledge of the facts whether or not to exercise their right of pre-emption. After receiving in 1983 the information missing from the declaration made in 1977, that is, the identity of the end

purchaser, the Italian authorities waited until 1988 before giving serious consideration to the question of ownership of the painting and deciding to exercise their right of pre-emption. During that time the authorities' attitude towards the applicant oscillated between ambivalence and assent and they often treated him de facto as the legitimate title-holder under the 1977 sale. Furthermore, the considerable latitude left to the authorities under the applicable provisions, as interpreted by the domestic courts, and the above-mentioned lack of clarity in the law made the situation even more uncertain, to the applicant's detriment. The respondent Government had failed to give a convincing explanation as to why the Italian authorities had not acted in 1984 in the same manner as they acted in 1988. Thus, taking punitive action in 1988 on the ground that the applicant had made an incomplete declaration, a fact of which the authorities had become aware almost five years earlier, hardly appeared justified. In that connection it had to be stressed that where an issue in the general interest was at stake it was incumbent on the public authorities to act in good time, in an appropriate manner and with utmost consistency. That state of affairs allowed the Ministry of Cultural Heritage to acquire the painting in 1988 at well below its market value. The authorities had derived an unjust enrichment from the uncertainty that existed during the period from 1983 to 1988 to which they had largely contributed. Irrespective of the applicant's nationality, such enrichment is incompatible with the requirement of a fair balance. The applicant had to bear a disproportionate and excessive burden and there had therefore been a violation of P1A1.

In the light of the conclusions in respect of P1A1, there was no reason to examine separately A 14 and no separate issue arose under A 18.

A 41 reserved.

Cited: Akkus v TR (9.7.1997), Chassagnou and Others v F (29.4.1999), Gasus Dosier und Fördertechnik GmbH v NL (23.2.1995), Håkansson and Sturesson v S (21.2.1990), Hentrich v F (22.9.1994), Holy Monasteries v GR (9.12.1994), Iatridis v GR (25.3.1999), James and Others v UK (21.2.1986), Lithgow and Others v UK (8.7.1986), Matos and Silva, Lda, and Others v P (judgment of 16.9.1996), Pressos Compania Naviera SA and Others v B (20.11.1995), Sporrong and Lönnroth v S (23.9.1982), Tre Traktörer AB v S (7.7.1989).

Bezicheri v Italy (1990) 12 EHRR 210 89/18

[Application lodged 18.1.1985; Commission report 10.3.1988; Court Judgment 25.10.1989]

Mr Marcantonio Bezicheri, a practising lawyer, was arrested on 14 May 1983 and the file was transmitted to the investigating judge. The applicant was remanded in custody on suspicion, *inter alia*, of being an accessory to an aggravated murder which had taken place in 1982. On 18 May 1983 he applied, unsuccessfully, for release. On 6 July 1983 he made another application for release and a request for various investigatory measures. He repeated that request on 6 October 1983. The investigating judge refused the application for release on 22 December 1983. The applicant complained that the application had not been examined speedily within the meaning of A 5(4).

Comm found by a majority V 5(4).

Court found unanimously V 5(4).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha (declaration), Mr C Russo, Mr SK Martens.

The investigating judge constituted a 'court' for the purposes of A 5(4) in view of his independence and the guarantees attaching to the proceedings conducted before him. The nature of detention on remand called for short intervals; there was an assumption in the Convention that detention on remand was to be of strictly limited duration because its raison d'être was essentially related to the requirements of an investigation which was to be conducted with expedition. The proceedings had taken approximately five and a half months. The investigating judge required a certain amount of time to carry out the necessary enquiries but the investigations were spread out over a period whose overall length was incompatible with A 5(4). With regard to the State's argument that the investigating judge had an excessive workload and concentrated on other sensitive custody cases, the Convention required States to organise their legal systems so as to enable the courts to comply

with the various requirements. The examination of the application of 6 July had not been effected speedily as required by A 5(4).

Judgment constituted adequate just satisfaction for A50.

Cited: Bozano v F (2.12.1987); Lamy (30.3.1989); Luberti v I (23.2.1984); Milasi v I (25.6.1987); Soering (7.7.1989).

Billi v Italy 93/12

[Application lodged 20.1.1989; Commission report 9.12.1991; Court Judgment 26.2.1993]

By writ of summons served on 7 June 1969, the municipality of Perugia instituted proceedings before the Perugia District Court against a friendly society which organised mutual assistance between employees and pensioners. The President of the Court ordered the interim seizure of the immovable property belonging to the members of the society's governing body, which included the applicant's father. He died during the trial and the applicant, Mrs Emma Billi, as his heir, sought leave to be joined to the proceedings at the hearing of 25 January 1973. There were adjournments for expert reports. Following trial in 1988, in a judgment dated 14 May 1988, deposited with the registry on 7 November 1988, the Perugia District Court rejected the municipality's claims. The decision became final on 7 November 1989. The applicant complained about the length of the proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr N Valticos, Mr SK Martens, Mrs E Palm, Mr F Bigi.

The period to be taken into consideration began on 1 August 1973 when Italy accepted the right of individual petition under A 25. The period in question ended on 7 November 1989. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The case was complex, the necessity for an expert opinion and the presence of several defendants made the proceedings more cumbersome and slowed them down. More than twelve years elapsed between the hearing at which the first expert took the oath and the date on which the second lodged his report. Both experts were working in the context of judicial proceedings supervised by a judge, who remained responsible for the preparation and the speedy conduct of the trial. In addition, having regard to the fact that the case was heard at only one level of jurisdiction, the Court could not consider reasonable a period of over sixteen years which had elapsed in the proceedings. There had therefore been a violation of A 6.

Damages (ITL 20 million).

Cited: Pandolfelli and Palumbo v I (27.2.1992).

Binelis and Nanni v Italy 00/26

[Application lodged 26.5.1994; Court Judgment 25.1.2000]

Mr Joannis Binelis and Mrs Roberta Nanni complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 3 July 1987 and was still pending on 19 May 1999. It had lasted to date more than 11 years 10 months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 32,000,000), costs and expenses (ITL 2,500,000).

Cited: Bottazzi v I (28.7.1999).

Biondi v Italy 92/5

[Application lodged 17.4.1987; Commission report 15.1.1991; Court Judgment 26.2.1992]

Mrs Ida Biondi brought proceedings on 7 March 1986 against the Istituto Nazionale della Previdenza Sociale (INPS) before the Rome magistrates' court in order to establish her right to a disability pension. Although the District Court gave judgment on 10 October 1991, the text of its decision had not yet been filed with the registry.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr SK Martens.

The period to be taken into consideration began on 7 March 1986 when the proceedings were instituted against the INPS in the magistrates' court. It had not yet ended as Mrs Biondi's appeal was still pending in the appellate court. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. Special diligence was necessary in employment disputes, which included pensions disputes. A 6(1) imposed on Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. This case did not give rise to any complex question of fact or law. The proceedings were conducted at a normal pace in the magistrates' court and the State could not be held responsible for the four months which elapsed between the decision of 3 October 1986 and the date on which the applicant appealed to the Rome District Court. On the other hand, the appeal proceedings remained dormant for more than two years. On 5 February 1987 the President of the Rome District Court set down the first hearing before the competent chamber for 21 February 1989. Furthermore, two years and eight months went by before the District Court gave judgment, on 10 October 1991. In view of what was at stake in the proceedings for Mrs Biondi, a lapse of time already amounting to nearly six years could not be regarded as reasonable. There had therefore been a violation of A 6(1).

Non-pecuniary damage (ITL 5 million), costs and expenses (ITL 2 million).

Cited: Vocaturo v I (24.5.1991).

Birou v France (1992) 14 EHRR 738 92/39

[Application lodged 16.9.1987; Commission report 17.4.1991; Court Judgment 27.2.1992]

Mr Roland Birou was charged with armed robbery and remanded in custody on 23 July 1983. He made numerous unsuccessful bail applications. He was convicted and sentenced in October 1988 to eight years' imprisonment. He complained that his length of detention on remand (approximately five years, three months) violated A 5(3).

Comm found unanimously V 5(3).

Court noted friendly settlement and struck the case off the list.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr L-E Pettiti, Mr A Spielmann, Mrs E Palm, Mr I Foighel, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The Court noted the friendly settlement reached between the Government and the applicant and discerned no reason of public order why the case should not be struck from the list.

FS (FF 30,000 compensation and withdrawal of proceedings) therefore case struck out of the list.

Bizzotto v Greece 96/49

[Application lodged 15.6.1992; Commission report 4.7.1995; Court Judgment 15.11.1996]

On 4 March 1990 Mr Carlo Bizzotto was arrested in transit at Athens Airport while in possession of 3.5 kg of cannabis which he had purchased in Islamabad for USD 1,000. On 6 May 1991 the Athens Court of Appeal, sitting as a first-instance criminal court, found him guilty and sentenced him to

eight years' imprisonment and a fine of two million drachmas. In addition, it ordered his placement in an appropriate centre to receive treatment for his drug addiction. An appeal court upheld the decision although the sentence was reduced. The applicant served his sentence in Patras Prison. The public prosecutor confirmed that there was no institution with the appropriate medical facilities available. The applicant made four requests to be released.

Comm found by majority (8–7) V 5(1).

Court unanimously dismissed the Government's preliminary objection, found NV 5(1).

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr F Matscher, Mr C Russo, Mr J De Meyer, Mr N Valticos, Mr JM Morenilla, Mr K Jungwiert, Mr E Levits.

A 26 required that available and sufficient remedies for the alleged violation be exhausted. An action under the domestic Code of Criminal Procedure would not have been effective in the circumstances of the case. The objection of failure to exhaust domestic remedies therefore had to be dismissed. The applicant had made four applications for release on licence. As his application to the Commission was made a few days after the dismissal of his third application he had satisfied the requirement of A 26 regarding complying with the time limit. The objection had therefore to be dismissed.

In order to comply with A 5(1) detention must take place 'in accordance with a procedure prescribed by law' and be 'lawful'. The Convention here referred essentially to national law and laid down the obligation to conform to the substantive and procedural rules of national law, but it required in addition that any deprivation of liberty should be in keeping with the aim of A 5, namely to protect the individual from arbitrariness. In addition, there had to be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention. The applicant's 'detention' was the consequence of his conviction as a drug trafficker. The Athens Court of Appeal, both sitting as a court of first instance and as appeal, passed sentence for the purposes of punishment. The court's finding that the applicant was a drug addict and the decision to have him placed in a prison with medical facilities did not in any way affect the main ground for his 'detention'. Accordingly, only sub-para (a) of A 5(1) applied. The domestic law had a humanitarian nature that was curative in purpose, but five years after that law was passed those provisions remained inoperative. The sections of the law lay down the arrangements for implementing sentences. Although such arrangements might sometimes be caught by the Convention, particularly where they were incompatible with A 3, they could not, in principle, have any bearing on the 'lawfulness' of a deprivation of liberty. Consequently the applicant's detention in the ordinary prison in Patras did not infringe A 5(1).

Cited: Ashingdane v UK (28.5.1985), Bouamar v B, Bozano v F, Winterwerp v NL, X v UK (5.11.1981).

Bladet Tromsø and Stensaas v Norway (2000) 29 EHRR 125 99/23

[Application lodged 10.12.1992; Commission report 9.7.1998; Court Judgment 20.5.1999]

The first applicant was a limited liability company Bladet Tromsø A/S, which published the daily newspaper *Bladet Tromsø* in the town of Tromsø in the north of Norway. The second applicant, Mr Pål Stensaas, was its editor. Mr Odd F Lindberg was a freelance journalist, author and photographer and in March 1988 he was appointed as a seal hunting inspector. In 1988 he served as an inspector on board the vessel *Harmoni*. In his report he alleged a series of violations of the Seal Hunting Regulations, claiming amongst other things that seals had been flayed alive. The Ministry of Fisheries decided that the report should not be published. *Bladet Tromsø* published an article by Mr Lindberg reproducing some of the allegations in his report but not mentioning any seal hunter by name. On 15 May 1991 the crew members of the *Harmoni* instituted defamation proceedings against the applicants. On 4 March 1992, the Nord-Troms District Court found the statements defamatory and declared them null and void. The applicants were refused leave to appeal to the Supreme Court. They complained that the District Court's judgment constituted an unjustified interference with their right to freedom of expression.

Comm found by majority (24–7) V 10.

Court found by majority (13–4) V 10.

Judges: Mr L Wildhaber, President, Mrs E Palm (jd), Mr A Pastor Ridruejo, Mr G Bonello, Mr J Makarczyk, Mr R Türmen, Mr J-P Costa, Mrs F Tulkens, Mrs V Stráznická, Mr W Fuhrmann (jd), Mr M Fischbach, Mr V Butkevych, Mr J Casadevall, Mrs HS Greve (d), Mr AB Baka (jd), Mr R Maruste, Mrs S Botoucharova.

The impugned measures constituted an interference by a public authority with the applicants' right to freedom of expression. The interference was prescribed by law and pursued a legitimate aim, namely the protection of the reputation or rights of others, and thus fulfilled two of the conditions for regarding the interference as permissible under the second paragraph of A 10. The dispute in the case under consideration related to the third condition, that the interference be 'necessary in a democratic society'. The Court recalled its well-established case-law. A factor of particular importance in the present case was the essential function the press fulfilled in a democratic society. The reasons relied on by the District Court were relevant to the legitimate aim of protecting the reputation or rights of the crew members. As to the sufficiency of those reasons for the purposes of A 10, the Court had to take account of the overall background against which the statements in question were made. Thus, the contents of the impugned articles could not be looked at in isolation of the controversy that seal hunting represented at the time in Norway and in Tromsø. In the Court's view, the manner of reporting in question should not be considered solely by reference to the disputed articles in *Bladet Tromsø* on 15 and 20 July 1988 but in the wider context of the newspaper's coverage of the seal hunting issue. During the period from 15 to 23 July 1988, *Bladet Tromsø*, which was a local newspaper, published almost on a daily basis the different points of view, including the newspaper's own comments, those of the Ministry of Fisheries, the Norwegian Sailors' Federation, Greenpeace and, above all, the seal hunters. Although the latter were not published simultaneously as the contested articles, there was a high degree of proximity in time, giving an overall picture of balanced news reporting. The thrust of the impugned articles was not primarily to accuse certain individuals of committing offences against the seal hunting regulations or of cruelty to animals, but rather for the fisheries authorities to make a constructive use of the findings in the Lindberg report in order to improve the reputation of seal hunting. A 10 did not guarantee wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern. Examination had to be made of whether there were any special grounds in the present case for dispensing the newspaper from its ordinary obligation to verify factual statements that were defamatory of private individuals. That depended in particular on the nature and degree of the defamation at hand and the extent to which the newspaper could reasonably regard the Lindberg report as reliable with respect to the allegations in question. The latter issue had be determined in the light of the situation as it presented itself to *Bladet Tromsø* at the material time, rather than with the benefit of hindsight. While some of the accusations were relatively serious, the potential adverse effect of the impugned statements on each individual seal hunter's reputation or rights was significantly attenuated by several factors. In particular, the criticism was not an attack against all the crew members or any specific crew member. Regarding the trustworthiness of the Lindberg report, it had been drawn up by Mr Lindberg in an official capacity as an appointed inspector. The press should normally be entitled, when contributing to public debate on matters of legitimate concern, to rely on the contents of official reports without having to undertake independent research. Otherwise, the vital public-watchdog role of the press might be undermined. The newspaper were already aware from the reactions to Mr Lindberg's statements in April 1988 that the crew disputed his competence and the truth of any allegations of 'beastly killing methods'. It must have been evident to the paper that the Lindberg report was liable to be controverted by the crew members. Taken on its own, this cannot be considered decisive for whether the newspaper had a duty to verify the truth of the critical factual statements contained in the report before it could exercise its freedom of expression under A 10 of the Convention. Far more material was the attitude of the Ministry of Fisheries, which had appointed Mr Lindberg to carry out the inspection and to report back. The Ministry had decided to exempt the report from public disclosure. Prior to the contested publication on 15 July 1988, the Ministry had not publicly expressed a doubt as to the possible truth of the criticism or questioned Mr

Lindberg's competence. The attitude expressed by the Ministry before 20 July 1988 did not constitute a ground for considering that it was unreasonable for the newspaper to regard as reliable the information contained in the report. Having regard to the various factors limiting the likely harm to the individual seal hunters' reputation and to the situation as it presented itself to *Bladet Tromsø* at the relevant time, the Court considered that the paper could reasonably rely on the official Lindberg report, without being required to carry out its own research into the accuracy of the facts reported. There was no reason to doubt that the newspaper acted in good faith in this respect. On the facts of the present case, the Court could not find that the crew members' undoubted interest in protecting their reputation was sufficient to outweigh the vital public interest in ensuring an informed public debate over a matter of local and national as well as international interest. In short, the reasons relied on by the respondent State, although relevant, were not sufficient to show that the interference complained of was 'necessary in a democratic society'. Notwithstanding the national authorities' margin of appreciation, there was no reasonable relationship of proportionality between the restrictions placed on the applicants' right to freedom of expression and the legitimate aim pursued. Accordingly, there had been a violation of A 10.

Pecuniary damage (NOK 323,342), costs and expenses (NOK 370,199), additional interest (NOK 65,000).

Cited: Darby v S (23.10.1990), De Haes and Gijsels v B (24.2.1997), Fressoz and Roire v F (21.1.1999), Goodwin v UK (27.3.1996), Handyside v UK (7.12.1976), Jersild v DK (23.9.1994), Lingens v A (8.7.1986), Observer and Guardian v UK (26.11.1991), Prager and Oberschlick v A (26.4.1995), Sunday Times (No 1) v UK (26.4.1979), Thorgeir Thorgeirson v ISL (25.6.1992), Tolstoy Miloslavsky v UK (13.7.1995).

Blaisot v France 00/10

[Application lodged 23.9.1996; Court Judgment 25.1.2000]

Mr and Mrs Blaisot complained of the length of proceedings before the administrative court relating to land consolidation.

Court found unanimously V 6(1).

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr L Loucaides, Mr P Kûris, Mrs F Tulkens, Mr K Jungwiert, Mrs HS Greve.

The period to be taken into consideration began at the latest on 17 November 1983 and ended on 2 May 1996, a period of 12 years, five months, 15 days. The period could not be regarded as reasonable.

Non-pecuniary damage (ITL 40,000), costs and expenses (ITL 10,000).

Cited: Caillot v F (4.6.1999), Demir and Others v TR (23.9.1998), Doustaly v F (23.4.1998), Guillemin v F (21.2.1997), Nikolova v BG (25.3.1999), Richard v F (22.4.1998).

Bock v Germany (1990) 12 EHRR 247 89/3

[Application lodged 2.7.1982; Commission report 13.11.1987; Court Judgment 29.3.1989]

Mr Hermann Bock married in 1961 and started divorce proceedings against his wife on 18 March 1974. On 24 April 1974, his wife brought guardianship proceedings in the District Court. The Court made the guardianship order. The applicant was committed to a mental hospital on the application of the guardian and remained there until the order was set aside on 3 May. There were further applications and reports. They were divorced in 1983. The applicant complained of the length of divorce proceedings which had lasted over nine years.

Comm found by a majority (13–1) V 6(1).

Court held unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mrs D Bindschedler-Robert, Mr L-E Pettiti, Sir Vincent Evans, Mr R Bernhardt, Mr J De Meyer, Mr N Valticos.

The reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case, taking into account the complexity of the case, conduct of the parties and

what was at stake in the litigation. The most striking feature of the case was the amount of time devoted to a consideration of the applicant's mental capacity to take legal proceedings. In principle, national courts had to proceed on the basis that a prospective or actual plaintiff was not suffering from mental incapacity. Should any reasonable doubt arise, arrangements had to be made to ensure that the position was clarified as soon as possible. By the time of the final divorce decree there had been five reports attesting to the applicant's soundness of mind against one whose author had been disqualified. The suffering caused to the applicant, in this case for 9 years because of the doubts cast on his mental state which proved unfounded, amounted to a serious encroachment on human dignity. Although some responsibility for the duration of the proceedings rested with the parties, the divorce petition was not heard within a reasonable time, owing to cumulative delays which were attributable to the competent courts. Having regard to the diligence required in cases concerning civil status and capacity, there had been a breach of A 6(1).

Non-pecuniary damage (DM 10,000), costs and expenses (DM 12,000).

Cited: Belilos v CH (29.4.1988), Buchholz v D (6.5.1981), Deumeland v D (29.5.1986), Eckle v D (21.6.1983), Erkner and Hofauer v A (23.4.1987), Ettl v A (23.4.1988), H v UK (9.6.1988), Martins Moreira (26.10.1988), Poiss v A (23.4.1987), Ringeisen v A (22.6.1972), Sramek v A (2.10.1984).

Boddaert v Belgium (1993) 16 EHRR 242 92/62

[Application lodged 13.2.1986; Commission report 17.4.1991; Court Judgment 12.10.1992]

Mr Jean-Claude Boddaert was suspected of murder; an investigation was opened on 18 July 1980. He fled to Spain but surrendered himself on 22 July and was handed over to the Belgian authorities on 30 July. He complained about the length of proceedings, which ended on 22 October 1986.

Comm found by majority (9–2) V 6(1).

Court found unanimously NV 6(1).

Judges: Mr R Bernhardt, President, Mr F Matscher, Mr J De Meyer, Mr N Valticos, Mr SK Martens, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou, Mr AB Baka.

The period to be taken into consideration began on 19 July 1980, the date on which the warrant was issued for the applicant's arrest. Following a brief interruption, owing to Mr Boddaert's departure to Spain, it ended on 22 October 1986, when the Court of Cassation delivered its judgment. It had lasted six years, two months and twenty-two days. The reasonableness of the length of proceedings had to be assessed by reference to the criteria laid down in the Court's case-law. The enquiry was a difficult one. The conduct of another defendant had to be taken into account. The gravity of the offences and the interdependence of the charges could reasonably appear to have made it necessary for a 'parallel progression' of the two cases, which were joined on 11 February 1986. The decision to hold a joint trial could further delay the applicant's committal for trial. However, the applicant had been released on 2 February 1982. A 6 commanded that judicial proceedings be expeditious, but it also laid down the more general principle of the proper administration of justice. In the circumstances of the case, the conduct of the authorities was consistent with the fair balance which had to be struck between the various aspects of that fundamental requirement.

Bodén v Sweden (1988) 10 EHRR 367 87/22

[Application lodged 10.1.1984; Commission report 15.5 1986; Court Judgment 27.10.1987]

The applicant and his brother owned three properties. Following the issue of an expropriation permit by the Municipal Council, proceedings were instituted by the Municipality before a real estate court. Swedish law contained no provision for appeals to the ordinary or the administrative courts against the Government's decisions to issue expropriation permits. There was a limited possibility to file a petition before the Supreme Administrative Court for re-opening of the proceedings. After the present case had been brought before the Court, the Municipality concluded

an agreement with the applicant for the repurchase by him of the properties for the same amount as it had paid for them. The applicant alleged a breach of A 6(1), complaining that he had not had the opportunity under Swedish law to challenge before a court an expropriation permit affecting property of which he was part-owner.

Comm found unanimously V 6(1).

Court held unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr G Lagergren, Mr F Gölcüklü, Mr L-E Pettiti (jso), Mr R Macdonald, Mr R Bernhardt, Mr J De Meyer (so).

The applicant's right of ownership of the properties was a civil right. The expression 'disputes over civil rights and obligations' covered all proceedings the result of which were decisive for such rights and obligations. However, a tenuous connection or remote consequences would not suffice for A 6(1). There was a serious disagreement between the applicant and the authorities. In addition, the expropriation permit was decisive for the applicant's property rights. The objections lodged by the applicant with the Government against the Municipal Council's request for an expropriation permit gave rise to a dispute over one of his civil rights, sufficient for A 6(1) to apply. The Court had to ascertain whether the applicant enjoyed the right to a court, guaranteed to him under A 6(1). The Government's decision as to the issue of the permit was not open to appeal before either the ordinary or the administrative courts, or before any other body which could be considered to be a 'tribunal' for the purposes of A 6(1). The applicant could have challenged the lawfulness of such a decision by requesting the Supreme Administrative Court to re-open the proceedings, but this extraordinary remedy did not meet the requirements of A 6(1). In addition, the requirements of A 6(1) would not have been satisfied by any possibility which the applicant might have had of seeking compensation for prejudice. Such an action would have concerned only certain effects of the expropriation permit and would not have determined the lawfulness of its issue. There was accordingly a violation of A 6(1).

Costs and expenses (8,900 SEK less FF 3,410).

Cited: Benthem v NL (23.10.1985), Golder v UK (21.2.1975), Poiss v A (23.4.1987), Sporrong and Lönnroth (23.9.1982), Van Marle and Others v NL (26.6.1986), W v UK (8.7.1987), Zimmermann and Steiner v CH (13.7.1983).

Boner v United Kingdom (1995) 19 EHRR 246 94/36

[Application lodged 4.4.1991; Commission report 4.5.1993; Court Judgment 28.10.1994]

The applicant, Mr Anthony Boner, lived in Glasgow, Scotland. He was arrested and indicted on a charge of assault and armed robbery, a charge of wilful damage and three charges relating to firearms. His trial took place between 29 March and 10 April 1990 at the High Court of Justiciary in Edinburgh. He received legal aid for the preparation of his defence and for his representation by counsel at the trial. He was found guilty and sentenced to eight years' imprisonment. He submitted notice of appeal and applied for legal aid to be extended to cover the appeal proceedings. On 14 November 1990 the Scottish Legal Aid Board told the applicant's solicitors that his application for legal aid had been refused. The applicant proceeded with his appeal without legal assistance. His appeal was dismissed. He complained that he had been refused legal aid.

Comm found by majority (17–2) V 6(3)(c).

Court found unanimously V 6(3)(c).

Judges: Mr R Ryssdal, President, Mr R Macdonald, Mr J De Meyer (c), Mrs E Palm, Mr JM Morenilla, Mr F Bigi, Sir John Freeland (c), Mr AB Baka, Mr J Makarczyk.

A 6(3)(c) attached two conditions to an accused's right to receive legal aid: 'lack of sufficient means to pay for legal assistance', and whether the 'interests of justice' required that the applicant be granted such assistance free. The manner in which A 6(3)(c) had to be applied in relation to appellate or cassation courts depended on the special features of the proceedings involved; account had to be taken of the entirety of the proceedings conducted in the domestic legal order

and of the role of the appellate or cassation court therein. The Scottish system of criminal appeals granted all persons a right to appeal without special leave being required. The proceedings always involved an oral hearing at which the Crown was represented. The Scottish Legal Aid Board, an independent body, decided in each case whether an applicant had substantial grounds for taking an appeal and whether it was in the interests of justice that he should have legal representation. A safeguard had been introduced in the form of a Practice Note by the Lord Justice General, dated 4 December 1990, ensuring that, in any appeal where legal aid had been refused, such aid was automatically granted where the court had reached the conclusion that, *prima facie*, an appellant may have substantial grounds for taking the appeal and that it was in the interests of justice that he should have legal representation in arguing these grounds. The legal issue in this case was not particularly complex. Nevertheless, to attack in appeal proceedings a judge's exercise of discretion in the course of a trial required a certain legal skill and experience. It was not the Court's function to indicate the measures to be taken by national authorities to ensure that their appeals system satisfied the requirements of A 6. Its task was solely to determine whether the system chosen by them in this connection led to results which were consistent with the requirements of A 6. A case such as the present, involving a heavy penalty, where an appellant was left to present his own defence unassisted before the highest instance of appeal, was not in conformity with the requirements of A 6. Given the nature of the proceedings, the wide powers of the High Court, the limited capacity of an unrepresented appellant to present a legal argument and, above all, the importance of the issue at stake in view of the severity of the sentence, the interests of justice required that the applicant be granted legal aid for representation at the hearing of his appeal. There had therefore been a violation of A 6(3)(c).

Judgment constituted sufficient just satisfaction for non-pecuniary damage. Costs and expenses (GBP 7,500.28 less FF 16,275.79).

Cited: Monnell and Morris v UK (2.3.1987), Pakelli v D (25.4.1983), Quaranta v CH (24.5.1991).

Bönisch v Austria (1987) 9 EHRR 191 85/5

[Application lodged 18.6.1979; Commission report 12.3.1984; Court Judgment 6.5.1985 (merits), 2.6.1986 (just satisfaction)]

Mr Helmut Bönisch ran a meat smoking firm. Complaints were made which led to his prosecution by the Federal Food Control Institute before the District Criminal Court and Regional Court of Vienna. The applicant was convicted. In October 1976 samples of his smoked meat were analysed by the Institute and found to be dangerous to health and adulterated. This opinion, drafted by the Director of the Institute, amounted to the lodging of a complaint: it was sent to the prosecuting authorities with a view to the institution of criminal proceedings. The case came before the same judge of the Regional Court who had dealt with an earlier case against the applicant and the Director of the Institute was appointed as expert. The applicant's allegation of bias in challenging the judge and the expert was rejected. He was found guilty and sentenced to two months' imprisonment. His appeal was rejected by the Vienna Court of Appeal in December 1978. A further prosecution and conviction by the same judge considering expert evidence from an Institute expert resulted in September 1979 in a sentence of one month's imprisonment. His appeal was dismissed. In February 1984, the Federal President commuted the two prison sentences imposed on the applicant to fines. The applicant alleged that the proceedings taken against him had violated A 6(1), in that they had not provided a fair trial, and A 6(3)(d), by reason of the inequality of treatment between the Institute's expert and the defence's expert, who had been heard only as a witness.

Comm found unanimously V 6(1) and V 6(3)(d).

Court found unanimously V 6(1), not necessary to examine 6(2).

Judges (merits): Mr G Wiarda, President, Mr J Cremona, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Mr B Walsh, Mr R Bernhardt.

Judges (A50): Mr G Wiarda, President, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Mr B Walsh, Mr R Bernhardt.

The Court held that, read literally, sub-paragraph (d) of para 3 related to witnesses and not experts. The guarantees contained in para 3 were constituent elements of the concept of a fair trial set out in paragraph 1. In the circumstances of the case, the Court considered that it should examine the complaints under the general rule of paragraph 1. As far as domestic law was concerned, it was not for the Court to depart from the definition which the Government had furnished of the notion of 'expert'. However, in order to assess the role played by the Director of the Institute, the Court had to have regard to the procedural position he occupied and to the manner in which he performed his function. In this connection, the Director had drafted the Institute's reports, the transmission of which to the prosecuting authorities had set in motion the criminal proceedings against the applicant. Thereafter he was designated as expert by the Regional Court pursuant to Austrian law, under which he had the duty of 'explaining and supplementing the findings or the opinion' of the Institute. It was understandable that doubts should arise as to the neutrality of an expert when it was his report that prompted the bringing of a prosecution. In the present case, appearances suggested that the Director was more like a witness against the accused. In principle, his being examined at the hearings was not precluded by the Convention, but the principle of equality of arms inherent in the concept of a fair trial required equal treatment as between the hearing of the Director and the hearing of persons who were or could be called by the defence. The Court considered that such equal treatment had not been afforded in the two proceedings in issue. In the first place, the Director had been appointed as 'expert' by the Regional Court in accordance with Austrian law; by virtue of that law, he was formally invested with the function of neutral and impartial auxiliary of the court. By reason of this, his statements must have carried greater weight than those of an 'expert witness' called by the accused, and yet his neutrality and impartiality were capable of appearing open to doubt. Circumstances also illustrated the dominant role that the Director was able to play: he could attend throughout the hearings, question the accused and witnesses with the leave of the court and comment on their evidence. The lack of equal treatment was particularly striking in the first proceedings, by reason of the difference between the respective positions of the court expert and the 'expert witness' of the defence. As a mere witness, the Director of the Institute for Meat Hygiene was not allowed to appear before the Regional Court until being called to give evidence; when giving his evidence, he was examined by both the judge and the expert; thereafter he was relegated to the public gallery. The Director, however, directly examined the Meat Hygiene Director and the accused. In addition, there was little opportunity for the defence to obtain the appointment of a counter-expert. Under Austrian law, if the court needed clarification in respect of the Institute's opinion, it had to first hear a member of the Institute's staff; the court may not have recourse to another expert except in certain contingencies, none of which obtained in the present case. Consequently, there was a breach of A 6(1). This conclusion dispensed the Court from giving a separate ruling on the alleged violation of A 6(3)(d). Having already found a violation of A 6(1), the Court did not rule on the merits of the complaint made under A 6(2), that there had been a reversal of the burden of proof contrary to the rule of the presumption of innocence.

Damages (ATS 700,000) damages; costs and expenses (ATS 300,000) awarded.

Cited: Adolf v A (26.3.1982), Artico v I (13.5.1980), Colozza v I (12.2.1985), Delcourt v B (17.1.1970), Engel and Others v NL (8.6.1976), Goddi v I (9.4.1984), Handyside v UK (7.12.1976), Sporrong and Lönnroth v S (18.12.1984), X v UK (5.11.1981), Young, James and Webster v UK (18.10.1982), Zimmermann and Steiner v CH (13.7.1983).

Borgers v Belgium (1993) 15 EHRR 92 91/45

[Application lodged 5.12.1985; Commission report 17.5.1990; Court Judgment 30.10.1991]

Mr André Borgers, a lawyer, was elected provincial counsellor on 8 November 1981 and thereupon tendered his resignation from the post of substitute district judge which he had held since 12 April 1976, but which under the Judicial Code was incompatible with his new elected office. On 16 June

1981 he appeared before the Antwerp Court of Appeal charged with forgery and using forged documents and on 19 May 1982 he was given a suspended sentence of six months' imprisonment and fined 40,000 Belgian francs. He appealed to the Court of Cassation who on 20 March 1984 allowed the appeal and quashed the contested decision on the ground that an adequate statement of the reasons on which it was based had not been given. The Ghent Court of Appeal, to which the case had been remitted, convicted the applicant on 14 November 1984 and imposed on him identical sanctions to those resulting from the earlier decision. The applicant again appealed. His appeal was dismissed on 18 June 1985, following a hearing at which the Court heard the report of the judge rapporteur and the concurring submissions of the avocat général, who had again participated in the deliberations. The applicant complained that the avocat général at the Court of Cassation had attended the deliberations of that court, infringing his right to a fair trial and violating the principle of the equality of arms. He further complained that he had not been able to reply to that official's submissions or address the Court of Cassation.

Comm found by majority (14–1) V 6(1).

Court found by majority (18–4) V 6(1).

Judges: Mr J Cremona (d), President, Mr Thór Vilhjálmsson (d), Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha (c), Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr A Spielmann, Mr N Valticos, Mr SK Martens (d), Mrs E Palm, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla (c), Mr F Bigi, Mr M Storme, ad hoc judge (d).

The Court noted its previous case-law. The rights of the defence and the principle of the equality of arms, which constituted features of the wider concept of a fair trial, had undergone a considerable evolution in the Court's case-law, notably in respect of the importance attached to appearances and to the increased sensitivity of the public to the fair administration of justice. The objectivity with which the procureur général's department at the Court of Cassation discharged its functions could not be questioned. However, the opinion of the procureur général's department could not be regarded as neutral from the point of view of the parties to the cassation proceedings. By recommending that an accused's appeal be allowed or dismissed, the official of the procureur général's department became objectively speaking his ally or his opponent. In the latter event, A 6(1) required that the rights of the defence and the principle of equality of arms be respected. The applicant could not reply to the submissions of the avocat général before the Court of Cassation that the appeal should not be allowed: before hearing them, he was unaware of their contents because they had not been communicated to him in advance; thereafter he was prevented from doing so by statute. There was no justification for such restrictions on the rights of the defence. The inequality was increased even more by the avocat général's participation, in an advisory capacity, in the Court's deliberations. Assistance of that nature, given with total objectivity, might be of some use in drafting judgments, although this task fell in the first place to the Court of Cassation itself. Even if such assistance was limited to stylistic consideration, it could reasonably be thought that the deliberations afforded the avocat général an additional opportunity to promote, without fear of contradiction by the applicant, his submissions to the effect that the appeal should be dismissed. Having regard to the requirements of the rights of the defence and of the principle of the equality of arms and to the role of appearances in determining whether they had been complied with, there was a violation of A 6(1).

Finding of violation constituted just satisfaction for damages. Costs and expenses (BEF 113,250).

Cited: Belilos v CH (29.4.1988), Bönisch v A (6.5.1985), Brandstetter v A (28.8.1991), Campbell and Fell v UK (28.6.1984), De Cubber v B (26.10.1984), Delcourt v B (10.11.1969), Demicoli v Malta (27.8.1991), Ekbatani v S (26.9.1988), Hauschildt v DK (24.5.1989), Langborger v S (22.6.1989), Piersack v B (1.10.1982), Sramek v A (22.10.1984).

Borgese v Italy 92/4

[Application lodged 15.4.1987; Commission report 15.1.1991; Court Judgment 26.2.1992]

The applicant, Mr Michelangelo Borgese, took proceedings on 4 September 1984 before the Rome magistrates' court against the Istituto Nazionale della Previdenza Sociale (INPS) to establish his

entitlement to a disability pension. On 12 April 1988, the District Court found that the applicant qualified for the pension. The text of the decision was lodged with the registry on 6 July 1988, the judgment became final on 6 July 1989, there having been no appeal to the Court of Cassation. He complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found by majority (5–4) V 6(1).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson (d), Mr F Matscher, Mr L-E Pettiti (d), Mr B Walsh, Mr C Russo (d), Mr A Spielmann, Mr N Valticos (d), Mr SK Martens.

The period to be taken into consideration began on 4 September 1984 when the proceedings were instituted against the INPS in the magistrates' court. It ended on 6 July 1989 when the Rome District Court's judgment became final. The reasonableness of the length of proceedings was to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. Special diligence was necessary in employment disputes, which included pensions disputes. Although the Government pleaded the backlog of cases in the relevant courts, A 6(1) imposed on Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. The case was not complex. The proceedings were conducted at a normal pace in the magistrates' court. The applicant would appear to have delayed serving on the INPS the decision of 22 May 1985 so that the State could not be held responsible for the five and a half months which elapsed before the appeal was filed on 5 November 1985; nor was it answerable for the year which went by before the judgment of 12 April 1988 became final. However, the appeal proceedings remained dormant for more than twenty-two months. In view of what was at stake in the proceedings for the applicant, the lapse of time could not be regarded as reasonable.

Non-pecuniary damage (ITL 3 million), costs and expenses (ITL 2 million).

Cited: Vocaturo v I (24.5.1991).

Bosio and Moretti v Italy 99/50

[Application lodged 28.6.1995; Commission report 27.5.1998; Court Judgment 6.9.1999]

Mrs Maddalena Bosio and Mrs Glauca Moretti complained of the length of civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr L Ferrari Bravo, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mr A Baka, Mr E Levits.

The period to be taken into consideration began on 10 April 1986; the parties reached a settlement on 15 April 1998. It had lasted just over 12 years and could not be considered reasonable.

Non-pecuniary damage (unanimously ITL 25,000,000 to each applicant), costs and expenses (by majority (6–1) ITL 8,000,000).

Cited: Bottazzi v I (28.7.1999).

Botta v Italy (1998) 26 EHRR 241 98/13

[Application lodged 30.7.1992; Commission report 15.10.1996; Court Judgment 24.2.1998]

Mr Maurizio Botta, who was physically disabled, went on holiday in 1990 to a seaside resort, Lido degli Estensi. There he discovered that the bathing establishments were not equipped with the facilities needed to enable disabled people to gain access to the beach and the sea (particularly special access ramps and specially equipped lavatories and washrooms), in breach of Italian legislation. In 1991 the applicant sent a letter to the mayor asking him to take the necessary measures to remedy the shortcomings noted the previous year. No reply was received, and later in 1991 when the applicant returned to the resort he found that none of the measures requested had

been implemented, although they were mandatory. The applicant complained to the carabinieri, alleging that, by failing to take any steps to oblige the private beaches to install the facilities for disabled people prescribed by law, the authorities had committed the offence of omitting to perform an official duty. In May 1992 the judge responsible for preliminary investigations ordered the discontinuation of the proceedings on the ground that, having completed his inquiry, he had not found any evidence that the offence had been committed. The applicant complained of impairment of his private life and development of his personality resulting from the State's failure to take appropriate measures to remedy the omissions of the private bathing establishments, namely the lack of lavatories and ramps providing access to the sea for the use of disabled people. He relied on A 8, claiming that he was unable to enjoy a normal social life which would enable him to participate in the life of the community and to exercise essential rights, such as his non-pecuniary personal rights, on account of the State's failure to discharge its positive obligations to adopt measures and to monitor compliance with domestic provisions relating to private beaches.

Comm found by majority (24–6) NV 8, unanimously NV 8+14.

Court found unanimously that neither 8 nor 14 were applicable.

Judges: Mr F Gölcüklü, President, Mr F Matscher, Mr C Russo, Mr R Pekkanen, Sir John Freeland, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr B Repik, Mr P Jambrek.

Private life included a person's physical and psychological integrity; the guarantee afforded by A 8 was primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings. In the instant case the applicant complained of inaction by the State. While the essential object of A 8 was to protect the individual against arbitrary interference by the public authorities, it did not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. However, the concept of respect is not precisely defined. In order to determine whether such obligations exist, regard must be had to the fair balance to be struck between the general interest and the interests of the individual. The State has a margin of appreciation. A State has obligations of this type where there is a direct and immediate link between the measures sought by an applicant and the latter's private and/or family life. In the instant case, however, the right asserted by the applicant – the right to gain access to the beach and the sea at a place distant from his normal place of residence during his holidays – concerned interpersonal relations of such broad and indeterminate scope that there could be no conceivable direct link between the measures the State was urged to take in order to make good the omissions of the private bathing establishments and the applicant's private life. Accordingly, A 8 was not applicable.

The applicant also relied on A 14 taken in conjunction with A 8, claiming that he was the victim of discrimination against him as a disabled person in the exercise of fundamental rights secured to all. A 14 complemented the other substantive provisions of the Convention and its Protocols. It had no independent existence, since it had effect solely in relation to 'the enjoyment of the rights and freedoms' safeguarded by those provisions. Although the application of A 14 did not presuppose a breach of one or more of those provisions, there could be no room for its application unless the facts of the case fell within the ambit of one or more of the latter. As the Court concluded that A 8 was not applicable, A 14 could not apply.

Cited: Abdulaziz, Cabales and Balkandali v UK (28.5.1985), Airey v IRL (9.10.1979), Guerra and Others v I (19.2.1998), Inze v A (28.10.1987), López Ostra v E (9.12.1994), Niemietz v D (16.12.1992), Stjerna v F (25.11.1994), X and Y v NL (26.3.1985).

Bottazzi v Italy 99/43

[Application lodged 26.10.1995; Commission report 10.3.1998; Court Judgment 28.7.1999]

Mr Emilio Bottazzi complained about the length of civil proceedings in a case concerning the review of a decision to stop payment of a war pension. The proceedings began on 4 April 1991 and

ended on 2 December 1997 when the Court of Audit's judgment dismissing the appeal was deposited with the registry.

Court unanimously found V 6(1).

Judges: Mrs E Palm, President, Mr A Pastor Ridruejo, Mr L Ferrari Bravo, Mr G Bonello, Mr T Türmen, Mr J-P Costa, Mrs F Tulkens, Mrs V Stráznická, Mr P Lorenzen, Mr W Fuhrmann, Mr M Fischbach, Mr V Butkevych, Mr J Casadevall, Mrs HS Greve, Mr A Baka, Mr R Maruste, Mrs S Botoucharova.

The reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case. Contracting States had a duty to organise their judicial systems in such a way that they could meet the requirements of A 6. There had been 65 judgments in which violations of 6(1) in respect of reasonable time had been found against Italy since 1987 (*Capuano*) and over 1,400 reports of the Commission resulting in breaches against Italy for the same reason. The frequency of the violations indicated an accumulation of identical breaches which could not be considered to be isolated incidents. The breaches presented a continuing situation which denied applicants a domestic remedy. A period of almost 6 years 8 months in the present case was not reasonable.

Damages (ITL 15 million), costs and expenses (ITL 7 million).

Botten v Norway 96/4

[Application lodged 22.12.1989; Commission report 11.10.1994; Court Judgment 19.2.1996]

Mr Harald Ståle Botten was a Lieutenant-Colonel in the Norwegian Air Force. Following a failed rescue in which 2 persons died on a shrimp trawler, a military board of inquiry found that the applicant, as Head of Station, was responsible. After a trial before the City Court the applicant was acquitted. On 12 April 1989 the public prosecutor appealed to the Supreme Court. At the hearing on 20 June 1989 the applicant was not present, although his counsel was, and addressed the Supreme Court and replied to the prosecutor's oral submissions. The Supreme Court heard no witnesses or experts. In a judgment of 27 June 1989, which was final, the Supreme Court upheld the prosecution appeal. He complained of violations of A 6

Comm found by majority (16–1) V 6(1).

Court unanimously dismissed the Government's preliminary objection, found by majority (7–2) V 6(1).

Judges: Mr R Bernhardt, President, Mr R Ryssdal (d), Mr F Gölcüklü (d), Mr A Spielmann, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi, Mr L Wildhaber, Mr U Lôhmus.

Regarding the preliminary objection of non-exhaustion, the subject-matter of the complaint was addressed and dealt with in the domestic proceedings. It was implicit in the Supreme Court's judgment that it did not consider the sentencing of the applicant without summoning him or hearing him in person gave rise to any unfairness in the proceedings against the applicant. In those circumstances, although neither the applicant or his counsel raised the matter themselves, the Norwegian court could not be said to have been denied the opportunity which the rule of exhaustion of domestic remedies was designed to afford to States, to put right the violations alleged against them. Accordingly, the Government's preliminary objection had to be dismissed.

The manner of application of A 6 to proceedings before courts of appeal depended on the special features of the proceedings involved; account had to be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein. Where a public hearing had been held at first instance, the absence of such a hearing might be justified at the appeal stage by the special features of the proceedings at issue, having regard to the nature of the domestic appeal system, the scope of the appellate court's powers and to the manner in which the applicant's interests were actually presented and protected before the court of appeal, particularly in the light of the nature of the issues to be decided by it. Leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, might comply with the requirements of A 6 although the appellant was not given an opportunity of being heard in person by the appeal or cassation court. Even where the court of appeal had full jurisdiction to examine

both points of law and of fact, A 6 did not always require a right to a public hearing or, if a hearing took place, a right to be present in person. The fairness of the proceedings in the City Court was undisputed. The appeal proceedings in the Supreme Court included a public and oral hearing at which the applicant was represented by counsel. The fact that the Supreme Court was empowered to overturn an acquittal by the City Court without summoning the defendant and without hearing the latter in person did not on its own infringe the fair hearing guarantee in A 6. Although the facts relating to the question of guilt established by the City Court were undisputed and the Supreme Court was bound by them, it had to some extent to make its own assessment for the purposes of determining whether they provided a sufficient basis for convicting the applicant. The Supreme Court had full jurisdiction to examine questions of fact and of law in considering sentence. However, in deciding on sentence in the case, the Supreme Court did not have the benefit of having a prior assessment of the question by the lower court which had heard the applicant directly. Bearing in mind the character of the offence in question, there was no reason to doubt that the outcome of the proceedings could have adversely affected the applicant's professional career. Taking into account what was at stake for the applicant, the Court did not consider that the issues to be determined by the Supreme Court when convicting and sentencing the applicant – and in doing so overturning his acquittal by the City Court – could, as a matter of fair trial, properly have been examined without a direct assessment of the evidence given by the applicant in person. Having regard to the entirety of the proceedings before the Norwegian courts, to the role of the Supreme Court and to the nature of the issues adjudicated on, the Court reached the conclusion that there were no special features to justify the fact that the Supreme Court did not summon the applicant and hear evidence from him directly before passing judgment. The Supreme Court was under a duty to take positive measures to that effect, notwithstanding the fact that the applicant neither attended the hearing, nor asked for leave to address the court, nor objected through his counsel to a new judgment under the relevant legislation being given by the Supreme Court. Therefore there had been a violation of A 6(1).

Damages not sought. Not necessary to make an award for costs and expenses.

Cited: Dombo Beheer BV v NL (27.10.1993), Edwards v UK (16.12.1992), Fejde v S (29.10.991), Helmers v S (29.10.1991), Kremzow v A (21.9.1993), Van Oosterwijck v B (6.11.1980).

Bouamar v Belgium (1989) 11 EHRR 1 88/1

[Application lodged 2.9.1980; Commission report 18.7.1986; Court Judgment 29.2.1999 (merits), 27.6.1988 (A50)]

Mr Naïm Bouamar, a Moroccan national, was a minor at the material time. He arrived in Belgium in 1972 and, as an adolescent with a disturbed personality, he was placed in various juvenile homes. In May 1978, the applicant was suspected of certain offences and was brought before the Liège Juvenile Court. Thereafter, a number of court orders were made in regard to him under the Children's and Young Persons' Welfare Act 1965 whose purpose was to protect the health, morals and education of young people under 18. On 9 occasions in 1980 he was ordered to be remanded in custody; in all, he was deprived of his liberty for 119 days during the period from 18 January to 4 November 1980. The applicant complained that his detentions were contrary to A 5(1), that the lawfulness of his detentions had never been reviewed and that the manner in which the proceedings were organised discriminated between adults and juveniles.

Comm found unanimously V 5(1)(d), V 5(4), no separate issue under 13, NV 5(4)+14.

Court found unanimously V 5(1), by majority (6–1) V 5(4), unanimously not necessary to consider 13, unanimously NV 5(4)+14.

Judges (merits and A 50): Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr J De Meyer (pd).

A 5(1) set out an exhaustive list which had to be interpreted strictly. It was for the national authorities, notably the courts, to interpret and apply the domestic law of their State. The

confinement of a juvenile in a remand prison did not necessarily contravene A 5(1)(d), even if it was not in itself such as to provide for the person's 'educational supervision'. A 5(1)(d) did not preclude an interim custody measure being used as a preliminary to a regime of supervised education, without itself involving any supervised education. In such circumstances, however, the imprisonment must be speedily followed by actual application of such a regime in a setting (open or closed) designed and with sufficient resources for the purpose. The Belgian State had chosen the system of educational supervision with a view to carrying out its policy on juvenile delinquency. Consequently it was under an obligation to put in place appropriate institutional facilities which met the demands of security and the educational objectives of the relevant legislation, in order to be able to satisfy the requirements of A 5(1)(d). Nothing in the evidence, however, showed that that was the case. The applicant had been detained in a remand prison in conditions of virtual isolation and without the assistance of staff with educational training, that could not be regarded as furthering any educational aim. The 9 placement orders, taken together, were not compatible with A 5(1)(d). Their fruitless repetition had the effect of making them less and less 'lawful' under A 5(1)(d), especially as Crown Counsel never instituted criminal proceedings against the applicant in respect of the offences alleged against him. There was therefore a breach of A 5(1).

The scope of the obligation under A 5(4) was not identical in all circumstances or for every kind of deprivation of liberty. In a case of the present kind, it was essential not only that the individual concerned should have the opportunity to be heard in person (as the applicant was) but that he should also have the effective assistance of his lawyer (his lawyers were not present at the Juvenile Court hearings). The mere fact that the applicant, who was very young at the time, appeared in person before the court did not, in the circumstances of the case, afford him the necessary safeguards. On appeal, the Court of Appeal heard the applicant's lawyers. However, there were lapses of time which were not compatible with the speed required by the terms of A 5(4). Furthermore, the appellate court did not really 'decide' the 'lawfulness' of the placement measures which were challenged before it, although it did go into the issue of lawfulness in some of the reasons given in two of its three decisions. The applicant's ordinary appeals and appeals on points of law thus had no practical effect. In sum, there had been a breach of A 5(4).

In the light of the conclusions regarding A 5(4), it was not necessary in this case to enquire into the less strict requirements of A 13, especially as the applicant did not reiterate the complaint in question before the Court.

The difference of treatment of between adults and juveniles regarding the review of the lawfulness of detention did not amount to discrimination. It stemmed from the protective, not punitive, nature of the procedure applicable to juveniles in Belgium. There was, accordingly, an objective and reasonable justification for the difference of treatment.

Friendly settlement reached (payment of 150,000 BEF to applicant) and accordingly the A 50 struck out of list.

Cited: Bozano v F (18.12.1986), De Cubber v B (26.10.1984), De Jong, Baljet and van den Brink (22.5.1984), De Wilde, Ooms and Versyp v B (18.6.1971), Guincho v P (10.7.1984), Lithgow and Others v UK (7.8.1986), Weeks v UK (2.3.1987), Winterwerp v NL (24.10.1979).

Bouchelkia v France 97/1

[Application lodged 25.10.1993; Commission report 6.9.1995; Court Judgment 29.1.1997]

Mr Hadi Bouchelkia was born in 1970 in Algeria and came to France in 1972 with his mother and his elder brother under the arrangements for family reunion. His mother and nine brothers and sisters live in France. He was convicted of rape with violence and theft. He escaped from custody and received an addition to the sentence for the other matters. On 11 June 1990 the Minister of the Interior made a deportation order against the applicant. His subsequent appeals were unsuccessful. In 1986 he met a woman of French nationality whom he married on 29 March 1996. They had a daughter born on 22 February 1993, in respect of whom he made a formal declaration

of paternity on 3 December 1993. He complained of violation of his right to respect for his private and family life.

Comm found by majority (9–4) NV 8.

Court found by majority (8–1) NV 8.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr L-E Pettiti, Mr R Macdonald, Mr A Spielmann, Mrs E Palm (d), Mr MA Lopes Rocha, Mr L Wildhaber, Mr B Repik.

The deportation order was made on 11 June 1990 and executed on 9 July 1990. It was with regard to the position at that time that the question whether the applicant had a private and family life within the meaning of A 8 fell to be considered. The applicant was at that point single and had no children. He only started his own family after the deportation order was made, thereby consolidating his family ties in France. At the time, he was still living with his original family and, since the age of 2, had lived in France where he had his main private and family ties. The applicant's deportation in 1990 amounted to an interference with his right to respect for his private and family life. The deportation order was based on s 26 of the 1945 Ordinance. The interference had aims which were entirely compatible with the Convention, namely 'the prevention of disorder or crime'. It was for the Contracting States to maintain public order, in particular by exercising their right, as a matter of well-established international law and subject to their treaty obligations, to control the entry and residence of aliens. For that purpose they were entitled to order the expulsion of such persons convicted of criminal offences. However, their decisions in that field had, in so far as they may interfere with a right protected under A 8(1), to be necessary in a democratic society, that is to say, justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued. The applicant, who was 20 years old, single and had no children when the deportation order was executed, maintained links at the material time with his country of origin of which he was a national and where close relatives of his lived. In addition the Court attached great importance to the nature of the offence which gave rise to the deportation order, aggravated rape. While it had been committed when the applicant was a minor aged 17, that did not detract from the seriousness and gravity of such a crime. The authorities could legitimately consider that the applicant's deportation was, at that time, necessary for the prevention of disorder or crime. The fact that, after the deportation order was made and while he was an illegal immigrant, the applicant built up a new family life, did not justify finding, a posteriori, that the deportation order made and executed in 1990 was not necessary. In the circumstances, a fair balance was struck between the relevant interests and the decision to deport the applicant was not disproportionate to the legitimate aims pursued. There had therefore been no violation of A 8.

Cited: Beldjoudi v F (26.3.1992), Boughanemi v F (24.4.1996), C v B (7.8.1996), Nasri v F (13.7.1995).

Boudier v France 00/95

[Application lodged 16.3.1998; Court Judgment 21.3.2000]

Mr René Boudier complained of the length of criminal proceedings which he had joined as a civil party.

Court found unanimously V 6(1).

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 26 June 1985 and ended on 28 January 1998. It had lasted 12 years, seven months, two days. The period could not be considered reasonable.

Non-pecuniary damage (ITL 30,000), costs and expenses (ITL 10,000).

Cited: Bouilly v F (7.12.1999), Doustaly v F (23.4.1998), Richard v F (22.4.1998), Scalvini v I (26.10.1999), X v F (31.3.1992).

Boughanemi v France (1996) 22 EHRR 228 96/18

[Application lodged 3.6.1993; Commission report 10.1.1995; Court Judgment 24.4.1996]

Mr Kamel Boughanemi was a Tunisian national. He came to France in 1968 at the age of 8 and lived there continuously until his deportation. His parents and his ten brothers and sisters resided in France. He claimed that he lived with a woman of French nationality whose child, born on 19 June 1993, he did not formally recognise until 5 April 1994. The applicant was convicted on a number of occasions for offences of burglary, assault, driving without a licence and without insurance and living on the earnings of prostitution with aggravating circumstances. On 8 March 1988 the Minister of the Interior issued an order for his deportation. The deportation order was executed on 12 November 1988 but the applicant returned to France and lived there illegally. His appeals against the deportation order were dismissed. He complained of violation of his right to respect for his private and family life.

Comm found by majority (21–5) V 8.

Court found by majority (7–2) NV 8.

Judges: Mr R. Ryssdal, President, Mr F Matscher, Mr L-E Pettiti (c), Mr A Spielmann, Mr N Valticos, Mr SK Martens (d), Mr AN Loizou, Mr AB Baka (d), Mr MA Lopes Rocha.

The applicant had recognised his child, admittedly belatedly. The concept of family life on which A 8 was based embraced, even where there was no cohabitation, the tie between a parent and his or her child, regardless of whether or not the latter was legitimate. In his case neither the belated character of the formal recognition, nor the applicant's alleged conduct in regard to the child, constituted a breaking of the tie. The applicant's parents and his ten brothers and sisters were legally resident in France and there was no evidence that he had no ties with them. His deportation had the effect of separating him from them and from the child. It could therefore be regarded as an interference with the exercise of the right under A 8. The order for deportation was based on sections 23 and 24 of the 1945 Ordinance on the conditions of entry and residence of aliens in France. The interference in question pursued the legitimate aim of 'the prevention of disorder' and the prevention of 'crime'. It was for the Contracting States to maintain public order, in particular by exercising their right, as a matter of well-established international law and subject to their treaty obligations, to control the entry and residence of aliens and notably to order the expulsion of aliens convicted of criminal offences. In determining whether the interference was 'necessary', allowance was made for the margin of appreciation left to the Contracting States in this field. The applicant had arrived in France at the age of 8 and was legally resident there from 1968 to 1988; he had then lived there, after his return as an illegal immigrant, until 12 October 1994. He had done most of his schooling there. His parents and siblings lived there. In addition he lived with a French woman there as man and wife and eventually formally recognised her child. His retention of his Tunisian nationality indicated that he had never manifested a wish to become French. He did not claim that he could not speak Arabic, or that he had cut all his ties with his country of birth, or that he had not returned there after his deportation. Particular importance was attached to the fact that the applicant's deportation was decided after he had been sentenced to a total of almost four years' imprisonment, non-suspended, three of which were for living on the earnings of prostitution with aggravating circumstances. The seriousness of that last offence and the applicant's previous convictions counted heavily against him. In the circumstances the applicant's deportation was not disproportionate to the legitimate aims pursued. There had accordingly been no violation of A 8.

Cited: Beldjoudi v F (26.3.1992), Berrehab v NL (21.6.1988), Gül v CH (19.2.1996), Moustaquim v B (18.2.1991), Nasri v F (13.7.1995).

Bouilly v France 99/94

[Application lodged 12.9.1997; Court Judgment 7.12.1999]

Mrs Elisabeth Bouilly complained of the length of administrative proceedings.

Court found unanimously V 6(1), not necessary to examine 13.

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr L Loucaides, Mr P Kûris, Mrs F Tulkens, Mr K Jungwiert, Mrs Hs Greve.

The period to be taken into consideration began on 12 August 1993 and ended on 20 November 1998. It had lasted five years, three months, eight days. The period could not be considered to be reasonable.

In view of the decision in relation to A 6 it was not necessary to examine the complaint under A 13.

Non-pecuniary damage (ITL 30,000), costs and expenses (ITL 15,000).

Cited: Di Pede v I (26.9.1996), Doustaly v F (23.4.1998), Hornsby v GR (19.3.1997), Pizzetti v I (26.2.1993), Richard v F (22.4.1998), Scalvini v I (26.1.1999), X v F (31.3.1992).

Boujlifa v France 97/80

[Application lodged 22.6.1994; Commission report 26.6.1996; Court Judgment 21.10.1997]

Mr Driss Boujlifa, a Moroccan, entered France at the age of 5 when he joined his father under the family reunion procedure. Three of his eight brothers and sisters had French nationality. When he was 20 he committed a number of criminal offences and in 1985 was sentenced to imprisonment for armed robbery. After he had served these sentences he was extradited to Switzerland to serve a prison sentence for theft. At the end of that period he returned to France and went to live with his parents. Deportation proceedings were commenced against him on account of the convictions. His appeals against the order were dismissed. He complained of a violation of his right to respect for private and family life.

Comm found by majority (11–2) NV 8.

Court found by majority (6–3) NV 8.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr L-E Pettiti, Mr JM Morenilla (d), Mr AB Baka (jd), Mr K Jungwiert, Mr P Kûris, Mr U Lôhmus, Mr P Van Dijk (jd).

Whether the applicant had a private and family life within the meaning of A 8 had to be determined by the Court in the light of the position at the time when the impugned measure was adopted. Although he could not claim at that time to be involved in a relationship, he had received his schooling there, and his parents and his eight brothers and sisters lived there. Consequently, the measure complained of amounted to interference with the applicant's right to respect for his private and family life. The deportation order was based on the 1945 Ordinance concerning the conditions of entry and residence of aliens in France. The interference sought to achieve the aim of 'the prevention of disorder or crime'. It was for the Contracting States to maintain public order, in particular by exercising their right to control the entry and residence of aliens. To that end they had the power to deport aliens convicted of criminal offences. With regard to the applicant's ties, the applicant had arrived in France at the age of 5 and had lived there since 1967, except for the period from 5 May 1987 to 5 August 1988, when he was serving a prison sentence in Switzerland. He received his education in France, he worked there for a short period and his parents and his eight brothers and sisters live there. On the other hand, he had not shown any desire to acquire French nationality at the time when he was entitled to do so. The offences committed, by their seriousness and the severity of the penalties they attracted, constituted a particularly serious violation of the security of persons and property and of public order. In the circumstances the requirements of public order outweighed the personal considerations which prompted the application. The order for the applicant's deportation could not be regarded as disproportionate to the legitimate aims pursued. There had accordingly been no breach of A 8.

Cited: Bouchelkia v F (1.7.1997), Kalaç v TR (1.7.1997).

Bowman v United Kingdom 98/7

[Application lodged 11.3.1994; Commission report 12.9.1996; Court Judgment 19.2.1998]

The applicant, Mrs Phyllis Bowman, was the executive director of the Society for the Protection of the Unborn Child (SPUC), an organisation opposed to abortion and human embryo experimentation. Before the parliamentary elections in April 1992, she arranged to have about one and a half million of the Society's leaflets distributed in constituencies throughout the United Kingdom. She was charged with an offence under sub-sections 75(1) and (5) of the Representation of the People Act 1983 which prohibited expenditure of more than GBP 5,000 by an unauthorised person during the period before an election on conveying information to electors with a view to promoting or procuring the election of a candidate. At her trial on 27 September 1993, the judge directed her acquittal because the summons charging her with the offence had not been issued within one year of the alleged prohibited expenditure in accordance with time limits in the Act. The proceedings were reported in the press. She complained that the prosecution violated her right to freedom of expression.

Comm found by majority (28–1) V 10.

Court unanimously rejected the Government's preliminary objection, found by majority (14–6) V 10.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr L-E Pettiti (jc), Mr B Walsh, Mr R Macdonald, Mr C Russo, Mr A Spielmann, Mr N Valticos (pd), Mrs E Palm, Mr A N Loizou (jpd), Sir John Freeland (pd), Mr AB Baka (jpd), Mr MA Lopes Rocha (jc), Mr L Wildhaber, Mr D Gotchev, Mr P Jambrek (jpd), Mr U Lôhmus, Mr E Levits (pd), Mr J Casadevall (jc), Mr P Van Dijk (jd).

Although she was eventually acquitted on a technicality, a prosecution had been brought against the applicant, indicating that the authorities considered that, unless she modified her behaviour during future elections, she would run the risk of being prosecuted again and possibly convicted and punished. She could properly claim to have been directly affected by the law in question and, therefore, to be a victim within the meaning of A 25(1). The Government's preliminary objection was accordingly dismissed.

The prohibition on expenditure contained in s 75 of the 1983 Act amounted to a restriction on freedom of expression, which directly affected the applicant. The restriction was provided for by the legislation. The purpose of s 75 was to contribute towards securing equality between candidates. Therefore, the application of this law to the applicant pursued the legitimate aim of protecting the rights of others, namely the candidates for election and the electorate in Halifax and, to the extent that the prosecution was intended to have a deterrent effect, elsewhere in the United Kingdom. Section 75 of the 1983 Act operated, for all practical purposes, as a total barrier to the applicant publishing information with a view to influencing the voters of Halifax in favour of an anti-abortion candidate. The Court was not satisfied that it was necessary to limit her expenditure to GBP 5,000 in order to achieve the legitimate aim of securing equality between candidates, particularly in view of the fact that there were no restrictions placed upon the freedom of the press to support or oppose the election of any particular candidate or upon political parties and their supporters to advertise at national or regional level, provided that such advertisements were not intended to promote or prejudice the electoral prospects of any particular candidate in any particular constituency. Accordingly the restriction was disproportionate to the aim pursued. There had therefore been a violation of A 10.

Costs and expenses (GBP 26,633.64).

Cited: Lingens v A (8.7.1986), Mathieu-Mohin and Clerfayt v B (2.3.1987), Norris v IRL (26.10.1988), Sunday Times v UK (No 1) (6.11.1980).

Boyle v United Kingdom (1995) 19 EHRR 179 94/9

[Application lodged 5.10.1989; Commission report 9.2.1993; Court Judgment 28.2.1994]

Mr Terence Boyle formed a close bond over the years with his sister's son C. Following an application by the National Society for the Prevention of Cruelty to Children, C was removed from the care of his mother under a Place of Safety Order on 2 February 1989 on suspicion that he had been sexually abused by her. The Juvenile Court made a full care order on behalf of the local authority; during proceedings the applicant was described as having been 'a good father figure' to C. His requests for access to C throughout C's placement in care were restricted. He complained that the refusal by the local authority to allow him access to his nephew in care and of the absence of any possibility of applying to the courts for access infringed his right to respect for family life.

Comm found by majority (14–4) V 8.

Court noted the friendly settlement and struck the case from the list.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr L-E Pettiti, Mr A Spielmann, Mr I Foighel, Sir John Freeland, Mr A B Baka, Mr MA Lopes Rocha, Mr L Wildhaber.

FS (GBP 15,000 ex gratia payment and reasonable legal costs) therefore SO.

Boyle and Rice v United Kingdom (1988) 10 EHRR 425 88/3

[Application lodged 4.3.1981; Commission report 15.1.1982; Court Judgment 27.4.1988]

The applicants James and Sarah Boyle: the first applicant was sentenced in Scotland to life imprisonment for murder. He received a number of subsequent prison sentences in 1968 and 1973 for prison breaking, attempted murder of a prison officer and assault on prison staff. The second applicant was his wife, a doctor by profession. The applicant complained that during his detention in Saughton Prison between September 1980 and November 1981 there had been infringement of his right to respect for their family and private life and home and correspondence and freedom of expression by the authorities imposing restrictions on the length of visits, the letters he could send, censorship of his mail and the reading of some of it in public by prison officers in a manner seriously inhibiting and embarrassing for the applicants, denial of access to a telephone, the refusal of the prison authorities in July 1981 to post a letter from the applicant to a friend, refusal to allow him to visit his home other than under a special escorted leave which afforded no privacy. They also complained that, in breach of A 13, there was no effective remedy before a national authority in respect of their complaints under the Convention.

The applicants Brian and John Rice: the first applicant was sentenced to life imprisonment for murder in 1967. The applicants alleged breach of A 8 during Brian Rice's period at Saughton Prison regarding the refusal to grant compassionate leave to visit his father John Rice who was ill, restrictions on prison visits, delays and stoppages to various letters which had been either delayed or stopped by the prison authorities. In addition they alleged that, in breach of A 13, there was no effective remedy before a national authority in respect of the claims presented in their application.

Comm found unanimously V 8 regarding stopping of Mr Boyle's letter, by majority (13–1) V 13 regarding limited prison visiting entitlement, unanimously V 13 regarding refusal to grant Brian Rice compassionate leave, NV 13 regarding applicants' other complaints.

Court unanimously found V 8 regarding stopping of Mr Boyle's letter, NV 13.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer (so), Mr N Valticos.

The stopping of Mr Boyle's letter violated A 8. Regarding Mr and Mrs Boyle's complaint regarding letter postage, the rules on payment of postage (prison authorities paid the postage of one outgoing letter per week and the postage of additional letters had to be met from prison earnings but not from the prisoner's general financial resources) were not in themselves unreasonable. Nor

was the vegetarian diet provided to Mr Boyle in prison inadequate, so that he was forced to spend his earnings on extra food rather than correspondence. Accordingly, no breach of A 13. Regarding Mr Brian Rice's complaint of delay of or refusal to post certain letters: on the evidence adduced, there was no arguable claim of violation of A 8 and so no violation of A 13. Regarding Mr and Mrs Boyle's complaint of screening of correspondence the Court recognised that some measure of control over prisoners' correspondence was called for and was not of itself incompatible with the Convention. No arguable claim of violation of A 8 had been made and consequently, no violation of A 13. Regarding their complaint that his mail was read aloud, that would constitute an abuse under the Prison Rules and be contrary to the Standing Orders and, if necessary, a petition to the Secretary of State would have provided an effective remedy under domestic law. Accordingly there had been no breach of A 13. Mr Boyle's complaint regarding the stopping of a letter constituted a violation of A 8. It was raised by petition to the Secretary of State and although he rejected the petition that did not establish that the remedy provided was ineffective. In addition, Mr Boyle could have applied to the courts for judicial review. Accordingly, the remedies available to Mr Boyle in respect of this complaint were sufficient to meet the requirements of A 13 which was therefore not breached. The applicants complained about the limited visiting entitlement. In general it was justifiable to apply to prisoners a uniform regime avoiding any appearance of arbitrariness or discrimination. In any event, in so far as the alleged inadequacy of visiting facilities flowed from a decision by the Governor of Saughton Prison, a remedy existed by way of petition to the Secretary of State, backed up if need be by an application to the courts for judicial review. The lack of success of those representations did not demonstrate that petition to the Secretary of State was an ineffective remedy for airing such complaints. Accordingly there had been no violation of A 13. Even if the complaint of Mr and Mrs Boyle regarding special escorted leave were arguable, an effective remedy existed in the form of a petition to the Secretary of State, who was competent to examine both the terms of the scheme and the individual decisions taken thereunder by the Governor. That conclusion was not affected by the unsuccessful outcome of the representations made to the Secretary of State in this connection by the applicants' solicitors. There had therefore been no violation of A 13 in relation to that complaint. There was no violation of A 8 regarding Brian and John Rice's complaint regarding compassionate leave. Taking into account all the circumstances of the case there had been no violation of A 13.

The difference in treatment between the detention in Saughton Prison and that in an open prison did not raise an arguable issue of discrimination under A 14.

Costs and expenses (GBP 3,000).

Cited: Airey v IRL (9.10.1979), James and Others v UK (21.2.1986), Johnston and Others v UK (18.12.1986), Klass and Others v D (6.9.1978), Leander v S (26.3.1987), Le Compte, Van Leuven and De Meyere v B (18.10.1982) Lithgow and Others v UK (8.7.1986), Silver and Others v UK (25.3.1983), Swedish Engine Drivers' Union (6.2.1976).

Bozano v France (1987) 9 EHRR 297, (1991) 13 EHRR 428 86/14

[Application lodged 30.3.1982; Commission report 7.12.1984; Court Judgments 18.12.1986 (merits), 2.12.1987 (JS)]

Mr Lorenzo Bozano, an Italian national, had been arrested by Italian police in May 1971 on a charge of abduction and murder in Genoa on 6 May. He was also charged with indecency offences with violence on four women. In June 1973 he was sentenced to imprisonment for offences relating to one of the four women. He was acquitted of the other charges, including the abduction and murder and he was released (having served time on remand). The prosecution appealed to the Genoa Assize Court of Appeal. The appeal began in April 1975, but the accused applied for an adjournment on medical grounds. The court found that he was deliberately refusing to appear and proceeded with the hearing. In May 1975, that court gave judgment *in absentia* and sentenced the applicant to life imprisonment for the abduction and murder and to four years' imprisonment for the other offences. An international arrest warrant was issued, the applicant having taken refuge in France. Italy officially applied to France for his extradition. In May 1979, the Indictment Division of

the Limoges Court of Appeal ruled against extradition, finding that the Italian procedure for trial *in absentia* was incompatible with French public policy. On 26 October 1979 the applicant was abducted by armed police and driven to the Swiss border from where he was extradited to Italy. The applicant argued that his 'abduction' and his 'forcible removal' to Switzerland had deprived him of his personal liberty and his freedom of movement, contrary to A 5(1) and P4A2. He also claimed breach of A 18.

Comm found by a majority (11–2) V 5(1), made no express finding in respect of 18 and considered it unnecessary to examine the case under P4A2.

Court unanimously rejected the Government's preliminary objections, unanimously found V 5(1), not necessary to examine the case either under 18 taken together with 5(1) or under P4A2.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr J Pinheiro Farinha, Mr L-E Pettiti, Sir Vincent Evans, Mr C Russo, Mr J Gersing.

The Government's preliminary objections of incompatibility with the Convention and non-exhaustion of domestic remedies were rejected, the latter objection being in part out of time and for the rest without foundation.

The case concerned the deprivation of liberty he suffered in France during the night of 26/27 October 1979: the main issue to be determined was whether the detention was 'lawful', including whether it was in accordance with 'a procedure prescribed by law'. The Convention refers essentially to national law and establishes the need to apply its rules, but it also requires that any measure depriving the individual of his liberty must be compatible with the purpose of A 5, namely to protect the individual from arbitrariness. This case concerned not only the 'right to liberty' but also the 'right to security of person'. The applicant's contention that the police action of 26/27 October 1979 was automatically deprived of any legal basis when the deportation order was retroactively quashed by the Limoges Administrative Court did not convince the Court. A Contracting State's agents may conduct themselves unlawfully in good faith: in such cases, a subsequent finding by the courts that there has been a failure to comply with domestic law may not necessarily retrospectively affect the validity, under domestic law, of any implementing measures taken in the meantime. However, it could be different if the authorities at the outset knowingly contravened the legislation in force and, in particular, if their original decision was an abuse of powers. There had been an abuse of powers in this case. The Limoges Administrative Court pointed out the haste with which the executive had proceeded, when the applicant had not even indicated his refusal to comply, and the choice of the Swiss border rather than any other; that court had come to the conclusion that the intention had been, not to expel the applicant, but to hand him over to the Italian authorities via the Swiss authorities, with whom Italy had an extradition agreement and therefore to circumvent the negative ruling in relation to extradition, which was binding on the French Government. Where the Convention refers directly back to domestic law, as in A 5, compliance with such law is an integral part of Contracting States' 'engagements' and the Court is accordingly competent to satisfy itself of such compliance where relevant; the scope of its task in this connection, however, is subject to limits inherent in the logic of the European system of protection, since it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. The arguments before the Court provided sufficient material for the Court to have the gravest doubts whether the contested deprivation of liberty satisfied the legal requirements in the respondent State. 'Lawfulness' also implies absence of any arbitrariness. The Court attached great weight to the circumstances in which the applicant was forcibly conveyed to the Swiss border. In the circumstances of the case, the Court concluded that the applicant's deprivation of liberty in the night of 26/27 October 1975 was neither 'lawful', within the meaning of A 5(1)(f), nor compatible with the 'right to security of person'. Depriving the applicant of his liberty in this way amounted in fact to a disguised form of extradition designed to circumvent the negative ruling of May 1979 by the Indictment Division of the Limoges Court of Appeal, and not to 'detention' necessary in the ordinary course of 'action ... taken with a view to deportation'. There was therefore a breach of A 5(1).

The applicant also relied on A 18, taken together with A 5(1). Given the decision of the Court in respect of A 5(1) taken alone, it was not necessary to examine the same issue under A 18. The Court had no jurisdiction to entertain an allegation made under A 5(4) which had been declared inadmissible by the Commission. The Court's conclusions in relation to A 5(1) made it unnecessary to determine whether P4A2(1) applied or was complied with.

Damages (FF 100,000), costs (FF 138,350).

Cited: Ashingdane v UK (28.5.1985), Barthold (25.3.1985), Campbell and Fell (28.6.1984), De Becker v B (27.3.1962), De Jong, Baljet and van den Brink v NL (22.5.1984), De Wilde, Ooms and Versyp v B (10.3.1972), Deweer v B (27.2.1980), Foti and Others v I (10.12.1982), Glasenapp v D (28.8.1986), Guzzardi v I (6.11.1980), Kosiek v D (28.8.1986), Van Droogenbroeck v B (24.6.1982), Van Oosterwijck v B (6.11.1980), Winterwerp v NL (24.10.1979).

Brandstetter v Austria (1993) 15 EHRR 378 91/38

[Application lodged 6.9.1984, 13.3.1987 and 21.10.1987; Commission report 8.5.1990; Court Judgment 28.8.1991]

Mr Karl Brandstetter was an Austrian wine merchant. Following an inspection by the Federal Inspector of Cellars and a report by the Agricultural Institute, the District Prosecutor instituted proceedings against him under s 45 of the Wine Act in respect of offences of offering for sale to the public 'imitation wine' and adulterated wine. The applicant complained that in proceedings concerning the quality of the wine and those relating to the charge of tampering with evidence, he had not had a fair trial, nor had he had the benefit of the right of the defence because of the position which the experts of the Agricultural Institute had occupied in relation to other expert witnesses. On 20 August 1984 criminal proceedings had been instituted at the request of the public prosecutor against the applicant for defamation, following his accusing the Inspector of Cellars of irregularities in taking the first samples. In so doing he had exposed the latter to the risk of disciplinary sanctions. He complained of further breaches of the rights of the defence and the principle of the presumption of innocence.

Comm found unanimously V 6(1)+6(3)(d) regarding the quality of the wine and tampering with evidence, by majority (9–3) V 6(3) regarding the applicant's conviction for defamation, unanimously no separate issue regarding other aspects of 6(1) and 6(2), by majority (11–1) NV 6(1) regarding equality of arms in the defamation proceedings.

Court found unanimously NV 6(1)+6(3)(d) regarding the quality of the wine, unanimously that, in the same proceedings, NV 6(3)(c), rejected unanimously Government's preliminary objection regarding expert evidence, unanimously that, in those proceedings, NV 6(1)+6(3)(d), unanimously that, as regards those proceedings, not necessary to examine the other complaints 6(1) and 6(2), unanimously that regarding the defamation proceedings, NV 6(3)(c) and by majority (6–3) NV 6(1).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson (pd), Mrs D Bindschedler-Robert (pd), Mr F Gölcüklü, Mr F Matscher (pd), Mr R Macdonald, Mr C Russo, Mr A Spielmann, Mr SK Martens.

Read literally, A 6(3)(d) related to witnesses and not experts. However, the guarantees in A 6(3) were constituent elements, amongst others, of the concept of a fair trial in A 6(1) and therefore the position of the expert in the proceedings and the manner in which he performed his functions could be considered. The fact that an expert is employed by the same institute or laboratory as the expert on whose opinion the indictment is based, did not in itself justify fears that he will be unable to act with proper neutrality. In this case the defence had not raised any objection to the expert until after the filing of his report, which was unfavourable to the applicant. The mere fact that the expert belonged to the staff of the Agricultural Institute did not justify his being regarded as a witness for the prosecution. The District Court's refusal of the defence's request to appoint other experts could not be seen as a breach of the principle of equality of arms. Nor was the refusal to call another expert as a witness unfair. The right to a fair trial did not require that a national court should appoint, at the request of the defence, further experts when the opinion of the court-appointed expert supported the prosecution case. Accordingly, there was no violation of A 6(1)

read in conjunction with A 6(3)(d). The applicant had never sought the attendance and examination of the members of the Agricultural Institute's panel in the proceedings concerning the quality of wine. The results of the wine-tasting procedures were part of the written expert opinions. The District Court had accepted the views and had found that the minutes of the wine-tasting session, which the applicant wanted to examine, did not constitute conclusive evidence. There was no violation of A 6(3)(1) and 6(3)(d). A 6(3)(c) did not provide for an unlimited right to use any defence arguments. The Court agreed in principle with the ruling of the Vienna Court of Appeal, that the rights of defence could not extend to an accused's conduct where it amounted to a criminal offence. The mere possibility of an accused being subsequently prosecuted on account of allegations made in his defence could not be deemed to infringe his rights under A 6(3)(c). He had not been threatened with the possibility of prosecution for defamation and there was no evidence that he was stopped from making the statements or in any way restrained from airing the views which he expressed. There had therefore been no violation of A 6(3)(c).

Regarding the Government's preliminary objection of failure to exhaust domestic remedies, the applicant had raised his complaint regarding the expert to the Vienna Court of Appeal which had rejected it. That being so, the domestic remedies were exhausted. The charge of tampering with evidence originated in a report prepared by the expert Mr F who was later appointed as official expert by the court in those proceedings. In those circumstances the applicant's apprehensions with regard to the neutrality and objectivity of the expert in question could be held to have been justified. Although it was not contrary to the Convention to examine Mr F, under the principle of equality of arms, persons who were or could be called, in whatever capacity, by the defence in order to refute the views professed by Mr Flack, should have been examined under the same conditions as he was. Although the applicant's expert was not heard 'under the same conditions' as Mr F, in the light of the way argument was presented to the hearing it could not be said that the refusal to appoint the applicant's expert amounted to a breach of the principle of equality of arms. Having regard to the particular circumstances of the case concerning the charge of tampering with evidence, the Court concluded that there had been no violation of A 6(1) and 6(3)(d).

The principle of equality of arms included the fundamental right that criminal proceedings should be adversarial. The right to an adversarial trial meant, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. In the present case no copy of the submissions of the Senior Public Prosecutor was sent to the applicant and he was not informed of their having been filed either. An indirect and purely hypothetical possibility for an accused to comment on prosecution arguments included in the text of a judgment could not be regarded as a proper substitute for the right to examine and reply directly to submissions made by the prosecution. There had therefore been a violation of A 6(1) in the appeal proceedings concerning the defamation case.

Costs and expenses (ATS 60,000).

Cited: Barberà, Messegué and Jabardo v E (6.12.1988), Bönisch v A (6.5.1985), Delta v F (19.12.1990), Delcourt v B (17.1.1970), Hauschildt v DK (24.5.1989).

Brannigan and McBride v United Kingdom (1994) 17 EHRR 539 93/19

[Application lodged 19.1.1989; Commission report 3.12.1991; Court Judgment 26.5.1993]

Mr Peter Brannigan, a labourer, was arrested at his home by police officers on 9 January 1989 at 6.30 am under the Prevention of Terrorism (Temporary Provisions) Act 1984 and removed to an Interrogation Centre at Gough Barracks. Extensions on his detention resulted in his being detained for a total period of 6 days, 14 hours and 30 minutes. During his detention he was interrogated on 43 occasions and denied access to books, newspapers and writing materials as well radio and television, not allowed to associate with other prisoners and had access to a solicitor delayed. He was seen by a medical practitioner on 17 occasions during police custody.

Mr Patrick McBride was arrested at his home by police officers on 5 January 1989 at 5.05 am and then removed to Castlereagh Interrogation Centre. Extensions to his detention resulted in a total period of detention of a total period of four days, six hours and 25 minutes. During his detention he was interrogated on 22 occasions and was subject to the same regime as Mr Brannigan. He received two visits from his solicitor and was seen by a medical practitioner on eight occasions during police custody. Mr McBride was shot dead on 4 February 1992 by a policeman who had run amok and attacked Sinn Fein Headquarters in Belfast.

The applicants complained that they were not brought promptly before a judge contrary to A 5(3), that they did not have an enforceable right to compensation in breach of A 5(5) and that there was no effective remedy in respect of their complaints contrary to A 13.

Comm found by majority (8–5) NV 5(3) in view of the UK's derogation under 15, unanimously no separate issue under 13.

Court found by majority (22–4) UK derogation satisfied the requirements of 15 and thus applicants could not validly complain of violation of 5(3), NV 5(5)+13.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr Thór Vilhjálmsson (declaration), Mr F Gölcüklü, Mr F Matscher (c), Mr L-E Pettiti (d), Mr B Walsh (d), Mr R Macdonald, Mr C Russo (c), Mr A Spielmann, Mr J De Meyer (d), Mr N Valticos, Mr SK Martens(c), Mrs E Palm, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla (jc), Mr F Bigi, Sir John Freeland, Mr AB Baka, Mr MA Lopes Rocha, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr J Makarczyk (d), Mr D Gotchev.

Having regard to its judgment in the case of Brogan and Others, the Court found that A 5(3) and A 5(5) had not been respected. However, the Government submitted that the failure to observe these requirements of A 5 had been met by their derogation of 23 December 1988 under A 15. Having regard to the nature of the terrorist threat in Northern Ireland, the limited scope of the derogation and the reasons advanced in support of it, as well as the existence of basic safeguards against abuse, the Court considered that the Government had not exceeded their margin of appreciation in considering that the derogation was strictly required by the exigencies of the situation. The derogation satisfied the requirements of A 15 and therefore the applicants could not validly complain of a violation of A 5(3). It followed that there was no obligation under A 5(5) to provide the applicants with an enforceable right to compensation.

It was open to the applicants to challenge the lawfulness of their detention by way of proceedings for habeas corpus, a remedy which satisfied A 5(4). Since the requirements of A 13 were less strict than those of A 5(4), which had to be regarded as the *lex specialis* in respect of complaints under A 5, there had been no breach of that provision.

Cited: Brogan and Others v UK (29.11.1988), De Jong, Baljet and van den Brink v NL (22.5.1984), De Wilde, Ooms and Versyp v B (18.6.1971), Huber v CH (23.10.1990), Ireland v UK (18.1.1978), Klass and Others v D (6.9.1978), Lamy v B (30.3.1989), Lawless v IRL (1.7.1961), Sanchez-Reisse v CH (21.10.1986), Schiesser v CH (4.12.1979).

Bricmont v Belgium (1990) 12 EHRR 217 89/12

[Application lodged 13.2.1984; Commission report 15.10.1987; Court Judgment 7.7.1989]

Mr Georges Bricmont, the first applicant had responsibility for managing some of the Prince of Belgium's assets and was assisted on occasions by his wife, Louise, the second applicant. They were convicted of various counts of forgery and misappropriation of funds. The criminal proceedings were brought by the Prince, who also joined the proceedings as a civil party seeking damages. The applicants complained that they had not had a fair trial because of the Prince's position. They complained about deficiencies in the judicial investigation, the refusal to arrange a confrontation with the Prince and to take evidence from him, the failure to examine certain witnesses, the failure to have an audit account carried out and the failure to produce a picture involved in one of the charges. They relied on A 6(1), A 6(3)(b) and A 6(3)(d).

Comm found by a majority (10–1) V 6(1) in that the applicants were in a less favourable position than the Prince and (6–5) V 6(3)(d) owing the failure to hear witness M; unanimously NV 6(3)(b) regarding

the failure to produce the picture 'Storm over Cannes' and lack of special examination of the accounts and NV 6(3)(d) regarding the failure to hear witnesses G and C.

Court unanimously dismissed the preliminary issue of non-exhaustion, found by a majority (5–2) V 6 as regards the failure to arrange a confrontation between the party seeking civil damages and the first applicant on some of the charges; unanimously NV 6 as regards the failure to arrange a confrontation between the party seeking damages and the second applicant; by a majority (5–2) NV 6 as regards the failure to have the accounts audited and unanimously NV 6 in respect of any of the other points raised by the applicants.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr F Matscher (pd), Mr J Pinheiro Farinha (pd), Mr R Macdonald, Mr C Russo (pd), Mr J De Meyer (pd).

The Court held that on the preliminary issue of non-exhaustion of domestic remedies the Government was estopped from relying on that rule as it had not been raised with sufficient clarity before the Commission.

There were objective reasons for having special regulations governing the taking of evidence from and the questioning of high-ranking persons of State and that did not conflict with A 6. The criminal proceedings were based on the Prince's accusations. The rights of the defence, an essential part of the right to a fair trial, required that the applicants should have an opportunity to challenge any aspect of the complainant's account during a confrontation or an examination, either in public or, if necessary, at the home of the complainant. At each stage of the proceedings the applicants asked for a confrontation with the Prince but none was ever arranged for the second applicant and the one with the first applicant dealt only with some of the charges. In convicting the first applicant, the Court of Appeal relied on the evidence of witnesses who had not been examined or confronted in the presence of the applicant in respect of those charges. Accordingly there had been a violation of A 6. It was normally for the national courts to decide whether it was necessary or advisable to call a witness. There were exceptional circumstances which could prompt the Court to conclude that the failure to hear a person as a witness was incompatible with A 6 but in the instant case it did not have sufficient grounds to so conclude. While an audit would have been desirable in view of the nature of the case, most of the transactions had been completed without any bank records being made and through companies which observed a rule of secrecy. In addition the applicants had never clearly requested an audit and therefore the failure to order an audit could not amount to a breach of A 6(1) and (3)(b). With regard to the failure to produce the picture, the applicants had not given details and could not therefore claim to be victims of a breach in that regard.

Finding of violation constituted sufficient just satisfaction for non-pecuniary damage. Costs and expenses (BEF 274,335.95).

Cited: Ciulla v I (22.2.1989), Unterpertinger v A (24.11.1986).

Brigandì v Italy 91/5

[Application lodged 22.2.1985; Commission report 6.12.1989; Court Judgment 19.2.1991]

In July 1961 Mr Natale Brigandì's warehouse was demolished by Mr B who put up a new building on the site. On 14 May 1962 the applicant sued Mr B seeking injunctions for demolition of the new building and rebuilding of his warehouse. The Court of Appeal gave final judgment on 23 July 1990 which was filed on 8 October 1990 awarding the applicant compensation and interest on the majority of his claim.

Comm found unanimously V 6(1), by majority (12–7) NV P1A1.

Court unanimously found V 6(1), unnecessary to examine P1A1.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr C Russo, Mr N Valticos, Mr SK Martens, Mr JM Morenilla.

The period to be considered began on 1 August 1973 when Italy recognised the right of individual petition to the ECHR. The proceedings ended on 8 October 1990 when the Court of Appeal's

judgment was filed. The reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case. The case was not complex although it had been dealt with at several levels of jurisdiction. A lapse of more than 17 years could not be regarded as reasonable especially as over 11 years had earlier elapsed before Italy recognised the right of individual petition. Accordingly V 6(1). In view of that conclusion it was unnecessary to examine P1A1.

Damages (ITL 15 million).

Cited: Baggetta v I (25.6.1987), Obermeier v A (28.6.1990), Union Alimentaria Sanders SA v E (7.7.1989).

Brincat v Italy (1993) 16 EHRR 591 92/70

[Application lodged 8.1.1988; Commission report 28.11.1991; Court Judgment 26.11.1992]

Mr Joseph Brincat, a Maltese lawyer, was a member of the Maltese Parliament and the Assembly of the Council of Europe. On 19 November 1987 one of his clients was seriously injured in a road accident. The applicant was instructed by an insurance company to report on the circumstances of the accident, and on 5 December 1987, accompanied by the victim's wife, he went to a scrapyard where the damaged vehicle had been taken. The client's wife having attempted to recover personal property concealed in the petrol tank, the owner of the scrapyard alerted the police, who discovered in her possession, *inter alia*, a banknote which formed part of the ransom paid for the release of a person who had been kidnapped. They were taken to the police station. The applicant appeared before the Lagonegro public prosecutor on Monday 7 December, who confirmed his detention. The public prosecutor conducted the preliminary investigation. On 14 December, the Lagonegro public prosecutor declared that he did not have territorial jurisdiction and sent the file to Paola, which had jurisdiction. On 18 December the Paola public prosecutor issued various orders and questioned him on Tuesday 22 December. On Monday 28 December 1987 the Cosenza District Court ordered the applicant's immediate release, as there was insufficient evidence against him. The public prosecutor's appeal was still pending. The applicant complained of his detention.

Comm found unanimously V 5(3).

Court found unanimously V 5(3).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr Thór Vilhjálmsson, Mr C Russo, Mr S K Martens, Mrs E Palm, Mr F Bigi, Sir John Freeland, Mr AB Baka.

A judicial officer who is competent to decide on detention may also carry out other duties, but there is a risk that his impartiality may arouse legitimate doubt on the part of those subject to his decisions if he is entitled to intervene in the subsequent proceedings as a representative of the prosecuting authority. The Court recalled its previous case-law. If the 'officer authorised by law to exercise judicial power' might later intervene, in the subsequent proceedings, as a representative of the prosecuting authority, there was a risk that his impartiality might arouse doubts which were to be held objectively justified. That was the case on 7 December 1987 when the Lagonegro deputy public prosecutor decided to confirm the applicant's detention. The mere fact that it became clear afterwards, on 14 December 1987, that he lacked territorial jurisdiction and therefore would not be entitled to conduct the prosecution was immaterial. The Paola public prosecutor too did not fulfil the conditions for a judicial officer deciding on detention; moreover, he did not hear Mr Brincat 'promptly' before issuing a warrant for his arrest. There had therefore been a violation of A 5(3).

Non-pecuniary damage (MTL 1,000), costs and expenses (MTL 821.43 and GBP 400).

Cited: De Jong, Baljet and Van den Brink v NL (22.5.1984), Duinhof and Duijf v NL (22.5.1984), Huber v CH (23.10.1990), Pauwels v B (26.5.1988), Van der Sluijs, Zuiderveld and Klappe judgment v NL (22.5.1984).

British-American Tobacco Company Ltd v Netherlands (1996) 21 EHRR 409 95/43

[Application lodged 27.2.1992; Commission report 19.5.1994; Court Judgment 20.11.1995]

On 14 May 1986 the applicant company filed a patent application with the Netherlands Patent Office. On 13 October 1988 the Examination Division gave a final decision refusing to publish the application for opposition purposes. The applicant company lodged an appeal with the Appeals Division of the Patent Office which gave a final decision on 29 August 1991 concluding that the subject-matter of the application was not patentable since it did not involve an inventive step and refusing therefore to publish the application. The applicant company complained that it had not had a fair hearing before an independent and impartial tribunal and under P1A1, that it had been deprived of its possessions without an examination by an independent and impartial tribunal.

Comm found by majority (22–1) V 6(1), unanimously NV P1A1.

Court found unanimously NV 6(1), not necessary to rule on 13, no separate issue arises under P1A1.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr A Spielmann, Mr N Valticos, Mr SK Martens, Mr I Foighel, Sir John Freeland, Mr D Gotchev, Mr P Jambrek.

Even if the proceedings before the Appeals Division of the Patent Office were considered not to comply with A 6 (1), no violation of the Convention could be found if there was available to the applicant company a remedy ensuring the determination of their asserted civil right by an independent judicial body that did have sufficient jurisdiction and did itself provide the safeguards required by A 6(1). Although no Netherlands civil court had ever held itself competent to review decisions of any Division of the Patent Office regarding patent applications, that did not mean that the remedy offered by civil proceedings must for that reason be regarded as 'ineffective'; it was equally true that no civil proceedings directed against a decision of the Appeals Division of the Patent Office had ever resulted in a ruling that the Appeals Division in fact offered sufficient procedural safeguards. The Court reviewed its previous case-law. It had found that 'where an administrative appeal to a higher authority [was] not considered to offer sufficient guarantees as to a fair procedure it [was] possible to have recourse to the civil courts for a full review of the lawfulness of the administrative decision'. The applicant company could have submitted its claim to the civil courts for examination; it chose, for whatever reason, not to do so. In those circumstances the Court could not find in the abstract that the remedies available to the applicant company under Netherlands law for vindicating their asserted right to a patent did not meet the requirements of A 6(1). Accordingly, there had been no violation of A 6(1).

The Court did not consider it necessary to rule on A 13. The applicant company had not adduced any argument to the effect that a violation of A 13 might be found even in the absence of a finding of a violation of A 6(1). In any event, the requirements of A 13 were less strict than, and were here absorbed by, those of A 6(1). The complaint under P1A1, namely the denial of a judicial remedy, was in substance identical to that already examined and rejected in the context of A 6(1). No separate issue arose under P1A1 in relation to the matters complained of.

Cited: Air Canada v UK (5.5.1995), Benthem v NL (23.10.1985), Campbell and Fell v UK (28.6.1984), Fischer v A (26.4.1995), Hentrich v F (22.9.1994), McMichael v UK (24.2.1995) Oerlemans v NL (27.22.1991), Van de Hurk v NL (19.4.1994).

Brogan and Others v United Kingdom (1989) 11 EHRR 117 88/17

[Applications lodged 18.10.1984, 22.10.1984, 22.11.1984, 8.2.1985; Commission report 14.5.1987; Court Judgment 29.11.1988 (merits), 30.5.1989 (A 50)]

The applicants were Mr Terence Brogan, a farmer, Mr Dermot Coyle, unemployed, Mr William McFadden, unemployed and Mr Michael Tracey, an apprentice joiner. They were arrested from their homes on 17 September 1984 in the case of Mr Brogan and 1 October 1984 in respect of the

other applicants, by police officers under the Prevention of Terrorism (Temporary Provisions) Act 1984 (the 1984 Act). They were taken to barracks or holding centres where they were detained and questioned about their suspected involvement in attacks on police patrols and security forces and about their suspected membership of the Provisional Irish Republican Army or Irish National Liberation Army, proscribed organisations. Mr Brogan was released on 22 September 1984, having spent a period in detention of five days and 11 hours. Mr Coyle was released on 7 October 1984, after a period of detention of six days and sixteen hours. Mr McFadden was released on 5 October 1984, after a period of detention of four days and six hours. Mr Tracey was released on 5 October 1984, after a detention period of four days and 11 hours. The applicants complained that their arrest and detention were not justified under A 5(1), that there had also been breaches of A 5 and that they had no effective remedy in respect of their complaints.

Comm found in respect of Mr Brogan and Mr Coyle by majority (10–2) V 5(3), (9–3) V 5(5), in respect of Mr McFadden and Mr Tracey (8–4) NV 5(3), NV 5(5), unanimously NV 5(1), by majority (10–2) NV 5(4), unanimously no separate issue under A 13.

Court found by majority (16–3) NV 5(1), (12–7) V 5(1) in respect of all four applicants, unanimously NV 5(4), (13–6) V 5(5), unanimously not necessary to consider A 13.

Judges (merits): Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson (jd), Mrs D Bindschedler-Robert (jd), Mr F Gölcüklü (jd), Mr F Matscher (jd), Mr J Pinheiro Farinha (pd), Mr L-E Pettiti, Mr B Walsh (d), Sir Vincent Evans (pd), Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer (c), Mr JA Carrillo Salcedo (d), Mr N Valticos (jd), Mr SK Martens (d), Mrs E Palm.

Judges (A 50): composition as above, but without Mr J Pinheiro Farinha. Judgment unanimous.

The scope of the Court's jurisdiction was determined by the Commission's decision declaring the originating application admissible. The applicant had expressly withdrawn his claim under A 5(2) and as a result the Commission discontinued its examination of the admissibility of that complaint. To permit the applicants to resuscitate this complaint before the Court would be to circumvent the machinery established for the examination of petitions under the Convention. Consequently, the allegation that there has been a breach of A 5(2) could not be entertained.

The applicants' arrest and detention were lawful under Northern Ireland law and, in particular, in accordance with a procedure prescribed by law. The applicants were questioned within a few hours of their arrest about their suspected involvement in specific offences and their suspected membership of proscribed organisations. Accordingly, the arrest and subsequent detention of the applicants were based on a reasonable suspicion of commission of an offence within the meaning of A 5(1)(c). The fact that the applicants were neither charged nor brought before a court did not necessarily mean that the purpose of their detention was not in accordance with A 5(1)(c). The existence of such a purpose had to be considered independently of its achievement and sub-para (c) of A 5(1) did not presuppose that the police should have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicants were in custody. Such evidence may have been unobtainable or, in view of the nature of the suspected offences, impossible to produce in court without endangering the lives of others. There was no reason to believe that the police investigation in this case was not in good faith or that the detention of the applicants was not intended to further that investigation by way of confirming or dispelling the concrete suspicions which grounded their arrest. Had it been possible, the police would, it could be assumed, have laid charges and the applicants would have been brought before the competent legal authority. Their arrest and detention had to therefore be taken to have been effected for the purpose specified in para 1(c). Therefore, there had been no violation of A 5(1).

None of the applicants was brought before a judge or judicial officer during his time in custody. The investigation of terrorist offences presented the authorities with special problems. The difficulties of judicial control over decisions to arrest and detain suspected terrorists could affect the manner of implementation of A 5(3); however, they could not justify, under that article, dispensing altogether with prompt judicial control. The scope for flexibility in interpreting and applying the notion of promptness was very limited. Even the shortest of the four periods of

detention (four days, six hours spent in police custody by Mr McFadden), fell outside the strict constraints as to time permitted by the first part of A 5(3). None of the applicants was either brought promptly before a judicial authority or released promptly following his arrest. The undoubted fact that the arrest and detention of the applicants were inspired by the legitimate aim of protecting the community as a whole from terrorism was not on its own sufficient to ensure compliance with the specific requirements of A 5(3). There had thus been a breach of A 5(3) in respect of all four applicants.

The remedy of habeas corpus was available to the applicants in the present case, though they chose not to avail themselves of it. There had been no violation of A 5(4).

As A 5 was not considered part of the domestic law of the UK, no claim for compensation lay for a breach of any provision of A 5 which did not at the same time constitute a breach of UK law. The applicants were arrested and detained lawfully under domestic law but in breach of A 5(3). That violation could not give rise, either before or after the findings made by the European Court in the present judgment, to an enforceable claim for compensation by the victims before the domestic courts. Accordingly, there had been a breach of A 5(5) in respect of all four applicants.

In the light of the finding that there has been no violation of A 5(4) it was not necessary to inquire whether the less strict requirements of A 13 were complied with, especially as the applicants did not pursue that complaint before the Court.

Judgment constituted sufficient just satisfaction for the purposes of A 50.

Cited: Ashingdane v UK (28.5.1985), Bouamar v B (29.2.1988), Bozano v F (18.12.1986), De Jong, Baljet and van den Brink v NL (22.5.1984), Engel and Others v NL (8.6.1976), Ireland v UK (18.1.1978), Klass and Others v D (6.9.1978), Neumeister v A (7.5.1974), Sunday Times v UK (26.4.1979), Weeks v UK (2.3.1987).

Bronda v Italy 98/47

[Application lodged 29.4.1993; Commission report 21. 1.1997; Court Judgment 9.6.1998]

The applicants, Mr Aldo Bronda and his wife Mrs Bronda Kaiser, complained that their granddaughter, S, born in 1984, had not been returned to live with them. On 29 October 1987 the Genoa Youth Court had made a care order in respect of S and parental rights were assigned to the local authority. Medical reports confirmed that the mother was mentally fit to assume her parental responsibility. S was subsequently placed in a children's home and in a decision of 22 November 1990 the Youth Court ruled that S was available for adoption. The applicants appealed to the Genoa Court of Appeal which set aside the judgment of the Youth Court and ordered that arrangement be made for S to be returned to her natural family. On 11 August 1995 the Youth Court held that S was sufficiently mature for her wishes to be taken into account and that she should not therefore be returned to her natural family against her will. Accordingly, the court awarded care of S to her foster parents and granted the parents access once every three months. They complained that their granddaughter had not been returned to her original home.

Comm found by majority (10–3) NV 8 and unanimously unnecessary to consider 13.

Court found unanimously NV 8, unnecessary to examine the complaint under 13.

Judges: Mr R Bernhardt, President, Mr C Russo, Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr D Gotchev, Mr P Kûris, Mr E Levits, Mr P Van Dijk, Mr T Pantiru.

The mutual enjoyment by parent and child of each other's company constituted a fundamental element of family life and domestic measures hindering such enjoyment amounted to an interference with the right protected by A 8. That principle applied to relations between a child and its grandparents, with whom it had lived for a time. The wording of relevant articles of the Civil Code and Code of Civil Procedure was rather general and national authorities had a wide measure of discretion in particular to determine what measures were necessary for the protection of the child. In this sphere it was impossible to lay down legal rules with total precision. Safeguards against arbitrary interference were provided by the fact that the way in which the norms were applied was subject to review by the courts. The measures taken in the present case were in

accordance with the law. The provisions concerned were applied in order to protect the child and there was no reason to consider that the domestic courts relied on them with the aim of estranging S from her original family. On the contrary, the wording of the decisions in issue clearly showed that the judges were guided by what was in S's interest and necessary to ensure her mental development. Consequently, the interference pursued a legitimate aim, namely the protection of the rights and freedoms of others under A 8(2). The consideration of what was in the best interest of the child was always of crucial importance. The national authorities had the benefit of direct contact with all the persons concerned, often at the very stage when care measures were being envisaged or immediately after their implementation. It followed that the Court's task was not to take the place of the competent national authorities in the exercise of their responsibilities for the regulation of the public care of children and the rights of parents whose children had been taken into care, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation. The decisions of the domestic court were based on reasons that were not only relevant but also sufficient for the purposes of paragraph 2 of A 8. In reaching them the domestic courts relied throughout on the thorough assessments of psychiatric experts and on reports prepared by social workers after each meeting between S and her natural family. While a fair balance had to be struck between S's interest in remaining with her foster parents and her natural family's interest in having her to live with them, the Court attached special weight to the overriding interest of the child, who, now aged fourteen, has always firmly indicated that she did not wish to leave her foster home. In the present case, S's interest outweighed that of her grandparents. Consequently, as the national authorities had not gone beyond their margin of appreciation, there had been no violation of A 8.

In the light of the findings under A 8 it was unnecessary to consider A 13 as no separate question arose in the present case under that provision.

Cited: Olsson v S (No 1) (24.3.1988), Johansen v N (7.8.1996).

Brozicek v Italy (1990) 12 EHRR 371 89/22

[Application lodged 7.5.1984; Commission report 22.3.1988; Court Judgment 19.12.1989]

The applicant, Mr Georg Brozicek, who was born in Czechoslovakia, resident in Germany and did not understand Italian, was charged with offences of resisting the police, assault and wounding in Italy. The notification of the accusation against him was in Italian. He returned the documentation to the Public Prosecutor's Office requesting that he be notified in his mother tongue or one of the international official languages of the United Nations. The Public Prosecutor's Office did not send any reply and did not have the letter translated. It asked the applicant to provide an address for service in Italy. On 5 December 1978 the German postal authorities returned the letter to the sender marked 'unclaimed'. He was tried and convicted *in absentia*, having failed to provide an address for service in Italy. He invoked A 6(1) and (3)(a).

Comm found by a majority (11–1, with two abstentions) V 6(3)(a), (13 votes, with one abstention) V 6(1).

Court dismissed the preliminary objection of non-exhaustion and held by a majority (15–5) V 6(1)+(3)(a).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson (jd), Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr L-E Pettiti (jd), Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo (jd), Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer (jd), Mr JA Carrillo Salcedo, Mr N Valticos (jd), Mr SK Martens (so), Mrs E Palm, Mr I Foighel.

The remedies that A 26 requires to be exhausted are those that are available and sufficient and relate to the breaches alleged. In this case the Court did not consider the appeal in question was sufficiently available. The applicant learned of his conviction some years after the final judgment. The time limit was unrealistic and a late appeal would not have remedied the violations in this case. In the circumstances the preliminary objection of failure to exhaust remedies was in part out of time and for the rest unfounded.

The applicant had informed the judicial authorities of his lack of knowledge of Italian and asked them to communicate to him in his mother tongue or one of the official languages of the United Nations. The judicial authorities should have taken steps to comply so as to ensure observance of the requirements of A 6(3)(a) unless they could establish that the applicant had sufficient knowledge of Italian to understand the purport of the communication. The right to participate in a trial, although not expressly mentioned in A 6(1) is recognised by the object and purpose of the Article taken as a whole. There was no evidence that the applicant intended to waive his right to participate in the trial. Accordingly, the trial was not fair within the meaning of A 6(1).

Just satisfaction for non-pecuniary damage, costs and expenses (DM 4,027.27 and CHF 1,900).

Cited: Artico v I (13.5.1980), Barberà, Messegué and Jabardo v E (8.12.1988), 'Belgian Linguistic' case (23.7.1968), Bricmont v B (7.7.1989), Ciulla v I (22.2.1989), Colozza v I (12.2.1985), Corigliano v I (10.12.1982), De Wilde, Ooms and Versyp v B (18.11.1960), Ireland v UK (18.1.1978), Johnston v IRL (18.12.1986), Klass v D (6.9.1978), Neumeister v A (27.6.1968), Van Oosterwijck v B (6.11.1980), Winterwerp v NL (24.10.1979).

Brualla Gómez de la Torre v Spain 97/100

[Application lodged 7.1.1995; Commission report 18.10.1996; Court Judgment 19.12.1997]

The applicant, Mrs Victoria Brualla Gómez de la Torre, was a practising lawyer in premises owned by an insurance company and to the tenancy of which she considered that she had succeeded on the death of her father. In 1990 the insurance company brought an action in the Madrid Court of First Instance for termination of the lease, arguing that the applicant could not succeed to her father's rights under it. On 18 April 1991 the insurance company's action was dismissed. It appealed successfully to the Madrid Audiencia provincial. The applicant gave notice of her intention to appeal to the Supreme Court. New legislation was enacted with accompanying transitional provisions, and the applicant's appeal was declared inadmissible. The applicant's appeal to the Constitutional Court was dismissed. She complained that she had not had a fair hearing.

Comm found by majority (16–13) NV 6(1), unanimously NV 13.

Court unanimously found NV 6(1), unnecessary to examine 13.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr C Russo, Mr R Pekkanen, Mr JM Morenilla, Mr AB Baka, Mr G Mifsud Bonnici, Mr P Jambrek, Mr P Van Dijk.

It was primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. Both the Supreme Court and the Constitutional Court considered that the principle of application with immediate effect laid down by the transitional provision should also apply in this type of case where the appeal had not been entered with the Supreme Court by the date when the new law came into force but where notice of appeal had been given in accordance with previous rules. It was not for the Court to express a view on the appropriateness of the domestic courts' choice of policy as regards case-law; its task was confined to determining whether the consequences of that choice were in conformity with the Convention. The 'right to a court', of which the right of access is one aspect, was not absolute; it was subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal were concerned, since by its very nature it called for regulation by the State, which enjoyed a certain margin of appreciation in that regard. The solution adopted in the instant case by the Spanish courts followed a generally recognised principle that, save where expressly provided to the contrary, procedural rules applied immediately to proceedings that were under way. The legitimate aim pursued by the statutory amendment was to increase the financial threshold for appeals to the Supreme Court in that sphere, so as to avoid that court becoming overloaded with cases of lesser importance. A 6 did not compel Contracting States to set up courts of appeal or of cassation. However, where such courts did exist, the guarantees of A 6 had to be complied with, for instance, in that it guaranteed to litigants an effective right of access to the courts for the determination of their 'civil rights and obligations'. The manner in which A 6(1) applied to courts

of appeal or of cassation depended on the special features of the proceedings concerned and account had to be taken of the entirety of the proceedings conducted in the domestic legal order and the court of appeal's role in them; the conditions of admissibility of an appeal on points of law may be stricter than for an ordinary appeal. Given the special nature of the Supreme Court's role as a court of appeal, the procedure followed in the Supreme Court might be more formal. However, in this case, the appeal to the Supreme Court had been made after the applicant's claims had been heard by both the Madrid Court of First Instance and the Audiencia provincial sitting as an appellate court, each of which had full jurisdiction. The fairness of the proceedings in those courts was not in any way called into question. For all those reasons and having regard to the proceedings as a whole, the applicant was not unduly hindered in her right of access to a tribunal and, accordingly there had been no violation of A 6(1).

Where the right claimed was a civil right, the role of A 6(1) in relation to A 13 was that of a *lex specialis*, the requirements of A 13 being absorbed by those of A 6(1). Consequently, it was unnecessary to rule on the complaint.

Cited: British-American Tobacco Company Ltd v NL (20.11.1995), Bulut v A (22.2.1996), Cantoni v F (15.11.1996), Delcourt v B (17.1.1970), Levages Prestations Services v France (23.10.1996), Tejedor García v E (16.12.1997).

Brumãrescu v Romania 99/72

[Application lodged 9.5.1995; Commission report 15.4.1998; Court Judgment 28.10.1999]

Mr Dan Brumãrescu's parents built a house in 1930 in Bucharest. In 1950 the State took possession of the house, allegedly under a decree on nationalisation. His parents were allowed to continue to live in one of the flats in the house as tenants of the State. In 1993 the applicant, as the beneficiary of his parents' estate, brought an action in the Bucharest Court of First Instance seeking a declaration that the nationalisation was null and void. On 9 December 1993 the Court of First Instance held that the nationalisation was unlawful and ordered the administrative authorities to return the house to the applicant. No appeal was lodged and the judgment became final and irreversible. In May 1994 the applicant obtained possession and ceased to pay rent on the flat he was occupying in the house and began paying land tax on the house. On an unknown date the Procurator-General of Romania lodged an application with the Supreme Court of Justice to have the judgment of 9 December 1993 quashed on the grounds that the Court of First Instance had exceeded its jurisdiction in examining the lawfulness of the application of the relevant decree. On 1 March 1995 the Supreme Court of Justice quashed the judgment of 9 December 1993 and dismissed the applicant's claim. The tax authorities informed the applicant that the house would be reclassified as State property with effect from 2 April 1996. The applicant lodged an application for restitution with the administrative board. On 24 March 1998 the Administrative Board vested ownership of the flat rented by the applicant in him and awarded him financial compensation for the rest of the house. On 14 May 1998 the applicant challenged that decision which refused to return the whole house to him. That application was dismissed on 21 April 1999. The applicant appealed and the proceedings are currently pending in the Bucharest County Court. He complained that he had been deprived of access to the court as the Supreme Court had held that the lower courts had no jurisdiction to deal with a claim for recovery of possession such as his and he also complained that the Supreme Court's judgment had deprived him of one of his possessions.

Comm found unanimously V 6(1), V P1A1.

Court dismissed Government's preliminary objection, found unanimously V 6(1) by reason of the lack of a fair hearing and of the refusal of the right of access to a court, V P1A1.

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr C Rozakis (c), Sir Nicolas Bratza (c), Mr L Ferrari Bravo, Mr L Caflisch, Mr L Loucaides, Mr J-P Costa, Mr W Fuhrmann, Mr K Jungwiert, Mr B Zupancic (jc), Mrs N Vajic, Mr J Hedigan, Mrs M Tsatsa-Nikolovska, Mr T Pantîru, Mr E Levits, Mr L Mihai, ad hoc judge.

A decision or measure favourable to an applicant was not in principle sufficient to deprive him of his status as a victim unless the national authorities had acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention. The applicant was currently in the same situation as he was on 1 March 1995, since there had been no final decision acknowledging, at least in substance, and redressing any violation of the Convention caused by the judgment of the Supreme Court of Justice. The applicant was still affected by the impugned judgment of the Supreme Court of Justice and continued to be the victim of the violations of the Convention which he asserted flow from that judgment. The preliminary objection of lack of victim was therefore dismissed.

The Government were responsible for the quashing of a final judgment determining an action for recovery of possession and could not subsequently rely on the argument that the applicant had failed to exhaust domestic remedies by failing to bring a fresh action for recovery of possession. Accordingly, the preliminary objection based on non-exhaustion had to be dismissed.

The right to a fair hearing before a tribunal as guaranteed by A 6(1) had to be interpreted in the light of the Preamble to the Convention, which declared, among other things, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law was the principle of legal certainty, which required, *inter alia,* that where the courts had finally determined an issue, their ruling should not be called into question. At the material time the Procurator-General of Romania had a power, which was not subject to any time-limit, under the Code of Civil Procedure to apply for a final judgment to be quashed. By allowing the application lodged under that power, the Supreme Court of Justice set at naught an entire judicial process which had ended in a judicial decision that was irreversible and thus *res judicata*, and which had, moreover, been executed. In applying the provisions of the Code of Civil Procedure in that manner, the Supreme Court of Justice infringed the principle of legal certainty. On the facts of the present case, that action breached the applicant's right to a fair hearing under A 6(1). Moreover, the ratio of the judgment of the Supreme Court of 1 March 1995 was that the courts had no jurisdiction whatsoever to decide civil disputes such as the action for recovery of possession in the present case. Such an exclusion was in itself contrary to the right of access to a tribunal guaranteed by A 6(1) and there had therefore been a violation of that article.

The applicant had a 'possession' for the purposes of P1A1. The Court of First Instance, in its judgment of 9 December 1993, established that the house in question had been nationalised in breach of the decree and held, with retrospective effect, that the applicant, as his parents' successor in title, was the lawful owner of that house. The judgment of the Supreme Court of Justice amounted to an interference with the applicant's right of property. In determining whether there had been a deprivation of possessions within the second 'rule', it was necessary not only to consider whether there had been a formal taking or expropriation of property but to look behind the appearances and investigate the realities of the situation complained of. Since the Convention was intended to guarantee rights that were practical and effective, it had to be ascertained whether the situation amounted to a de facto expropriation. The judgment of the Court of First Instance, ordering the administrative authorities to return the house to the applicant, became final and irrevocable and, in compliance with the judgment, the Mayor of Bucharest ordered the house to be returned to the applicant, which was done in May 1994. In addition, as of that date, the applicant ceased to pay rent on the flat he was occupying in the house and from April 1994 until April 1996 he paid land tax on the house. The effect of the judgment of the Supreme Court of Justice was to deprive the applicant of all the fruits of the final judgment in his favour by holding that the State had demonstrated its title to the house under the nationalisation decree. In consequence of the judgment of the Supreme Court of Justice, the applicant was accordingly deprived of the rights of

ownership of the house which had been vested in him by virtue of the final judgment in his favour. In particular, he was no longer able to sell, devise, donate or otherwise dispose of the property. In those circumstances, the effect of the judgment of the Supreme Court of Justice was to deprive the applicant of his possessions within the meaning of the second sentence of the first paragraph of P1A1. A taking of property within this second rule could only be justified if it was shown, *inter alia*, to be in the public interest and subject to the conditions provided for by law. Moreover, any interference with the property had to also satisfy the requirement of proportionality. A fair balance had to be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance would not be struck where the person concerned bore an individual and excessive burden. No justification had been offered for the situation brought about by the judgment of the Supreme Court of Justice. In particular, neither the Supreme Court of Justice itself nor the Government sought to justify the deprivation of property on substantive grounds as being in the public interest. The applicant had now been deprived of ownership of the property for more than four years without the payment of compensation reflecting its true value, and his efforts to recover ownership had to date proved unsuccessful. In those circumstances, even assuming that the taking could be shown to serve some public interest, a fair balance was upset and the applicant bore and continued to bear an individual and excessive burden. There had accordingly been, and continued to be, a violation of P1A1.

A 41 reserved.

Cited: Artico v I (13.5.1980), Campbell and Fell v UK (28.6.1984), Lüdi v CH (15.6.1992), Sporrong and Lönnroth v S (23.9.1982), Vasilescu v RO (22.5.1998).

Bryan v United Kingdom (1996) 21 EHRR 342 95/47

[Application lodged 29.10.1991; Commission report 28.6.1994; Court Judgment 22.11.1995]

The applicant, Mr John Bryan, was a farmer and a contractor. An enforcement notice was issued and served on him on 4 December 1989 by the Vale Royal Borough Council requiring the demolition of two brick buildings on land which he had bought in 1987 as they appeared to have been erected without the necessary planning permission. He appealed to the Secretary of State for the Environment. An inspector was appointed to conduct an inquiry and determine the appeal. He was a Principal Housing and Planning Inspector, a civil servant and a member of the salaried staff of the Department of the Environment. He had been appointed by the Secretary of State after approval of the Lord Chancellor. In his decision letter of 1 October 1990 the inspector rejected the appeal. The applicant's further appeal was dismissed by a High Court judge on 8 March 1991. Leave to appeal to the Court of Appeal was refused. He complained of an infringement of A 6.

Comm found by majority (11–5) NV 6(1).

Court unanimously found NV 6(1).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr F Matscher, Mr I Foighel, Sir John Freeland, Mr MA Lopes Rocha, Mr J Makarczyk, Mr D Gotchev, Mr U Lôhmus.

The planning proceedings involved a determination of the applicant's 'civil rights' and accordingly A 6 was applicable to the facts of the present case. The proceedings before the inspector in the present case ensured the applicant a 'fair hearing' for the purposes of A 6(1). In considering whether a body could be considered 'independent', regard had to be had, *inter alia*, to the manner of appointment of its members and to their term of office, to the existence of guarantees against outside pressures and to the question whether the body presented an appearance of independence. Although the inspector was required to decide the applicant's planning appeal in a quasi-judicial, independent and impartial, as well as fair, manner, the Secretary of State could at any time, even during the course of proceedings which were in progress, issue a direction to revoke the power of an inspector to decide an appeal. In the context of planning appeals the very existence of this power available to the Executive, whose own policies might be in issue, was enough to deprive the

inspector of the requisite appearance of independence, notwithstanding the limited exercise of the power in practice and irrespective of whether its exercise was or could have been in issue in the present case. For that reason the review by the inspector did not of itself satisfy the requirements of A 6(1), despite the existence of various safeguards customarily associated with an 'independent and impartial tribunal'. Even where an adjudicatory body determining disputes over 'civil rights and obligations' did not comply with A 6(1) in some respect, no violation of the Convention could be found if the proceedings before that body were 'subject to subsequent control by a judicial body that had full jurisdiction and did provide the guarantees of A 6(1). The appeal to the High Court, being on 'points of law', was not capable of embracing all aspects of the inspector's decision concerning the enforcement notice served on the applicant. In particular, there was no rehearing as such of the original complaints submitted to the inspector; the High Court could not substitute its own decision on the merits for that of the inspector; and its jurisdiction over the facts was limited. However, apart from the classic grounds of unlawfulness, the inspector's decision could have been quashed by the High Court on various grounds. The safeguards in the procedure before the inspector (the quasi-judicial character of the decision-making process; the duty incumbent on each inspector to exercise independent judgment; the requirement that inspectors must not be subject to any improper influence; the stated mission of the Inspectorate to uphold the principles of openness, fairness and impartiality) could have been subject to review by the High Court if there were shortcomings in relation to them. In the present case the High Court had jurisdiction to entertain the grounds of the applicant's appeal, and his submissions were adequately dealt with point by point. Although the High Court could not have substituted its own findings of fact for those of the inspector, it had the power to satisfy itself that the inspector's findings of fact or the inferences based on them were neither perverse nor irrational. The scope of review of the High Court was therefore sufficient to comply with A 6(1). There had accordingly been no violation of that provision in the present case.

Cited: Albert and Le Compte v B (10.2.1983), Langborger v S (22.6.1989), Zander v S (25.11.1993).

Buchholz v Germany (1981) 3 EHRR 597 81/1

[Application lodged 18.12.1976; Commission report 14.5.1980; Court Judgment 6.5.1981]

Mr Walter Buchholz worked for a dry-cleaning firm from February 1949; he was mainly employed as a driver until the end of 1963 and thereafter as, in particular, controller of branch establishments. On 28 June 1974, he was given notice that he was dismissed with effect from 31 December of the same year as a result of rationalisation measures. He took proceedings before the appropriate courts contesting the lawfulness of this notice. He complained, *inter alia*, that the courts did not determine his case within a reasonable time.

Comm found by majority (7–5) V 6(1), no issue under 3, 8 or 12.

Court found unanimously NV 6(1), 3, 8 12.

Judges: Mr G Wiarda, President, Mr H Mosler, Mr Thór Vilhjálmsson, Mr W Ganshof Van Der Meersch, Mrs D Bindschedler-Robert, Mr F Matscher, Mr E Garcia De Enterria.

The period to be examined extended from 10 July 1974 (commencement of the action before the Labour Court) until 26 April 1979 (delivery of the Federal Labour Court's judgment); its overall duration was four years, nine months, 16 days. The reasonableness of the length of proceedings had to be assessed according to the particular circumstances. In respect of criminal matters, the Court had regard, *inter alia*, to the complexity of the case and to the conduct of both the applicant and the competent authorities. In cases concerning proceedings brought before administrative courts in connection with civil rights, the Court took account additionally of the defendant's behaviour and what was at stake in the litigation for the plaintiff. In Germany, proceedings before the civil courts were governed by the principle of the conduct of the litigation by the parties and, in addition, the legislation encouraged the friendly settlement of cases concerning employment. That did not, however, dispense the judicial authorities from ensuring the trial of the action expeditiously. The Convention placed a duty on the Contracting States to organise their legal

systems so as to allow the courts to comply with the requirements of A 6(1) including that of trial within a reasonable time. A temporary backlog of business did not involve liability on the part of the Contracting States provided they had taken reasonably prompt remedial action to deal with an exceptional situation of that kind. More than four years and nine months passed before the Federal Labour Court delivered judgment as the court of final instance. That lapse of time appeared considerable for a case like this. Furthermore, what was at stake in the litigation was of great importance for the applicant: what was involved was either reinstatement in his employment or an award of compensation in the event of the contract being terminated. Although there were long delays on the part of the courts, the duration of the litigation was also to a large extent the result of certain issues raised by the applicant of his own accord, in respect of which he had to bear the consequences. The Court could not overlook the fact that the delays at the Court of Appeal level occurred at a time of transition marked by a significant increase in the volume of litigation resulting from a deterioration in the general economic situation. Having assessed the material before it and taken notice of the authorities' efforts to expedite the conduct of business before the labour courts, the Court considered that, even when viewed cumulatively, the delays attributable to the competent courts did not exceed a reasonable time within the meaning of A 6(1).

The applicant also invoked A 8, 3 and 12 of the Convention contending that the length of the proceedings had been the source of serious financial and personal difficulties for him. Assuming that failure to try an action within a reasonable time could on occasions have repercussions as regards respect for some other right guaranteed by the Convention, the Court had not found a breach of the requirements of A 6(1) in the present case. In addition, no issue arose under A 8, 3 or 12 taken on their own.

Cited: 'Belgian Linguistic' case (9.2.1967), König v D (28.6.1978), Neumeister v A (27.6.1968), Ringeisen v A (16.7.1971).

Buckley v United Kingdom (1997) 23 EHRR 101 96/35

[Application lodged 7.2.1992; Commission report 11.1.1995; Court Judgment 25.9.1996]

Mrs June Buckley, a Gypsy, lived with her three children in caravans parked on land which she owned. On 4 December 1989 she applied retrospectively to South Cambridgeshire District Council for planning permission for the three caravans on her site. She was refused on 8 March 1990 and on 9 April 1990 the Council issued an enforcement notice requiring the caravans to be removed within a month. The applicant's appeal against the enforcement notice to the Secretary of State for the Environment was dismissed on 16 April 1991. She did not appeal further. She was prosecuted for failure to comply with the 1990 enforcement notice and on 7 January 1992 she was fined GBP 50 and required to pay GBP 10 costs. She was again prosecuted on further occasions. She complained that she was prevented from living with her family in caravans on her own land and from following the traditional lifestyle of a Gypsy.

Comm found by majority (7–5) V 8.

Court found unanimously A 8 applicable, by majority (6–3) NV 8, (8–1) NV 14+8.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr L-E Pettiti (d), Mr AN Loizou, Mr JM Morenilla, Sir John Freeland, Mr B Repik (pd), Mr K Jungwiert, Mr U Lôhmus (pd).

Although the Commission considered the case only under A 8, the additional complaint under A 14 and 8 was encompassed in the Commission's decision declaring the application admissible. The Court accordingly had jurisdiction to examine it.

The applicant bought the land to establish her residence there. She has lived there almost continuously since 1988 and it had not been suggested that she had established, or intended to establish, another residence elsewhere. The case therefore concerned the applicant's right to respect for her home. She was refused the planning permission which would have allowed her to live in the caravans on her land, was required to remove the caravans and prosecuted for failing to do so, all pursuant to the relevant sections of the Town and Country Planning Act 1990. That constituted interference by a public authority with the applicant's exercise of her right to respect for her home.

The measures to which the applicant was subjected were in accordance with the law. The legitimate aims pursued by the measures were public safety, the economic well-being of the country, the protection of health and the protection of the rights of others. It was for the national authorities to make the initial assessment of the necessity for an interference, as regards both the legislative framework and the particular measure of implementation. Although a margin of appreciation was thereby left to the national authorities, their decision remained subject to review by the Court for conformity with the requirements of the Convention. The scope of this margin of appreciation was not identical in each case, but would vary according to the context. Relevant factors included the nature of the Convention right in issue, its importance for the individual and the nature of the activities concerned. Town and country planning schemes involved the exercise of discretionary judgment in the implementation of policies adopted in the interest of the community. It was not for the Court to substitute its own view of what would be the best policy in the planning sphere or the most appropriate individual measure in planning cases. National authorities were in principle better placed than an international court to evaluate local needs and conditions. The interests of the community were to be balanced against the applicant's right to respect for her home, a right which was pertinent to her and her children's personal security and well-being. The importance of that right for the applicant and her family had to also be taken into account in determining the scope of the margin of appreciation allowed to the respondent State. Whenever discretion capable of interfering with the enjoyment of a Convention right such as the one in issue in the present case was conferred on national authorities, the procedural safeguards available to the individual would be especially material in determining whether the respondent State had, when fixing the regulatory framework, remained within its margin of appreciation. Whilst A 8 contained no explicit procedural requirements, the decision-making process leading to measures of interference had to be fair and such as to afford due respect to the interests safeguarded to the individual by A 8. The Court's task was to determine, on the basis of the above principles, whether the reasons relied on to justify the interference in question were relevant and sufficient under A 8(2). Proper regard was had to the applicant's predicament both under the terms of the regulatory framework, which contained adequate procedural safeguards protecting her interest under A 8, and by the responsible planning authorities when exercising their discretion in relation to the particular circumstances of her case. The latter authorities arrived at the contested decision after weighing in the balance the various competing interests in issue. It was not the Court's task to sit in appeal on the merits of that decision. Although facts were adduced arguing in favour of another outcome at national level, the Court was satisfied that the reasons relied on by the responsible planning authorities were relevant and sufficient, for the purposes of A 8, to justify the resultant interference with the exercise by the applicant of her right to respect for her home. In particular, the means employed to achieve the legitimate aims pursued could not be regarded as disproportionate. In sum, the Court did not find that in the present case the national authorities exceeded their margin of appreciation. Therefore, there had been no violation of A 8.

It did not appear that the applicant was at any time penalised or subjected to any detrimental treatment for attempting to follow a traditional Gypsy lifestyle. In fact, it appeared that the relevant national policy was aimed at enabling Gypsies to cater for their own needs. That being so, the applicant could not claim to have been the victim of discrimination contrary to A 14 taken together with A 8 and accordingly, there had been no violation under that head.

Cited: Bellet v F (4.12.1995), Erkner and Hofauer v A (23.4.1987), Gillow v UK (24.11.1986), Allan Jacobsson v S (25.10.1989), Klass and Others v D (6.9.1978), Leander v S (26.3.1987), Miailhe v F (No 1) (25.2.1993), McMichael v UK (24.2.1995), Philis v GR (27.8.1991), Poiss v A (23.4.1987), Sporrong and Lönnroth v S (23.9.1982).

Bulut v Austria (1997) 24 EHRR 84 96/11

[Application lodged 5.10.1990; Commission report 8.9.1994; Court Judgment 22.2.1996]

Mr Mikdat Bulut was a waiter. In 1990 he faced charges of attempting to bribe staff of the Innsbruck Employment Agency. The trial took place on 23 March 1990. The presiding judge

mentioned that one of the judges, Mr Schaumburger, had acted as investigating judge for part of the preliminary proceedings. No point was taken by the parties. The applicant was found guilty and fined. He appealed to the Supreme Court. On 29 June 1990, the Attorney-General filed the observations with the Supreme Court, which were not disclosed to the defence. On 7 August 1990 the Supreme Court rejected the applicant's appeal. On 3 October 1990, after a hearing, the Innsbruck Court of Appeal increased the applicant's sentence to nine months' imprisonment, suspended for three years. The applicant complained that the trial court had included a judge disqualified from sitting by law as he had previously participated in the preliminary investigation. He further complained that no hearing had been held in the Supreme Court, that the Attorney-General had submitted to the Supreme Court observations which had not been made available to the defence and that the Supreme Court had divulged the name of the judge rapporteur to the Attorney-General contrary to the relevant legal provisions.

Comm found by majority (25–1) NV 6(1) on account of Judge Schaumburger's participation in the trial, unanimously NV 6(1) on account of the Supreme Court's failure to hold a hearing on account of the fact that the name of the judge rapporteur was communicated to the Attorney-General, by majority (25–1) V 6(1) on account of the Attorney-General's submission to the Supreme Court of observations of which the applicant was not aware.

Court found by majority (8–1) NV 6(1) with regard to Judge Schaumburger's participation in the trial, NV 6(1) on account of the Supreme Court's failure to hold a hearing, V 6(1) on account of the submission of observations by the Attorney-General's Office to the Supreme Court without communication to the defence.

Judges: Mr R Ryssdal, President, Mr F Matscher (pc/pd), Mr C Russo, Mr J De Meyer (so), Mr I Foighel, Mr JM Morenilla (pd), Mr L Wildhaber, Mr D Gotchev, Mr P Jambrek.

The applicant's complaint that the Supreme Court had divulged the name of the judge rapporteur to the Attorney-General, contrary to the relevant domestic legal provisions, which was declared admissible by the Commission, was abandoned before the Court, which saw no reason to entertain it of its own motion.

When the impartiality of a tribunal for the purposes of A 6(1) was being determined, regard had to be had not only to the personal conviction of a particular judge in a given case, the subjective approach, but also whether he afforded sufficient guarantees to exclude any legitimate doubt in that respect, the objective approach. There had been no suggestion of any prejudice or bias on the part of Judge Schaumburger and the Court therefore presumed his personal impartiality. In the present case the fear that the trial court might not be impartial was based on the fact that one of its members had questioned witnesses during the preliminary investigation. That kind of situation might give rise to misgivings on the part of the accused as to the impartiality of the judge. However, whether those misgivings should be treated as objectively justified depended on the circumstances of each particular case; the mere fact that a trial judge has also dealt with the case at the pre-trial stage could not be held as in itself justifying fears as to his impartiality. Judge Schaumburger was responsible for preparing the case for trial or for deciding whether the accused should be brought to trial. It had not been established that he had to take any procedural decisions at all. His role was limited in time and consisted of questioning two witnesses. It did not entail any assessment of the evidence by him, nor did it require him to reach any kind of conclusion as to the applicant's involvement. In that limited context, the applicant's fear that the Innsbruck Regional Court lacked impartiality could not be regarded as objectively justified. In any event, it was not open to the applicant to complain that he had legitimate reasons to doubt the impartiality of the court which tried him, when he had the right to challenge its composition but refrained from doing so. There had therefore been no violation of A 6 in that regard.

The manner of application of A 6 to proceedings before appellate courts depended on the special features of the proceedings involved; account had to be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein. Provided that there had been a public hearing at first instance, the absence of public hearings at a second or third instance might

be justified by the special features of the proceedings at issue. Thus proceedings for leave to appeal or proceedings involving only questions of law, as opposed to questions of fact, might comply with the requirements of A 6 even where the appellant was not given an opportunity of being heard in person by the appeal or cassation court. In the present case, a public hearing was held at first instance. The Supreme Court rejected the applicant's appeal. The nature of the review could be compared to that of proceedings for leave to appeal. The Court was not satisfied that the grounds of nullity under the Code of Criminal Procedure, as formulated by the applicant, raised questions of fact bearing on the assessment of the applicant's guilt or innocence that would have necessitated a hearing. The applicant essentially challenged the trial court's assessment of the available evidence, a challenge which the Supreme Court considered inadmissible. Accordingly, the Court found no violation as regards the Supreme Court's failure to hold a hearing.

Under the principle of equality of arms, as one of the features of the wider concept of a fair trial, each party had to be afforded a reasonable opportunity to present his case under conditions that did not place him at a disadvantage vis-à-vis his opponent. In this context, importance was attached to appearances as well as to the increased sensitivity to the fair administration of justice. While the Attorney-General's objectivity could not be questioned, from the moment he recommended that an appeal be allowed or dismissed, that opinion could not be regarded as neutral. In those circumstances, A 6(1) required that the rights of the defence and the principle of the equality of arms be respected. That applied *a fortiori* where the Attorney-General's Office was the body charged with the prosecution. The submission of the observations allowed the Attorney-General to take up a clear position as to the applicant's appeal, a position which was not communicated to the defence and to which the defence could not reply. The principle of the equality of arms did not depend on further, quantifiable unfairness flowing from a procedural inequality. It was a matter for the defence to assess whether a submission deserved a reaction. It was therefore unfair for the prosecution to make submissions to a court without the knowledge of the defence. Therefore the principle of the equality of arms had not been respected and there had been a violation of A 6(1) on account of the Attorney-General's submission of observations to the Supreme Court without the applicant's knowledge.

Legal costs and expenses (ATS 75,000 less FF 7,328).

Cited: Borgers v B (30.10.1991), Casado Coca v E (24.2.1994), Dombo Beheer BV v NL (27.10.1993), Hauschildt v DK (24.5.1989), Kerojärvi v SF (19.7.1995), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Lobo Machado v P (20.2.1996), Monnell and Morris v UK (2.3.1987), Nortier v NL (24.8.1993), Piersack v B (1.10.1982), Sutter v CH (22.2.1984).

Bunkate v Netherlands (1995) 19 EHRR 477 93/20

[Application lodged 24.11.1987; Commission report 1.4.1992; Court Judgment 26.5.1993]

On 12 September 1983 Mr Johannes Maria Clemens Bunkate was arrested in The Hague on suspicion of having committed forgery. He was placed in detention on remand until 16 December 1983, on which date the Public Prosecutor ordered his release on the ground of a shortage of cells then existing in The Netherlands. He was tried by the Regional Court of The Hague and on 5 January 1984 that court sentenced him to one year's imprisonment on two counts of forgery. Both the Public Prosecutor and the applicant filed an appeal the same day and the applicant was allowed to remain at liberty pending the appeal. Two days after the judgment of the Regional Court the applicant travelled to the Dominican Republic, where he stayed for some 11 months and had a death certificate in his own name issued by the competent Dominican authorities. His death was registered in The Hague on 18 May 1984. He returned to The Netherlands on 19 November 1984 and, following an application by his mother, the Regional Court deleted the entry of his death from the register on 25 June 1986. The appeal against the judgment of the Regional Court of 5 January 1984 was heard by the Court of Appeal of The Hague, which on 28 May 1985 found him guilty of only one count of forgery and acquitted him of the other; his sentence was increased to one year and four months. The applicant introduced an appeal on points of law to the Supreme

Court on 10 June 1985. The registry of the Court of Appeal transmitted the case file to the registry of the Supreme Court, which received it on 23 September 1986. The Supreme Court dismissed his appeal by judgment of 26 May 1987. He complained of the duration of the proceedings against him, especially with regard to the period between the judgment of the Court of Appeal and that of the Supreme Court.

Comm found unanimously V 6(1).

Court unanimously decided not to strike the case out of its list of cases, found V 6(1).

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr F Matscher, Mr C Russo, Mr N Valticos, Mr SK Martens, Sir John Freeland, Mr G Mifsud Bonnici, Mr AB Baka.

By letter of 4 January 1993, the Government, being the party which had brought the case before the Court, notified the Registrar of its intention not to proceed with the case in view of the judgment in the case of Abdoella v Netherlands. The applicant did not comment. There had been no friendly settlement, arrangement or other fact of a kind to provide a solution of the matter, so that Rule 49(2) was inapplicable. As to Rule 49(1), the applicant's entitlement to a formal and binding decision on the merits and as to just satisfaction, if any, overrode any interest the Government might have in discontinuance of the case. Accordingly, the Court decided not to strike the case out of its list.

The period to be taken into consideration began on 12 September 1983, the date of the applicant's arrest, and ended on 26 May 1987, the date of the decision of the Supreme Court by which the sentence of 16 months' imprisonment became final. However, the period from 7 January 1984 until 19 November 1984, during which the applicant was in the Dominican Republic and thus effectively out of reach of the Netherlands authorities, had to be deducted from the overall period. The reasonableness of the length of proceedings was to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The case was not particularly complex. Although the applicant filed his appeal on points of law on 10 June 1985, the registry of the Supreme Court did not receive the case file from the Court of Appeal until 23 September 1986. For that lapse of time, spanning 15 and a half months, the Government had offered no satisfactory explanation. A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. A period of total inactivity lasting for 15 and a half months was not acceptable. There had accordingly been a violation of A 6(1).

Cited: Girolami v I (19.2.1991).

Burghartz v Switzerland (1994) 18 EHRR 101 94/2

[Application lodged 26.1.1990; Commission report 21.10.1992; Court Judgment 22.2.1994]

Mrs Susanna Burghartz and Mr Albert Burghartz were Swiss nationals, married in Germany in 1984; Mrs Burghartz had German citizenship also. In accordance with German law they chose the wife's surname, 'Burghartz', as their family name; the husband availed himself of his right to put his own surname in front of that and thus call himself 'Schnyder Burghartz'. The Swiss registry office having recorded 'Schnyder' as their joint surname, the couple applied to substitute 'Burghartz' as the family surname and 'Schnyder Burghartz' as the husband's surname. On 6 November 1984 the cantonal government of Basle Rural turned down the application. The applicants complained that the authorities had withheld from Mr Burghartz the right to put his own surname before their family name although Swiss law afforded that possibility to married women who had chosen their husbands' surname as their family name.

Comm found by majority (18–1) V 14+8, (13–6) no need to examine 8 taken alone.

Court unanimously dismissed the Government's preliminary objections, found by majority (6–3) 8 applicable, (5–4) V 14+8, unanimously not necessary to determine 8 taken alone.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson (d), Mr F Gölcüklü, Mr L-E Pettiti (d), Mr C Russo (pd), Mr N Valticos (d), Mr JM Morenilla, Mr AB Baka, Mr L Wildhaber.

The case originated in a joint application by Mr and Mrs Burghartz to change their joint family name and the husband's surname simultaneously. Having regard to the concept of family which prevailed in the Convention system, Mrs Burghartz could claim to be a victim of the impugned decisions, at least indirectly. The objection of lack of victim was therefore dismissed.

The Federal Court was required by Swiss Constitution to apply the laws passed by the Federal Assembly. It was expressly forbidden to suspend the effects of any such laws which might prove to be incompatible with the Constitution. This prohibition had been extended by current case-law to cases in which there was a conflict between such a law and a treaty. That being so, the applicants could not be blamed for having founded their appeal solely on domestic law, seeing that their arguments were identical in substance with those they submitted to the Commission. As to a public-law appeal, its subsidiary nature prevented it from being considered in this instance an adequate remedy which A 26 would also have required the applicants to exhaust. Accordingly, the objection of non-exhaustion was dismissed.

The Convention did not contain any explicit provisions on names. As a means of personal identification and of linking to a family, a person's name concerned his or her private and family life. The fact that society and the State had an interest in regulating the use of names did not exclude this, since these public-law aspects were compatible with private life conceived of as including, to a certain degree, the right to establish and develop relationships with other human beings, in professional or business contexts as in others. The applicant's retention of the surname by which, according to him, he had become known in academic circles might significantly affect his career. A 8 therefore applied.

The advancement of the equality of the sexes was a major goal in the Member States of the Council of Europe; that meant that very weighty reasons would have to be put forward before a difference of treatment on the sole ground of sex could be regarded as compatible with the Convention. The Court was not persuaded by the Government's argument that family unity should be reflected in a single joint surname, since family unity would be no less reflected if the husband added his own surname to his wife's, adopted as the joint family name, than it was by the converse arrangement allowed by the Civil Code. The Court rejected the Government's argument that a genuine tradition was at issue here. Married women had enjoyed the right from which the applicant sought to benefit only since 1984. In any event, the Convention had to be interpreted in the light of present-day conditions, especially the importance of the principle of non-discrimination. Nor was there any distinction to be derived from the spouses' choice of one of their surnames as the family name in preference to the other. Contrary to what the Government contended, it could not be said to represent greater deliberateness on the part of the husband than on the part of the wife. It was therefore unjustified to provide for different consequences in each case. Other types of surname, such as a double-barrelled name or any other informal manner of use, could be distinguished from the legal family name, which was the only one that could appear in a person's official papers. They therefore could not be regarded as equivalent to it. In sum, the difference of treatment complained of lacked an objective and reasonable justification and accordingly contravened A 14 taken together with A 8.

Having regard to that conclusion, it was unnecessary to determine whether there had also been a breach of A 8.

Costs and expenses (CHF 20,000).

Cited: Beldjoudi v F (26.3.1992), Ekbatani v S (26.5.1988), Marckx v B (13.6.1979), Niemietz v D (16.12.1992), Schuler-Zgraggen v CH (24.6.1993).

Buscarini and Others v San Marino 99/8

[Application lodged 17.11.1995; Commission report 2.12.1997; Court Judgment 18.2.1999]

Mr Buscarini, Mr Della Balda and Mr Manzaroli, the applicants, were elected to the General Grand Council, the parliament, of the Republic of San Marino in elections held on 30 May 1993. They requested permission from the Captains-Regent to take the oath without making reference to any religious text. At the General Grand Council session of 18 June 1993 the applicants took the oath in writing, save for the reference to the Gospels, which they omitted. At its session of 26 July 1993 the General Grand Council adopted a resolution proposed by the Captains-Regent ordering the applicants to retake the oath on the Gospels, on pain of forfeiting their parliamentary seats. The applicants complied with the Council's order and took the oath on the Gospels, albeit complaining that their right to freedom of religion and conscience had been infringed. Subsequently new legislation was enacted which introduced a choice for newly elected members of the General Grand Council between the traditional oath and one in which the reference to the Gospels was replaced by the words 'on my honour'. The traditional wording is still mandatory for other offices, such as that of Captain-Regent or of a member of the Government. They complained of an infringement of their right to freedom of religion and conscience.

Comm found unanimously V 9.

Court found unanimously V 9.

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr L Ferrari Bravo, Mr L Caflisch, Mr P Kûris, Mr J-P Costa, Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach, Mr B Zupancic, Mrs N Vjic, Mrs W Thomassen, Mrs M Tsatsa-Nikolovska, Mr T Pantiru, Mr E Levits, Mr K Traja, Mrs S Botoucharova.

The applicants' announcement of their intention of bringing the matter to the attention of the Strasbourg Court could not be regarded as an abuse of the right of individual petition. Accordingly, the objection of abuse of process had to be dismissed. The applications were lodged by all three applicants within the period laid down in the Convention and were completed later. Consequently, the objection that the application was lodged out of time had to be dismissed. In order to comply with the rule of exhaustion of domestic remedies, normal recourse had to be had by an applicant to remedies which were available and sufficient to afford redress in respect of the breaches alleged. The domestic decisions relied on by the Government in the present case to show that the civil courts would have had jurisdiction to deal with the matter were irrelevant. The civil courts could not in any circumstances review and quash political decisions of the General Grand Council. Administrative proceedings or an application to the Sindacato della Reggenza would have been ineffective. Objection of non-exhaustion also dismissed.

A 9 was, in its religious dimension, one of the most vital elements that went to make up the identity of believers and their conception of life, but it was also a precious asset for atheists, agnostics, sceptics and the unconcerned. Requiring the applicants to take an oath on the Gospels constituted a limitation under A 9, as it required them to swear allegiance to a particular religion on pain of forfeiting their parliamentary seats. The interference was based on s 55 of the Elections Act, and was therefore prescribed by law. Requiring the applicants to take the oath on the Gospels was tantamount to requiring elected representatives of the people to swear allegiance to a particular religion, a requirement which was not compatible with A 9. As the Commission had rightly stated in its report, it would be contradictory to make the exercise of a mandate intended to represent different views of society within Parliament subject to a prior declaration of commitment to a particular set of beliefs. The limitation complained of accordingly could not be regarded as necessary in a democratic society. There had therefore been a violation of A 9 of the Convention.

Judgment constituted sufficient just satisfaction as to non-pecuniary damage.

Cited: Aksoy v TR (18.12.1996), Assenov and Others v B (28.10.1998), Kokkinakis v GR (25.5.1993)

Buscemi v Italy 99/51

[Application lodged 23.6.1995; Commission report 27.10.1998; Court Judgment 16.9.1999]

Mr Vincenzo Ettore Buscemi was a doctor. Following separation from his partner, the Youth Court awarded custody of their daughter to the mother. She subsequently gave the child to him and he

applied for legal custody to be transferred. On 5 May 1994 the Turin Youth Court decided to place the child in a children's home and appointed experts to determine which parent should be awarded custody. The applicant's appeal to the Court of Appeal was dismissed. The official report concluded that neither parent was fit to give the child a sufficiently well-balanced upbringing. The applicant's own report criticised that conclusion with regard to the applicant. The applicant's further application to the court was dismissed and on 3 November 1994 the court upheld the decision to place the child in a children's home. Between 11 July and 5 September 1994 the applicant had been involved in a heated dispute in the press with the President of the Youth Court over the social role played by those courts. On 21 November 1994 he requested that the President withdraw from the case involving his daughter. His application was dismissed as being out of time as the decision relating to the custody of the child had already been given when the request for the President to withdraw was filed. The applicant's further appeals for custody were rejected. On 9 August 1995 custody was again awarded to the mother and the applicant was awarded strictly supervised monthly access. The applicant complained of violation to respect for his family life as a result of the expert report which he submitted was procedurally flawed. He also alleged that the statements to the press by the President of the Youth Court caused injury to his reputation and to his family life and that the issue of custody of his daughter should not have been decided by a judge with whom he had publicly had a dispute.

Comm found unanimously V 8+6(1).

Court found unanimously V 6(1), NV 8.

Judges: Mr M Fischbach, President, Mr B Conforti, Mr G Bonello (pd), Mr P Lorenzen, Mrs M Tsatsa-Nikolovska, Mr AB Baka, Mr E Levits.

The applicant had been able to play a sufficiently active role in the proceedings which had led to the authorities' interference with his family life. His criticism of the manner in which the experts' investigation had been conducted was not a decisive factor, particularly as one of the experts appointed by him had been able to discuss with the court appointed experts the results of the examinations made during the investigation. Furthermore, the expert report had not been the only factor taken into account by the courts in deciding the case.

The public statement made to the press by the President of the Youth Court did not in any way amount to an infringement of the applicant's private or family life, since he had himself disclosed his identity in his first letter to the newspaper.

The duty of impartiality required judicial authorities to maintain maximum discretion with regard to the cases with which they dealt, even where they were provoked. The public statements by the President of the court had been such as to justify the applicant's fears as to his impartiality. There had therefore been a violation of A 6(1).

Finding of violation sufficient just satisfaction regarding non-pecuniary damage (majority 6–1). Costs and expenses (ITL 1,000,000).

Cited: Bronda v I (9.6.1998), Ferrantelli and Santangelo v I (7.8.1996), McMichael v UK (24.2.1995), Söderbäck v S (28.10.1998), W v UK (8.7.1987).

C

C v Belgium 96/25

[Application lodged 22.3.1993; Commission report 21.2.1995; Court Judgment 7.8.1996]

The applicant, a Moroccan citizen born in 1955, came to live in Belgium in 1966 with his parents and siblings. He lived in Brussels with his family in a house which they owned. After leaving school he trained as a mechanic. From 1984 onwards he worked for the family business as a taxi driver. On 17 October 1985, in Morocco, he married a Moroccan woman who came to live with him in Belgium. She gave birth to a son on 10 August 1986. He later divorced his wife in Morocco. On 6 April 1988 the Brussels Criminal Court convicted him of criminal damage, unlawful possession of drugs and conspiracy. Sentence was reduced on appeal to five years' imprisonment. He was released on parole on 23 May 1991. A royal order of 25 February 1991, which was served in March 1991, required the applicant to leave Belgium. The applicant complained of an infringement of his right to respect for his private and family life.

Comm found by majority (19–3) NV 8, (21–1) NV 8+14.

Court unanimously found NV 8, NV 8+14.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr A Spielmann, Mr J De Meyer, Mr AN Loizou, Mr AB Baka, Mr MA Lopes Rocha, Mr L Wildhaber, Mr P Kûris.

The concept of family on which A 8 is based embraces, even where there is no cohabitation, the tie between a parent and child, regardless of whether or not the latter is legitimate. Although that tie may be broken by subsequent events, this can only happen in exceptional circumstances. The applicant had established real social ties in Belgium, having lived and schooled and worked there. He had therefore established a private life there within the meaning of A 8, which encompasses the right for an individual to form and develop relationships with other human beings, including relationships of a professional or business nature. The applicant's deportation therefore amounted to interference with his right to respect for his private and family life. The royal order of 25 February 1991, based on ss 20 and 21 of the Act of 15 December 1980 on the entry, residence, settlement and expulsion of aliens was lawful. The interference had aims which were compatible with the Convention, namely the prevention of disorder or crime. It was for the Contracting States to maintain public order, in particular by exercising their right to control the entry and residence of aliens and notably to order the expulsion of aliens convicted of criminal offences. However, their decisions in this field must, in so far as they may interfere with a right protected under A 8(1), be necessary in a democratic society, that is to say, justified by a pressing social need and proportionate to the legitimate aim pursued. The Court's task was to determine whether they struck a fair balance between the applicant's right to respect for his private and family life, on the one hand, and the prevention of disorder or crime, on the other. The applicant had real links with Belgium, although he had not applied for naturalisation. However, he had preserved important links with Morocco. He had married and divorced a woman there and concluded an agreement with her giving him custody of their child; his father had died there. The interference was not so drastic as that which may result from the expulsion of applicants who were born in the host country or first went there as young children. In addition, the Court attached great importance to the seriousness of the offences which resulted in a long term of imprisonment and his deportation, namely unlawful possession of drugs and conspiracy. The applicant had assisted in the sale of more than 17 kilograms of cannabis. In the light of the ravages of drugs among the population, and especially among young people, it was not surprising that the authorities showed great firmness with regard to those who actively contributed to the spread of that scourge. In all the circumstances the Belgian authorities had not acted in an arbitrary or unreasonable manner, or failed to fulfil their obligation to strike a fair balance between the relevant interests. The applicant's expulsion could not therefore be regarded as disproportionate to the legitimate aims pursued. There had accordingly been no violation of A 8.

Regarding the applicant's complaint that in breach of A 8 and 14, his deportation amounted to less favourable treatment than was accorded to criminals who, as nationals of a Member State of the

European Union, were protected against such a measure in Belgium, the Court considered that such preferential treatment was based on an objective and reasonable justification, given that the Member States of the European Union formed a special legal order, which has, in addition, established its own citizenship. There had accordingly been no violation of A 8 and 14.

Cited: Beldjoudi v F (26.3.1992), Boughanemi v F (4.4.1996), Gül v CH (19.2.1996), Moustaquim v B (18.2.1991), Niemietz v D (16.12.1992).

CR v United Kingdom (1996) 21 EHRR 363 95/49

[Applications lodged 29 and 31.3.92; Commission report 27.6.1994; Court Judgment 22.11.1995]

The separate applications of SW and CR were heard together (see SW & CR v UK 95/48 for facts of SW). CR's wife had left the matrimonial home, although no divorce proceedings had begun by the time he was charged with her attempted rape and assault occasioning actual bodily harm. At his Crown Court trial on 30 July 1990 he claimed that the charge of rape was one which was not known to the law by reason of the fact that he was the husband of the alleged victim. Following the trial judge's ruling, CR pleaded guilty to attempted rape and assault occasioning actual bodily harm, and was sentenced to three years' imprisonment. He appealed to the Court of Appeal, which dismissed the appeal, as did the House of Lords on 23 October 1991, which declared that the general principle that a husband could not rape his wife no longer formed part of the law of England and Wales. It stressed that the common law was capable of evolving in the light of changing social, economic and cultural developments. Both CR and SW complained that, in breach of A 7, they were convicted in respect of conduct, namely the attempted rape and rape respectively upon their respective wives, which at the relevant time did not constitute a criminal offence.

Comm found by a majority (14–3) NV 7(1).

Court held unanimously NV 7(1).

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr C Russo, Mr J De Meyer, Mr SK Martens, Mr F Bigi, Sir John Freeland, Mr P Jambrek, Mr U Lôhmus.

Both SW and CR complained that their conviction and sentence constituted retrospective punishment in breach of A 7. The Court held that the guarantee enshrined in A 7 occupied a prominent place in the Convention system of protection. It should be construed and applied in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment. Accordingly, A 7 was not confined to prohibiting the retrospective application of the criminal law to an accused's disadvantage: it also embodied, more generally, the principle that only the law can define a crime and prescribe a penalty and the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy. From these principles it followed that an offence had to be clearly defined in the law. That requirement was satisfied where the individual could know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions would make him criminally liable. When speaking of 'law' A 7 alluded to the very same concept as that to which the Convention refers elsewhere when using that term, a concept which comprised written as well as unwritten law and implied qualitative requirements, notably those of accessibility and forseeability. However clearly drafted a legal provision might be, in any system of law, including criminal law, there was an inevitable element of judicial interpretation. There would always be a need for elucidation of doubtful points and for adaptation to changing circumstances. The applicants SW and CR maintained that the general common law principle that a husband could not be found guilty of rape upon his wife, subject to certain limitations, was still effective on the dates when they committed the acts which gave rise to the charges. The Court noted that both SW's and CR's convictions were based on the statutory offence of rape in s 1 of the 1956 Act, as further defined in s 1(1) of the 1976 Act. Neither applicant disputed that the conduct for which he was convicted would have constituted rape within the meaning of the statutory definition of rape as applicable at the time, had the victim not been his wife. CR's complaint under A 7 related solely

to the fact that he could not avail himself of the marital immunity under common law because, he submitted, it had been retrospectively abolished. The question was whether 'removal' of the marital immunity would conflict with the statutory definition of rape, in particular whether it would be prevented by the word 'unlawful'. The Court of Appeal carefully examined various strands of interpretation of the provision in the case-law, including the argument that the term 'unlawful' excluded intercourse within marriage from the definition of rape. The Court held that it is in the first place for the national authorities, notably the courts, to interpret and apply national law. It saw no reason to disagree with the Court of Appeal's conclusion, which was subsequently upheld by the House of Lords, that the word 'unlawful' in the definition of rape was merely surplusage and did not inhibit them from removing a common law fiction which had become anachronistic and offensive and from declaring that a rapist remains a rapist subject to the criminal law, irrespective of his relationship with his victim. The decisions of the Court of Appeal and then the House of Lords did no more than continue a perceptible line of case-law development dismantling the immunity of a husband from prosecution for rape upon his wife. There was no doubt under the law as it stood at the dates of the offences that a husband who forcibly had sexual intercourse with his wife could, in various circumstances, be found guilty of rape. Moreover, there was an evident evolution, which was consistent with the very essence of the offence, of the criminal law through judicial interpretation towards treating such conduct generally as within the scope of the offence of rape. This evolution had reached a stage where judicial recognition of the absence of immunity had become a reasonably foreseeable development of the law. The essentially debasing character of rape was so manifest that the result of the decisions of the Court of Appeal and the House of Lords could not be said to be at variance with the object and purpose of A 7, namely to ensure that no one should be subjected to arbitrary prosecution, conviction or punishment. The abandonment of the unacceptable idea of a husband being immune against prosecution for rape of his wife was in conformity not only with a civilised concept of marriage but also, and above all, with the fundamental objectives of the Convention, the very essence of which is respect for human dignity and human freedom. The Court found that the national courts' decisions that CR and SW could not invoke immunity to escape conviction and sentence for attempted rape and rape respectively upon their respective wives did not give rise to a violation of their rights under A 7(1). The Court did not find it necessary to enquire into whether the facts in either case were covered by the exceptions to the immunity rule already made by the English courts before 12 November 1989 or 18 September 1990.

Cited: Kemmache v F (No 3) (24.11.1994), Kokkinakis v GR (25.5.1993), Tolstoy Miloslavsky v UK (13.7.1995).

Caballero v United Kingdom 00/69

[Application lodged 28.6.1996; Commission report 30.6.1998; Court Judgment 8.2.2000]

Mr Clive Caballero was convicted of manslaughter by the Central Criminal Court in 1987. He was sentenced to four years' imprisonment and was released in August 1988. On 2 January 1996 he was arrested by the police on suspicion of the attempted rape of his next door neighbour. He was brought before the magistrates' court on 4 January 1996. Although he instructed his solicitor to apply for bail on his behalf, no bail application was made in view of s 25 of the Criminal Justice and Public Order Act 1994, the effect of which was that he could not be granted bail because of his previous conviction. He was remanded in custody. He was convicted of attempted rape and of assault occasioning actual bodily harm and on 17 January 1997 he was sentenced to four years' imprisonment for the assault conviction and to life imprisonment for the attempted rape conviction. On 11 July 1997 the Court of Appeal rejected his appeal against sentence. He complained that the automatic denial of bail prior to his trial constituted a violation of A 5 taken alone and in conjunction with A 13 and that there had been a violation of A 14 taken in conjunction with A 5(3).

Comm found by majority (19–12) V 5(3), V 5(5), not necessary to consider 14+5(3), unanimously NV 13.

Court unanimously accepted the Government's concession that there had been a violation of 5(3) and 5(5), not necessary to consider 13, not necessary to consider 14+5(3).

Judges: Mr L Wildhaber, President, Mrs E Palm (c), Mr A Pastor Ridruejo, Mr G Bonello (jc), Mr J Makarczyk, Mr P Kûris, Mr J-P Costa, Mrs F Tulkens (jc), Mrs V Stráznická, Mr M Fischbach, Mr V Butkevych, Mr J Casadevall (so), Mrs Hs Greve (js/o), Mr Ab Baka, Mr R Maruste, Mrs S Botoucharova, Sir Robert Carnwath (c), Ad Hoc Judge.

The Court accepted the Government's concession that there had been a violation of A 5(3) and (5), with the consequence that it was empowered to make an award of just satisfaction to the applicant under A 41, but it did not consider it necessary in the particular circumstances to examine the issues of interpretation of A 5(3) and (5) raised by the applicant's complaint.

The applicant did not pursue his complaint under A 13 before the Court, which saw no cause to examine it of its own motion.

Section 25 of the 1994 Act operated by selecting certain accused persons to whom bail could not be granted prior to trial. In view of the Court's acceptance of the Government's concession in connection with A 5(3), it was not necessary also to consider the applicant's complaint about s 25 of the 1994 Act under A 14.

Non-pecuniary damage (GBP 1,000), costs and expenses (GBP 15,250).

Cited: Brogan and Others v UK (30.5.1989) (A 50), De Jong, Baljet and Van den Brink v NL (22.5.1984), Hood v UK (18.2.1999), Huber v CH (23.10.1990), Kampanis v GR (13.7.1995), Nikolova v BG (25.3.1999), Pauwels v B (26.5.1988), Toth v A (12.12.1991), Van Droogenbroeck v B (25.4.1983) (A 50).

Cable and Others v United Kingdom 99/11

[Application lodged on various dates between June 1994 and September 1996; Commission report 4.3.1998; Court Judgment 18.2.1999]

Twenty four of the applicants were serving in the Royal Air Force and 11 were serving in the Army. They were each charged with one or more civilian criminal offences or armed forces' disciplinary offences and tried, convicted and sentenced by a court martial under either the Air Force Act 1955 or the Army Act 1955. All the applicants pleaded not guilty, except two who pleaded guilty. They complained that they had been denied fair hearings by independent and impartial tribunals established by law, contrary to A 6(1).

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr L Ferrari Bravo, Mr Kûris, Mr J-P Costa, Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach, Mr B Zupancic(pd), Mrs N Vajic, Mr J Hedigan, Mrs W Thomassen, Mrs W Thomassen, Mrs M Tsatsa-Nikolovska, Mr T Pantiru, Mr E Levits, Mr K Traja, Sir John Freeland, ad hoc judge.

The Court recalled its previous case-law in which it had found that courts-martial convened pursuant to the Army Act 1955 and Air Force Act 1955 did not meet the requirements of independence and impartiality laid down by A 6(1), in view in particular of the central part played in the prosecution by the convening officer, who was closely linked to the prosecuting authorities, was superior in rank to the members of the court martial and had the power, albeit in prescribed circumstances, to dissolve the court martial and to refuse to confirm its decision. There was no reason to distinguish the present cases. There had therefore been a violation of A 6(1).

Finding of violation constituted sufficient just satisfaction for any pecuniary damage, costs and expenses (GBP 40,000 less FF 19,200). No basis to award punitive damages.

Cited: Findlay v UK (25.2.1997), Coyne v UK (24.9.1997), Selçuk and Asker v TR (24.4.1998).

Caffè Roversi Spa v Italy 92/27

[Application lodged 27.1.1987; Commission report 5.12.1990; Court Judgment 27.2.1992]

The applicant, a limited company, filed a suit against Mr and Mrs P before the Modena District Court claiming payment of ITL 8,910,088. The investigation commenced at the hearing of 21

January 1982. On 14 April 1988 the District Court allowed the applicant's claim. The text of the judgment was lodged with the court registry on 20 May 1988. There was no appeal. The applicant company complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into account began on 13 November 1981 when the proceedings were instituted against Mr and Mrs P in the Modena District Court. It appeared to have ended on 20 May 1989, the date on which the District Court's judgment must have become final. The reasonableness of the length of proceedings was to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The investigation took a little more than five years following which one year and four months elapsed before the trial hearing on 13 April 1988. Regarding the first of those periods, the parties caused several adjournments. In addition, the investigating judge had to have recourse to an expert graphological opinion, hear witnesses and rule on an application for an attachment order. However, the case was not so complex that it warranted no less than twenty hearings. Moreover, the judge in question waited respectively 14 and six months before ordering, at the applicant's request, the two above-mentioned investigative measures. The second period made the situation worse. Although the Government pleaded the backlog of cases in the Modena District Court, A 6(1) imposed on Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. The lapse of time in the present case could not be regarded as reasonable and there had therefore been a violation of A 6(1).

Costs and expenses (ITL 8 million).

Cited: Pugliese (No 2) v I (24.5.1991) Vocaturo v I (24.5.1991).

Caillot v France 99/26

[Application lodged 18.7.1997; Court judgment 4.6.1999]

Mrs Simone Caillot complained of the length of civil land proceedings.

Court found by majority (5–2) V 6(1).

Judges: Sir Nicholas Bratza, President, Mr J-P Costa (d), Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert (d), Mrs HS Greve, Mr K Traja.

The period to be taken into consideration began at the latest on 16 February 1990 and ended on 6 May 1996, it had lasted almost 6 years and 3 months at 2 levels of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (FF 15,000), costs and expenses (FF 10,000).

Cited: Demir and Others v TR (23.9.1998), Doustaly v F (23.4.1998), Nikolova v BG (25.3.1999), Richard v F (22.4.1998).

Çakici v Turkey 99/40

[Application lodged 2.5.1994; Commission report 12.3.1998; Court Judgment 8.7.1999]

The applicant, Mr Izzet Çakici, made an application to the Commission on his own behalf and on behalf of his brother Ahmet Çakici. On 8 November 1993 an operation was carried out by the gendarmes at Ahmet Çakici's village looking for evidence concerning murders and kidnaps by the PKK. The facts surrounding the disappearance of the applicant's brother were disputed. The applicant claimed that his brother was detained by the gendarmes, tortured and disappeared. The authorities claimed that Ahmet Çakici was not taken into custody. On 13 June they declared that Ahmet Çakici's identity card had been found on the body of a dead terrorist. The applicant

complained about his brother's detention by the security forces and his subsequent disappearance and that those events had not been adequately investigated by the authorities.

Comm found unanimously V 2 in respect of the disappearance of the applicant's brother, V 3 in respect of the applicant's brother, V 5 in respect of the disappearance of the applicant's brother, by majority (27–3) V 3 in respect of the applicant, unanimously V 13, NV 14 and 18.

Court unanimously dismissed the Government's preliminary objection, found unanimously V 2, V 3 in respect of the applicant's brother, by majority (14–3) NV 3 in respect of the applicant, unanimously V 5, by majority (16–1) V 13, unanimously NV 14 or 18.

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr L Ferrari Bravo, Mr L Caflisch, Mr J-P Costa, Mr W Fuhrmann, Mr K Jungwiert (pd), Mr M Fischbach (pd), Mr B Zupancic, Mrs N Vajic, Mr J Hedigan, Mrs W Thomassen (pd), Mrs M Tsatsa-Nikolovska, Mr T Pantiru, Mr E Levits, Mr K Traja, Mr F Gölcüklü (pd), ad hoc judge.

The Court accepted the facts as established by the Commission, which had carried out the fact-finding exercise. In reviewing the evidence, the Court found that in this case the Government fell short of their obligations under former A 28(1)(a) to furnish all necessary facilities to the Commission in its task of establishing the facts.

The applicant and his father had made petitions and inquiries to the State Security Court prosecutor in relation to the disappearance of Ahmet Çakici. Although their concerns were known to the prosecutors, nothing was done. In the absence of an effective investigation into the alleged disappearance and in light of the authorities' repeated denial that Ahmet Çakici had ever been in custody, there was no basis for any meaningful recourse by the applicant to the civil and administrative remedies referred to by the Government and the applicant had to be regarded as having done everything that could reasonably be expected of him to exhaust the domestic remedies available to him. Consequently, the Government's preliminary objection was dismissed.

There was sufficient circumstantial evidence, based on concrete elements, on which it could be concluded beyond reasonable doubt that Ahmet Çakici died following his apprehension and detention by the security forces. The responsibility of the respondent State for his death was engaged. No explanation had been forthcoming from the authorities as to what occurred following his apprehension, nor any ground of justification relied on by the Government in respect of any use of lethal force by their agents. Liability for Ahmet Çakici's death was therefore attributable to the respondent State and there had accordingly been a violation of A 2 on that account. Furthermore, having regard to the lack of effective procedural safeguards disclosed by the inadequate investigation carried out into the disappearance and the alleged finding of Ahmet Çakici's body, the respondent State had failed in its obligation to protect his right to life. Accordingly, there had been a violation of A 2 on that account also.

The witness evidence supported a finding to the required standard of proof, ie beyond reasonable doubt, that Ahmet Çakici, the applicant's brother, was tortured during his detention. There had, consequently, been a violation of A 3 in relation to him.

Whether a family member of a disappeared person was a victim of A 3 in these circumstances would depend on the existence of special factors which gave the suffering of the applicant a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements would include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those inquiries. The essence of such a violation did not so much lie in the fact of the 'disappearance' of the family member but rather concerned the authorities' reactions and attitudes to the situation when it is brought to their attention. It was especially in respect of the latter that a relative might claim directly to be a victim of the authorities' conduct. In the present case, the applicant was the brother of the disappeared person, he was not present when the security forces took his brother. He did not bear the brunt of making the various petitions and inquiries to the authorities. Nor had any aggravating features arising from the response of the

authorities been brought to the attention of the Court in this case. Consequently, there were no special features existing in this case which would justify finding an additional violation of A 3 of in relation to the applicant himself. Accordingly, there had been no breach of A 3 as concerns the applicant in this case.

To minimise the risks of arbitrary detention, A 5 provided a corpus of substantive rights intended to ensure that the act of deprivation of liberty be amenable to independent judicial scrutiny and secured the accountability of the authorities for that measure. The unacknowledged detention of an individual was a complete negation of the guarantees in A 5 and disclosed a most grave violation of that article. Given the responsibility of the authorities to account for individuals under their control, A 5 required them to take effective measures to safeguard against the risk of disappearance and to conduct a prompt and effective investigation into an arguable claim that a person has been taken into custody and had not been seen since. The disappearance of Ahmet Çakici while he was held in unacknowledged detention in the complete absence of the safeguards contained in A 5 constituted a particularly grave violation of the right to liberty and security of person guaranteed under that provision.

There had been unacknowledged detention, ill-treatment and disappearance of the applicant's brother in circumstances that give rise to the presumption that he had died since those events. Given the fundamental importance of the rights in issue, the right to protection of life and freedom from torture and ill-treatment, A 13 imposed, without prejudice to any other remedy available under the domestic system, an obligation on States to carry out a thorough and effective investigation apt to lead to those responsible being identified and punished and in which the complainant had effective access to the investigation proceedings. The authorities had an obligation to carry out an effective investigation into the disappearance of the applicant's brother. They had failed to comply with that obligation, which failure undermined the effectiveness of any other remedies which might have existed. Consequently, there had been a violation of A 13.

The Court, on the basis of the facts as established by the Commission, found no violation of A 14 (discriminatory policy pursued by the authorities against Kurdish citizens) or A 18 (the existence of an authorised practice).

The scope of examination of the evidence undertaken in the case and the material on the case file were not sufficient to enable the Court to determine whether the authorities had adopted a practice of violating A 13.

Pecuniary damage (GBP 11,534.29), non-pecuniary damage (GBP 25,000 to be held by the applicant for his brother's heirs and GBP 2,500 in respect of the applicant), costs and expenses (by majority (12–5) GBP 20,000 less FF 7,000).

Cited (merits): Akdivar and Others v TR (16.9.1996), Assenov and Others v BG (28.10.1998), Aydin v TR (25.9.1997), Aytekin v TR (23.9.1998), Chahal v UK (15.11.1996), Kaya v TR (19.2.1998), Kurt v TR (25.5.1998), McCann and Others v UK (27.9.1995), McMichael v UK (24.2.1995), Yasa v TR (2.9.1998).

Cited (A 41): Aksoy v TR (18.12.1996), Aydin v TR (25.9.1997), Ergi v TR (28.7.1998), Güleç v TR (27.7.1998), Kaya v TR (19.2.1998), Kurt v TR (25.5.1998), Ogur v TR (20.5.1999), Tekin v TR (9.6.1998), Yasa v TR (2.9.1998).

Caleffi v Italy 91/32

[Application lodged 20.9.1985; Commission report 6.3.1990; Court Judgment 24.5.1991]

On 21 November 1977, Mr Massimo Caleffi, the applicant, brought an action in the Rome magistrates' court against his employer seeking recognition of his right to a professional qualification corresponding to the work he had been doing since 1 April 1972 and payment of a sum equivalent to the resulting difference in remuneration. At a hearing on 1 July 1985 the applicant agreed to relinquish any claim against the employer in exchange for the sum of ITL 20,908,784 and for reimbursement of the procedural costs and lawyers' fees. He complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Sir Vincent Evans, Mr C Russo, Mr SK Martens, Mr JM Morenilla.

The period to be taken into consideration began on 21 November 1977 when the applicant's employer was summoned to appear before the magistrates' court. It ended on 1 July 1985 when a friendly settlement was reached. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and the criteria laid down in the Court's case-law. It was for the Contracting States to organise their legal systems in such a way that their courts could meet the requirements under A 6(1). Employment disputes called generally for expeditious decision. The Italian authorities had acknowledged this by amending the special procedure used in such cases in 1973; the changes introduced included a shortening of the time limits normally applicable in civil proceedings. In the present case none of them was complied with. This was particularly so during the cassation proceedings, when over three years elapsed before the hearing. There had therefore been a violation of A 6(1).

Non-pecuniary damage (ITL 10 million), costs and expenses (ITL 3 million) awarded.

Cited: H v F (24.10.1989), Obermeier v A (28.6.1990), Santilli v I (19.2.1991), Zanghì v I (19.1.1991).

Caliendo v Italy 00/89

[Application lodged 12.10.1996; Commission report 1.12.1998; Court Judgment 14.3.2000]

Mrs Giuseppina Caliendo complained of the length of administrative proceedings.

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr L Ferrari Bravo, Mr G Bonello (d), Mrs M Tsatsa-Nikolovska, Mr P Lorenzen, Mr AB Baka, Mr E Levits (d).

The period to be taken into consideration began on 26 April 1994 and was still pending on 6 October 1999. It had lasted more than 5 years 5 months at one level of jurisdiction.

Judgment constituted sufficient just satisfaction in respect of non-pecuniary damage (by majority 5–2). Costs and expenses (unanimously ITL 1,224,000).

Cited: Bottazzi v I (28.7.1999).

Caliri v Italy 00/48

[Application lodged 2.5.1997; Court Judgment 8.2.2000]

Mrs Maria Caliri complained of the length of administrative proceedings.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr B Conforti, Mr G Ress, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mrs N Vajic.

The period to be taken into consideration began on 10 June 1992 and ended on 8 April 1999. It had lasted 6 years 10 months at one level of jurisdiction.

Non-pecuniary damage (ITL 10,000,000), costs and expenses (ITL 5,000,000).

Cited: Bottazzi v I (28.7.1999).

Caloc v France 00/186

[Application lodged 6.5.1996; Court Judgment 20.7.2000]

Mr Adrien Caloc, a heavy plant driver, was interviewed by police on 29 September 1988 in respect of a complaint by his former employer who suspected him of having sabotaged two bulldozers. He attempted to flee while being questioned and was caught and immobilised by police. He was examined by a doctor. On 18 November 1988 he complained that he had been beaten and injured and the prosecution opened a preliminary investigation. He claimed that admissions made by him

in custody had been obtained by ill-treatment. By a judgment in December 1994 the Court of Cassation concluded that there was no serious charge against the police officers. The applicant complained of his ill-treatment in custody and length of proceedings.

Court unanimously dismissed the Government's preliminary objection, found by majority (6–1) NV 3, unanimously V 6(1).

Judges: Mr W Fuhrmann, President, Mr J-P Costa, Mr P Kûris, Mrs F Tulkens, Mr K Jungwiert, Mrs HS Greve (pd), Mr K Traja.

A preliminary investigation was opened by the prosecution less than two weeks after the applicant lodged his complaint. The doctors who examined the applicant while he was in custody and after his release were interviewed and the applicant was interviewed on three occasions. It was regrettable that the authorities took advantage of the fact that the applicant was in custody to carry out those interviews, however, the interviews were carried out by officers not present at the attempt to flee and by officers from a different brigade. There was no evidence that he was unable to speak freely. The indictments division carried out a thorough investigation. The Government did not dispute the allegations of violence on the occasion when the applicant attempted to flee. However, the applicant did not deny having resisted the police officers or having struggled while attempting to escape. Nor was it apparent from the medical report that he had been beaten. Therefore, it had not been proved that the force employed was excessive or disproportionate. Regarding the allegations of ill-treatment following his attempts to flee, the indictments division cast doubt on the appellant's credibility owing to the inconsistencies in his statements and his belated references to the ill-treatment allegedly suffered in the detention cell. The fact that he did not complain of his pain until the day following his release from custody did not necessarily mean that he had been the victim of ill-treatment between the time of his examination by the doctor and when he was released, since the doctors in question stated that the type of pain from which he was suffering could appear after a period of time. He could have withdrawn his admissions, but did not do so. The judgment was upheld by the Court of Cassation. His other complaints of ill-treatment found no support in he medical examinations. In sum, his allegations did not appear to be based on evidence which had sufficient basis to be probative.

The Government's preliminary objection in respect of the complaint under A 6 was rejected.

The proceedings regarding the investigation of the complaint together with an application to join the proceedings as a civil party began on 3 March 1989 and ended on 6 March 1996, a period of seven years, three days. The judicial authorities were under a particular duty to act diligently when they were investigating a complaint lodged by an individual as a result of violence allegedly committed against him by law enforcement agencies. Even though the indictments division of the court carried out a thorough investigation, the total requisite diligence was not observed. There had therefore been a violation of A 6(1).

Non-pecuniary damage (FF 60,000), costs and expenses (FF 10,000).

Cited: Assenov v BG (28.10.1998), Demir and Others v TR (23.9.1998), Doustaly v F (23.4.1998), Kaya v TR (19.2.1998), Klaas v D (22.9.1993), Labita v I (6.4.2000), McCann and Others v UK (27.9.1995), Maini v F (26.10.1999), Miailhe (No 2) v F (26.9.1996), Nikolova v BG (25.3.1999), Ribitsch v A (4.12.1995), Selmouni v F (28.7.1999), Tekin v TR (9.6.1998), Tomasi v F (27.8.1992), Yasa v TR (2.9.1998).

Calor Sud v Italy 99/69

[Application lodged 16.4.1996; Commission report 27.5.1998; Court Judgment 26.10.1999]

The applicant company complained of the length of civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr L Ferrari Bravo, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mr AB Baka, Mr E Levits.

The period to be taken into consideration began on 23 June 1987 and was still pending. It had lasted nearly 12 years, three months.

Claim for pecuniary loss dismissed as the domestic courts might still award financial compensation.

Cited: Bottazzi v I (28.7.1999), Casciaroli v I (27.2.1992).

Camenzind v Switzerland (1999) 28 EHRR 458 97/98

[Application lodged 2.10.1992; Commission report 3.9.1996; Court Judgment 16.12.1997]

On 5 December 1991 the radio communications surveillance unit of the Head Office of the Swiss Post and Telecommunications Authority (PTT) located on a frequency reserved for civil and military aircraft a private telephone conversation being held on a telephone of an unauthorised type. The conversation was traced to the applicant, a lawyer. He was suspected of contravening s 42 of the Federal Act of 1922 'regulating telegraph and telephone communications' and an investigation was commenced pursuant to the Federal Administrative Criminal Law Act 1974. On 13 December 1991 the area director of the PTT in Berne issued a warrant to search the applicant's home under the Federal Administrative Criminal Law Act to find and seize the unauthorised cordless telephone. The search was carried out by a single PTT official, as requested by the applicant, and in his presence. No equipment of the type sought was found. On 24 January 1992 the applicant applied to the Indictment Division of the Federal Court under s 26 of the Federal Administrative Criminal Law Act for a declaration that the search was a nullity. The Federal Court dismissed the application. The applicant was fined 150 Swiss francs by the Federal Communications for an offence under s 42 of the Act. The applicant's proceedings in the District Court for review of that decision was dismissed. He complained of the search at his home.

Comm found unanimously NV 8, V 13.

Court found by majority (8–1) NV 8, unanimously dismissed Government's preliminary objection, unanimously V 8+13.

Judges: Mr R Bernhardt, President, Mr J De Meyer (pd), Mr AN Loizou (c), Mr AB Baka, Mr L Wildhaber (c), Mr Mifsud Bonnici, Mr J Makarczyk, Mr E Levits, Mr P Van Dijk.

The search of the room occupied by the applicant amounted to an interference with his right to respect for his home. In the case before it, Swiss federal legislation provided safeguards and, more particularly, the search had been of very limited scope. The notion of 'necessity' implied that the interference corresponded to a pressing social need and was proportionate to the legitimate aim pursued. Although States had a margin of appreciation, particular vigilance had to be exercised where, as in the present case, the authorities could, under national law, order and effect searches without a judicial warrant. In the present case the purpose of the search was to seize an unauthorised cordless telephone that the applicant was suspected of having used; the seizure and, consequently, the search, were necessary to provide evidence of the relevant offence. Having regard to the safeguards provided by Swiss law and to the limited scope of the search, the interference with the applicant's right to respect for his home could be considered to have been proportionate to the aim pursued and thus 'necessary in a democratic society' under A 8. Consequently, there had not been a violation of that provision.

Regarding the Government's objection that A 13 had not been expressly raised in the application and had been raised by the Commission of its own motion, the Convention institutions had jurisdiction to review the circumstances complained about by the applicant in the light of the entirety of the Convention's requirements. In the performance of their task, the Convention institutions were free to attribute to the facts of the case, as found to have been established on the evidence before them, a characterisation in law different from that given by the applicant or, if need be, to view the facts in a different manner.

A 13 required an effective remedy before a national authority in respect of grievances which could be regarded as 'arguable' in terms of the Convention. In this case the complaint under A 8 was 'arguable'. The Federal Administrative Criminal Law Act provided a special remedy in respect of

coercive measures by way of a complaint to the Indictment Division of the Federal Court. However, it was the settled case-law of the Indictment Division of the Federal Court that only persons who were still affected by the impugned decision had *locus standi* to lodge a complaint; the applicant's complaint was therefore declared inadmissible. Therefore the remedy could not be termed 'effective'. Other procedures relied on by the Government had not been shown to be effective. The applicant did not have an effective remedy before a national authority for airing his complaint under A 8, therefore there had been a violation of A 13 taken together with A 8.

Finding of a violation constituted sufficient just satisfaction in respect non-pecuniary damage, costs and expenses (CHF 8,000 less FF 9,184).

Cited: Crémieux v F (25.2.1993), Foti and Others v I (10.12.1982), Funke v F (25.2.1993), Kruslin v F (24.4.1990), Miailhe v F (25.2.1993), Olsson v S (No 1) (24.3.1988), Powell and Rayner v UK (21.2.1990), Valsamis v GR (18.12.1996), Vereinigung Demokratischer Soldaten Österreichs and Gubi v A (19.12.1994), Vilvarajah and Others v UK (30.10.1991), Z v SF (25.2.1997).

Campbell v United Kingdom (1993) 15 EHRR 137 92/41

[Application lodged 14.1.1986; Commission report 12.7.1990; Court Judgment 25.3.1992]

On 10 October 1984 the applicant was convicted of assault and murder at the High Court, Glasgow, and was sentenced to life imprisonment with a recommendation that he should serve not less that twenty years' imprisonment. Since his imprisonment the applicant had been advised by his solicitor in respect of actions for damages against the Secretary of State for Scotland for injuries sustained following assault by prison officers on various occasions, infestation of lice while in the hospital wing of Peterhead Prison in November 1985, denial of communication with his solicitor following the assault, denial of his right to full and unrestricted correspondence between himself and his legal advisers on all of the above matters, an application to the Commission concerning, *inter alia*, his solitary confinement and access to his solicitor while in custody in hospital and the present application. He complained that correspondence to and from his solicitor and the Commission was opened and read by the prison authorities in breach of A 8.

Comm found by majority (11–1) V 8 regarding opening of the applicant's correspondence with his solicitor concerning contemplated and pending proceedings, (8–4) V 8 regarding of the opening of the applicant's general correspondence with his solicitor, (11–1) V 8 regarding opening of the applicant's correspondence with the Commission, (10–2) NV 25(1).

Court found by majority (8–1) V 8 regarding interference with the applicant's correspondence with his solicitor and with Commission, unanimously not necessary to examine 25(1).

Judges: Mr J Cremona, President, Mr J Pinheiro Farinha (so), Mr R Macdonald, Mr A Spielmann, Mr S K Martens, Mr I Foighel, Mr R Pekkanen, Mr J M Morenilla (pd), Sir John Freeland (pd).

There had been interference with the applicant's correspondence with his solicitor. The interference was 'in accordance with the law', namely the Prison (Scotland) Rules 1952 made under s 35 of the Prisons (Scotland) Act 1952. The control of the applicant's correspondence was carried out under the Prison Rules and Standing Orders to ensure, *inter alia*, that it did not contain material which was harmful to prison security or the safety of others or was otherwise of a criminal nature. The interference thus pursued the legitimate aim of the prevention of disorder or crime. The notion of necessity implied that the interference corresponded to a pressing social need and, in particular, that it was proportionate to the legitimate aim pursued. In that respect regard could be had to the State's margin of appreciation. A measure of control over prisoners' correspondence was not of itself incompatible with the Convention, regard being paid to the ordinary and reasonable requirements of imprisonment. In assessing the permissible extent of such control in general, the fact that the opportunity to write and to receive letters is sometimes the prisoner's only link with the outside world should not be overlooked. The lawyer–client relationship was, in principle, privileged. There was no reason to distinguish between the different categories of correspondence (general correspondence or that concerning contemplated litigation) with lawyers which, whatever their purpose, concerned matters of a private and confidential character. In principle,

such letters were privileged under A 8. Prison authorities could open a letter from a lawyer to a prisoner when they had reasonable cause to believe that it contained an illicit enclosure which the normal means of detection have failed to disclose. The letter should, however, only be opened and should not be read. Suitable guarantees preventing the reading of the letter should be provided, eg, opening the letter in the presence of the prisoner. The reading of a prisoner's mail to and from a lawyer, on the other hand, should only be permitted in exceptional circumstances when the authorities have reasonable cause to believe that the privilege is being abused in that the contents of the letter endanger prison security or the safety of others or are otherwise of a criminal nature. What may be regarded as 'reasonable cause' will depend on all the circumstances but it presupposed the existence of facts or information which would satisfy an objective observer that the privileged channel of communication was being abused. The provisions of the European Agreement relating to persons participating in proceedings of the European Commission and Court of Human Rights of 6 May 1969 were not to be interpreted as limiting the obligations assumed under the Convention, as indicated by A 6 of the Agreement. With regard to the Government's arguments that the professional competence and integrity of solicitors could not always be relied on, the Court noted that the possibility of examining correspondence for reasonable cause provided a sufficient safeguard against the possibility of abuse. In addition, solicitors as officers of the court were subject to disciplinary sanctions by the Law Society for professional misconduct. The mere possibility of abuse was outweighed by the need to respect the confidentiality attached to the lawyer-client relationship. There was no further room for allowing for a margin of appreciation, there was no pressing social need for the opening and reading of the applicant's correspondence with his solicitor and accordingly, the interference was not 'necessary in a democratic society'.

The practice of opening letters from the Commission, whether or not they were read, amounted to an interference with the applicant's right to respect for correspondence. The interference was thus 'in accordance with the law' (*inter alia*, the Standing Orders). The letters were opened for the prevention of disorder or crime. It was of importance to respect the confidentiality of mail from the Commission. There was no compelling reason why letters from the Commission should be opened. The risk, adverted to by the Government, of Commission stationery being forged in order to smuggle prohibited material or messages into prison, was so negligible that it must be discounted. The provisions of the Agreement could not be invoked to limit the scope of A 8. The opening of letters from the Commission was not 'necessary in a democratic society' and there had therefore been a breach of A 8 regarding correspondence with the Commission.

The question of compliance with A 25 (hindrance in the exercise of the right of individual petition) was not pursued before the Court.

Costs and expenses (GBP 9,257.69 less FF 7,205).

Cited: Campbell and Fell v UK (28.6.1984), Ekbatani v S (26.5.1988), Fox, Campbell and Hartley v UK (30.8.1990), Kruslin v F (24.4.1990), S v CH (28.11.1991), Silver and Others v UK (25.3.1983), The Sunday Times v UK (No 2) (26.11.1991).

Campbell and Cosans v United Kingdom (1982) 4 EHRR 293, (1991) 13 EHRR 411 82/1

[Applications lodged 30.3.1976 and 1.10.1976; Commission report 16.5.1980; Court Judgment 25.2.1982 (merits), 22.3.1983 (A 50)]

Both applicants lived in Scotland. For both financial and practical reasons, the applicants had no realistic and acceptable alternative to sending their children to State schools. Gordon Campbell attended a primary school where corporal punishment (strapping with the tawse) was used for disciplinary purposes. The relevant Regional Council had refused Campbell's requests for a guarantee that he would not be subjected to this measure. He was, in fact, never so punished whilst at that school. Jeffrey Cosans went to a High School in a different area. In 1976, he was told to report to the Assistant Headmaster to receive corporal punishment. On his father's advice, he

reported but refused to accept the punishment. On that account he was immediately suspended from school until such time as he was willing to accept the punishment. His parents were officially informed of his suspension and they had an inconclusive meeting with an official of the Regional Council during which they repeated their disapproval of corporal punishment. The day after a further meeting, that official informed Mr and Mrs Cosans by letter that he had decided to lift the suspension in view of the fact that their son's long absence from school constituted punishment enough, but on condition that they should accept that he would obey the rules, regulations or disciplinary requirements of the school. The Cosans stipulated that if their son were to be readmitted to the school he should not receive corporal punishment for any incident while he was a pupil. This was taken to constitute a refusal to accept the condition, and his suspension was not lifted and his parents were warned that they might be prosecuted for failure to ensure his attendance at school. Each applicant claimed that the use of corporal punishment as a disciplinary measure in the school attended by her child constituted treatment contrary to A 3 and also failed to respect her right as a parent to ensure her son's education and teaching in conformity with her philosophical convictions, as guaranteed by the second sentence of P1A2. Cosans further contended that Jeffrey's suspension from school violated his right to education, protected by the first sentence of P1A2.

Commission found by majority (13–1) V 3, by majority (9–5), as regards both applicants violation second sentence of P1A2, by majority (8–1 with 5 abstentions) not necessary to consider whether separate violation of the first sentence of P1A2.

Court held unanimously NV 3, by majority (6–1), as regards both applicants, violation second sentence of P1A2, by majority (6–1) as regards Cosans, V first sentence of P1A2.

Judges (merits): Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr L Liesch, Mr L-E Pettiti, Sir Vincent Evans (so), Mr R MacDonald.

Judges (A 50): Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr L Liesch, Mr F Gölcüklü, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald.

Although neither boy was, in fact, strapped, provided it was sufficiently real and immediate, a mere threat of conduct prohibited by A 3 could itself conflict with that provision. Although the system of corporal punishment could cause a certain degree of apprehension in those who may be subject to it, the situation in which the applicants' sons found themselves did not amount to 'torture' or 'inhuman treatment'. Treatment would not be 'degrading' unless the person concerned had undergone, either in the eyes of others or in his own eyes, humiliation or debasement attaining a minimum level of severity. That level had to be assessed with regard to the circumstances of the case. The threat of a particular measure was not excluded from the category of 'degrading', simply because the measure had been in use for a long time or even met with general approval. However, in this case it was not established that pupils at a school where such punishment was used were, solely by reason of the risk of being subjected thereto, humiliated or debased in the eyes of others to the requisite degree or at all. As to whether Gordon or Jeffrey were humiliated or debased in their own eyes, a threat directed to an exceptionally insensitive person may have no significant effect on him but nevertheless be incontrovertibly degrading; and conversely, an exceptionally sensitive person might be deeply affected by a threat that could be described as degrading only by a distortion of the ordinary and usual meaning of the word. It had not been shown by means of medical certificates or otherwise that they suffered any adverse psychological or other effects. Jeffrey may well have experienced feelings of apprehension or disquiet when he came close to an infliction of the strap, but such feelings were not sufficient to amount to degrading treatment. The same applied to Gordon since he was never directly threatened with corporal punishment. The group tension and sense of alienation in the pupil that might be induced by the very existence of this practice fell into a different category from humiliation or debasement. No violation of A 3 had been established.

The use of corporal punishment could be said to belong to the internal administration of a school, but at the same time it was, when used, an integral part of the process whereby a school sought to

achieve the object for which it was established, including the development and moulding of the character and mental powers of its pupils. The State had assumed responsibility for formulating general policy and the schools attended by the applicants' children were State schools. Having regard to the Convention as a whole, including A 17, the expression 'philosophical convictions' in the present context denoted such convictions as were worthy of respect in a democratic society and were not incompatible with human dignity; in addition, they should not conflict with the fundamental right of the child to education. The applicants' views related to a weighty and substantial aspect of human life and behaviour, namely the integrity of the person, the propriety or otherwise of the infliction of corporal punishment and the exclusion of the distress which the risk of such punishment entailed. They were views which satisfied each of the above criteria; it was that which distinguished them from opinions that might be held on other methods of discipline or on discipline in general. The duty to respect parental convictions could not be overridden by the alleged necessity of striking a balance between the conflicting views involved, nor was the Government's policy to move gradually towards the abolition of corporal punishment in itself sufficient to comply with that duty. It had not been established that other means of respecting the applicants' convictions, such as a system of exemption for individual pupils in a particular school, would necessarily be incompatible with 'the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure' – the applicants had accordingly been victims of a violation of the second sentence of P1A2.

As regards Cosans' suspension, there was a substantial difference between the legal basis of the two claims brought under this article, as one concerned a right of a parent and the other a right of a child. The issue arising under the first sentence was therefore not absorbed by the finding of a violation of the second. The right to education guaranteed by the first sentence of P1A2 called for regulation by the State, but such regulation must never injure the substance of the right nor conflict with other rights enshrined in the Convention or its Protocols. The suspension of Jeffrey was motivated by his and his parents' refusal to accept that he receive or be liable to corporal chastisement. His return to school could have been secured only if his parents had acted contrary to their convictions, convictions which the United Kingdom was obliged to respect under the second sentence of P1A2. A condition of access to an educational establishment that conflicted in that way with another right enshrined in P1 could not be described as reasonable and in any event fell outside the State's power of regulation under P1A2. There was accordingly, as regards Jeffrey, a breach of the first sentence of P1A2.

Pecuniary and non-pecuniary loss (GBP 3,000 to Jeffrey Cosans), costs and expenses (GBP 940 to Mrs Campbell, GBP 8,846.60 less FF 2,300 to Mrs Cosans).

Cited: 'Belgian Linguistic' case (23.7.1968), Ireland v UK (18.1.1978), Kjeldsen, Busk Madsen and Pedersen v DK (7.12.1976), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Marckx v B (13.6.1979), Tyrer v UK (25.4.1978), Young, James and Webster v UK (13.8.1981).

Campbell and Fell v UK (1985) 7 EHRR 165 84/8

[Applications lodged 4 and 31.3.1977; Commission report 12.5.1982; Court Judgment 3.5.1984]

In November 1973 the first applicant John Joseph Campbell was convicted of various offences, including conspiracy to rob and possession of a firearm with intent to commit robbery, and sentenced to 10 years' imprisonment. The second applicant, Father Patrick Fell, a Roman Catholic priest, was convicted in November 1973 of conspiracy to commit arson, conspiracy to commit malicious damage, and taking part in the control and management of an organisation using violent means to obtain a political end and was sentenced to 12 years' imprisonment. They were subsequently detained in a number of different prisons as category A prisoners and, on 16 September 1976, were in Albany Prison. They were engaged in a protest at the treatment of another prisoner, by sitting down in a corridor of the prison and refusing to move. They were removed by prison officers after a struggle and in the process injuries were sustained by certain members of staff and by both applicants. They were charged with, and found guilty by the Prison Board of

Visitors of, disciplinary offences against the Prison Rules 1964. They claimed, amongst other things that: (a) the disciplinary hearings amounted in substance to 'criminal' charges and that they had not afforded a hearing complying with the requirements of A 6; (b) they were delayed in obtaining legal advice contrary to A 6 and 8; (c) the refusal to allow them an independent medical examination breached A 6; (d) correspondence was restricted contrary to A 8; and (e) there was no effective remedy in respect of claims under A 6(1) and 8 contrary to A 13.

Comm found by majority (9 with 3 abstentions) V 6 in respect of the proceedings before the Board of Visitors in Mr Campbell's case, unanimously V 6(1) and 8 in respect of the delay in allowing both applicants to obtain legal advice, unanimously NV 6(1) in respect of the refusal to allow the applicants facilities for an independent medical examination, unanimously V 6(1) and not necessary to consider 8 in respect of the refusal to allow Father Fell to consult in private with his lawyer, V 8 in respect of the refusal to allow Father Fell to correspond with Sister Power and Sister Benedict, V 13 in that no effective remedy was available to Father Fell in relation to his complaints under 8.

Court found by majority in relation to Mr Campbell that: A 6 was applicable, NV 6(1) by the Board not conducting its adjudication in public, V 6 (1) by the Board not making its decision public, V 6(3)(b) and (c) in Mr Campbell's inability to obtain legal assistance prior to the Board's hearing or legal representation thereat. Court held unanimously in relation to Father Fell that: V 6(1) as regards the conditions for visits to him by his solicitors and that it was not necessary to examine the matter under 8 and V 8 and 13 as regards the restrictions on his personal correspondence. Court found unanimously V 6(1) and 8 as regards the applicants' access to legal advice in connection with their personal injury claims.

Judges: Mr G Wiarda, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Sir Vincent Evans, Mr R Macdonald, Mr C Russo.

Preliminary objection of non-exhaustion unanimously rejected, as were further submissions by one of the applicants. In determining:

A 6: the question of whether the disciplinary proceedings involved the determination of a 'criminal charge' was assessed by: (1) the classification of the proceedings in domestic law; (2) the nature of the offence or conduct in question; (3) the nature and degree of severity of the penalty that may be incurred. The forfeiture of remission that the applicant risked and did in fact incur, involved such serious consequences as regards the length of detention that the penalties were regarded as 'criminal'.

In determining whether the Board could be considered 'independent', regard was had to: the manner of appointment of its members and the duration of their term of office, the existence of guarantees against outside pressures and whether the body presents the appearance of independence. The Court saw no reason to conclude that the Board was not 'independent'. Whether the Board was 'impartial' had to be determined according to a subjective test, that is, the personal conviction of a particular judge, and also according to an objective test, that is, whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect. Neither test was met on the facts.

To require disciplinary proceedings concerning convicted prisoners to be held in public would have been to impose a disproportionate burden on the State authorities. However, as it did not appear that any steps had been taken to make public the Board's decision, a breach of A 6(1) was found.

A 6(3)(b) and (c) was breached in that Mr Campbell did not have adequate facilities to prepare his defence which, if not conducted by himself, must have been conducted with legal assistance.

Despite permission to seek legal advice in connection with a civil action claiming compensation for the injuries sustained during the incident to which the disciplinary proceedings related having been only temporarily delayed and the delay having been contributed to by Mr Campbell, such hindrance of access to a court violated A 6(1).

Once permission had been granted, Father Fell was unable to consult his solicitors out of the hearing of a prison officer. This absence of privileged contact amounted to an interference with the right of access to court that was incompatible with A 6(1).

The applicants did not pursue their claim against the refusal to allow them access to independent medical advice and it was not therefore necessary to examine it.

A 8: the applicants' inability to correspond with their solicitors in connection with the civil claim until after the internal inquiry had not been necessary within the meaning of A 8(2).

It was not necessary to examine Father Fell's claim concerning the restriction on his confidential consultation with his solicitors in view of the A 6(1) finding.

The restrictions on Father Fell's correspondence with people other than relatives or existing friends, was not necessary within the meaning of A 8(2).

A 13: as the requirements of this Article were less strict than those of A 6 it was not necessary to examine the claim given the Court's conclusions in relation to A 6.

As regards the complaints under A 8 concerning the restrictions on access to legal advice and on personal correspondence, there was a violation of A 13. A remedy would have been available had the relevant directives been incorrectly applied, but they had not.

As regards restrictions on personal correspondence, where a causal connection was found, a finding of a violation was considered to be sufficient to constitute just satisfaction. Costs and expenses awarded: GBP 13,000 plus VAT.

Cited: Airey v IRL (9.10.1979), De Wilde, Ooms and Versyp v B (18.6.1971), Delcourt v B (17.1.1970), Deweer v B (27.2.1980), Engel and Others v NL (8.6.1976), Golder v UK (21.2.1975), Ireland v UK (18.1.1978), Le Compte, Van Leuven and De Meyere v B (18.10.1982), Öztürk v TR (21.2.1984), Pakelli v D (25.4.1983), Piersack v B (26.10.1984), Pretto and Others v I (8.12.1983), Van Droogenbroeck v B (24.6.1982), Van Oosterwijck v B (6.11.1980), Zimmermann and Steiner v CH (13.7.1983).

Campomizzi v Italy 00/52

[Application lodged 24.7.1997; Court Judgment 8.2.2000]

Mr Fernando Campomizzi complained of the length of civil proceedings.

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska.

The period to be taken into consideration began on 6 August 1984 and was still pending on 19 October 1999. It had lasted more than 15 years and 2 months at two levels of jurisdiction and could not be considered to be reasonable.

Non-pecuniary damage (ITL 50,000,000), costs and expenses (ITL 4,000,000).

Cited: Bottazzi v I (28.7.1999).

Can v Austria (1986) 8 EHRR 121 85/9

[Application lodged 14.4.1981; Commission report 12.7.1984; Court Judgment 30.9.1985.]

Mr Elvan Can was arrested by police in August 1980, on suspicion of an offence. It was ordered that he be detained on remand, on the ground that there was danger of absconding and suppression of evidence. Six applications for his release were rejected. His detention on remand was authorised to be continued for a number of months. At a hearing before the trial court in November 1981, the applicant was released, subject to depositing a sum as security. At the outset of his detention the applicant was permitted to consult with his lawyer and his assistants only under supervision. The applicant sought leave to consult with his lawyer in the absence of any third party, this was refused. In 1983 the applicant was convicted of being an accomplice to arson and sentenced to 14 months' imprisonment. The applicant complained both of the duration of his detention on remand – 14 months and 26 days – and of the initial supervision of his consultations with his lawyer. On the first point he relied on A 5(3) and on the second, on A 6(3)(c).

Commission found by a majority V 5(3) and unanimously V 6(3)(c).

Court noted the friendly settlement and struck the case from the list.

Judges: Mr G Wiarda, President, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr L-E Pettiti, Mr B Walsh, Mr C Russo.

FS (applicant to receive compensation of ATS 100,000 costs and expenses; the Government to propose to the legislative assemblies new rules on the supervision of consultations between a suspect in detention on remand and his lawyer when there is a danger of suppression of evidence, taking account of the observations of the Commission in its report) therefore case struck out of list.

Cited: Campbell and Fell v UK (28.6.1984), Engel and Others v NL (8.6.1976), Luedicke, Belkacem and Koç v D (28.11.1978), Matznetter v A (10.11.1969), Neumeister v A (27.6.1968), Ringeisen v A (16.7.1971), Stögmüller v A (10.11.1969), Wemhoff v D (27.6.1968).

Canea Catholic Church v Greece (1999) 27 EHRR 521 97/97

[Application lodged 2.8.1994; Commission report 3.9.1996; Court Judgment 16.12.97]

The applicant, the Roman Catholic Church of the Virgin Mary of Canea had been used as a church since at least 1879. In June 1987 two people living next to the church demolished one of the surrounding walls (1.20 metres high) and made a window looking onto the church in the wall of their own building. The church successfully applied to the District Court which ordered that the wall had to be rebuilt. The defendants successfully appealed that judgment to the Canea Court of First Instance which found that the Catholic Church had no legal personality in Greece and therefore could not bring a legal action. The Catholic Church appealed to the Court of Cassation, which dismissed the appeal. The Right Reverend Frangiskos Papamanolis applied to the Commission complaining that the Greek courts' refusal to acknowledge that the Catholic Church of the Virgin Mary in Canea had legal personality amounted to a discriminatory interference with its right of access to a court, its right to respect for its freedom of religion and its right to the peaceful enjoyment of its possessions; he relied on A 6(1), A 9 and A 14 of the Convention and P1A2.

Comm found unanimously NV 9, by majority (18–10) V 9+14, (17–11) no separate issue under 6 or 6+14, (21–7) no separate issue under P1A1 or P1A1+14.

Court unanimously rejected the Government's preliminary objection and found V 6(1), 6(1)+14, not necessary to consider 9, P1A1 alone or with 14.

Judges: Mr R Bernhardt, President, Mr F Gölcüklü, Mr A Spielmann, Mr J De Meyer, Mr N Valticos, Mr R Pekkanen, Mr AN Loizou, Mr AB Baka, Mr L Wildhaber.

Government's preliminary objection regarding standing was rejected. The Court considered that the Church had validly applied to the Commission through the Right Reverend Frangiskos Papamanolis, Roman Catholic Bishop of the Islands of Syros, Milos and Thera and Acting Bishop of Crete, noting that the Court of Cassation had already held that the Catholic bishop in charge of the churches in his diocese and the abbots in charge of Catholic monastic establishments were alone empowered to represent those churches and establishments in legal proceedings concerning any claim or issue relating to their property.

The legal personality of the Church and of the various parish churches had never been called into question since the creation of the Greek State either by the administrative authorities or by the courts. Those churches had, in their own name, acquired, used and freely transferred movable and immovable property, concluded contracts and taken part in, among others, notarial transactions, whose validity had always been recognised. In holding that the applicant church had no capacity to take legal proceedings, the Court of Cassation did not only penalise the failure to comply with a simple formality necessary for the protection of public order, as the Government maintained. It also imposed a real restriction on the applicant church preventing it on this particular occasion and for the future from having any dispute relating to its property rights determined by the courts. The Court did not accept the Government's argument that the Catholic Church should have carried out formalities in order to acquire a form of legal personality under the Civil Code since there was nothing to suggest that it would one day be deprived of access to a court in order to defend its civil

rights. Quite apart from the difficulties of adapting a church to the personality or union of persons that the Government suggested, and the procedural problems which might arise in the event of litigation, such late compliance with the relevant rules of domestic law might be interpreted as an admission that countless acts of the applicant church in the past were not valid. The finding that the Catholic Church did not have a legal personality impaired the very substance of the 'right to a court' and therefore constituted a breach of A 6(1).

The applicant church, which owned its land and buildings, had been prevented from taking legal proceedings to protect them, whereas the Orthodox Church or the Jewish community could do so in order to protect their own property without any formality or required procedure. Having regard to the conclusion under A 6(1) there had also been a breach of A 14 taken together with A 6(1) as no objective and reasonable justification for such a difference of treatment had been put forward.

Having regard to its conclusions above, the Court held that it was not necessary to rule on the complaints based on A 9 and P1A1.

Pecuniary damages (GRD 5,000,000), costs and expenses (GRD 5,908,000).

Cited: Ashingdane v UK (28.5.1985), Golder v UK (21.2.1975).

Cantacessi v Italy 99/107

[Application lodged 13.3.1997; Court Judgment 14.12.1999]

The applicant complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mrs M Tsatsa-Nikolovska, Mr A Baka.

The period to be taken into consideration lasted more than six years, 11 months at one level of jurisdiction and could not be considered reasonable.

Non-pecuniary damage (ITL 12,000,000), costs and expenses (ITL 6,000,000).

Cited: Bottazzi v I (28.7.1999).

Cantoni v France 96/45

[Application lodged 26.11.1990; Commission report 12.4.1995; Court Judgment 15.11.1996]

Mr Michel Cantoni was the manager of a supermarket. In 1988 criminal proceedings were brought, at the instigation of the Pharmacists' Association and several individual pharmacists, against the applicant and other managers of supermarkets in the region for unlawfully selling pharmaceutical products. The defendants maintained that the products in question were not medicinal products within the meaning of the Public Health Code and were accordingly not covered by the pharmacists' monopoly. He was found guilty and fined. The Paris Court of Appeal upheld the first-instance judgment and a further appeal to the Criminal Division of the Court of Cassation was dismissed. He complained that the statutory definition of medicinal product lacked sufficient clarity and precision to satisfy the requirements of A 7(1).

Comm found by majority (15–9) V 7(1).

Court unanimously found NV 7.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr L-E Pettiti, Mr SK Martens, Mr I Foighel, Mr JM Morenilla, Sir John Freeland, Mr AB Baka, Mr MA Lopes Rocha, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr D Gotchev, Mr P Jambrek, Mr K Jungwiert, Mr P Kûris, Mr E Levits.

A 7 embodied, *inter alia*, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy. From these principles it followed that an offence must be clearly defined in the law. That requirement is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the

courts' interpretation of it, what acts and omissions would make him criminally liable. The 'law' comprises statutory law as well as case-law and implies qualitative requirements, notably those of accessibility and forseeability. The wording of statutes was not always precise. One of the standard techniques of regulation by rules was to use general categorisations as opposed to exhaustive lists. The need to avoid excessive rigidity and to keep pace with changing circumstances meant that many laws were inevitably couched in terms which, to a greater or lesser extent, were vague. The interpretation and application of such enactments depended on practice. The definition of 'medicinal product' was rather general. There would often be grey areas at the fringes of a definition; that penumbra of doubt in relation to borderline facts did not in itself make a provision incompatible with A 7, provided it proved to be sufficiently clear in the large majority of cases. The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain, taking into account the changes in everyday practice. The Court of Cassation had always either confirmed the decisions of the courts below classifying a parapharmaceutical-type product as medicinal or quashed decisions which denied that classification. It had never upheld a decision by a lower court finding that such a product fell outside the notion of medicinal product. The Court of Cassation had adopted, before the present case, a clear position on this matter, which with the passing of time became even more firmly established. The scope of the notion of forseeability depended to a considerable degree on the content of the text in issue, the field it was designed to cover and the number and status of those to whom it is addressed. A law might still satisfy the requirement of forseeability even if the person concerned had to take appropriate legal advice to assess, to a degree that was reasonable in the circumstances, the consequences which a given action might entail. That was particularly true in relation to persons carrying on a professional activity, who were used to having to proceed with a high degree of caution when pursuing their occupation. With the benefit of appropriate legal advice, the applicant, who was the manager of a supermarket, should have appreciated at the material time that, in view of the line of case-law stemming from the Court of Cassation and from some of the lower courts, he ran a real risk of prosecution for unlawful sale of medicinal products. Accordingly there had been no breach of A 7.

Cited: Groppera Radio AG and Others v CH (28.3.1990), Kokkinakis v GR (25.5.1993), SW and CR v UK (22.11.1995), Tolstoy Miloslavsky v UK (13.7.1995).

Capoccia v Italy 00/64

[Application lodged 7.2.1994; Court Judgment 8.2.2000]

Mrs Agnese Capoccia complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mrs E Palm, President, Mr B Conforti, Mr L Ferrari Bravo, Mr Gaukur Jörundsson, Mr B Zupancic, Mr T Pantîru, Mr R Maruste.

The period to be taken into consideration began on 6 June 1988 and was still pending on 14 October 1999. It had lasted more than 11 years, four months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 32,000,000), costs and expenses (ITL 1,000,000).

Cited: Bottazzi v I (28.7.1999).

Capodanno v Italy 00/121

[Application lodged 16.4.1997; Commission report 4.3.1999; Court Judgment 5.4.2000]

Mr Vito Capodanno complained of the length of civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr L Ferrari Bravo, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska, Mr AB Baka.

The period to be taken into consideration began on 16 December 1980 and ended on 24 October 1996. It lasted more than 15 years, 10 months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 50,000,000).

Cited: Bottazzi v I (28.7.1999).

Cappellaro v Italy 00/13

[Application lodged 15.10.1996; Court Judgment 25.1.2000]

Mrs Giovanna Bice Cappellaro complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 16 February 1989 and was still pending. It had lasted more than 10 years 10 months at two levels of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 20,000,000).

Cited: Bottazzi v I (28.7.1999).

Cappello v Italy 92/26

[Application lodged 7.2.1987; Commission report 5.12.1990; Court Judgment 27.2.1992]

Mrs Caterina Cappello, a housewife, was knocked down by a motorcycle and seriously injured on 19 August 1976. Criminal proceedings were taken against the rider, a minor. On 23 March 1979 the Cagliari Juvenile Court acquitted him under an amnesty. By a writ dated 16 May 1980, the applicant brought an action for damages before the District Court at Tempio Pausania against the young motorcyclist, his parents and the owner of the motorcycle. She complained about the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 16 May 1980, when the applicant brought her action for damages in the Tempio Pausania District Court. It probably ended, at the latest, on 26 September 1991, the date by which the judgment of the Cagliari Court of Appeal must have become final. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. Although the Government pleaded the backlog of cases in the Tempio Pausania District Court and the transfer of two judges, A 6(1) imposed on Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. The case-file did not provide many details on the proceedings in the Cagliari Court of Appeal. The State could not be held responsible for the period of several months which the defendants took to appeal, but approximately three months elapsed between the adoption of the judgment and the filing of its text with the registry. The lapse of time in the present case could not be regarded as 'reasonable'. There had therefore been a violation of A 6(1).

Non-pecuniary damage (ITL 10 million), costs and expenses (ITL 3 million) awarded.

Cited: Pugliese (No 2) v I (24.5.1991), Vocaturo v I (24.5.1991).

Capuano v Italy (1991) 13 EHRR 271 87/9

[Application lodged 21.12.1980; Commission report 15.10.1985; Court Judgment 25.6.1987]

Mrs Gloria Capuano, the applicant, commenced civil proceedings in respect of renovations and building works against a vendor of her property. The hearing commenced on 10 January 1977 and following adjournments and postponements was still continuing at the date of the Court judgment, a lapse of time exceeding 10 years and 4 months.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mrs D Bindschedler-Robert, Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr J Gersing.

The period to be considered began on 10 January 1977, when the defendants were due to appear before the court, Italian law leaving it to the plaintiff to indicate the date for the initial hearing of the summons. It had not yet ended, since the proceedings were still pending. The reasonableness of the length of the proceedings had to be assessed in the light of the circumstances of the case and having regard to the Court's case-law. The Government claim that in Italy the procedure in civil cases was governed by the 'principle of determination', meaning that the initiative and the power of advancing matters rested with the parties, did not dispense the courts from ensuring compliance with A 6 as to the 'reasonable time' requirement. The case was not complex either as regards facts or law. The applicant was responsible to a certain extent for the prolongation of the proceedings. However, the first instance court (before whom the case had lasted six years, eight months and 10 days) was responsible for a delay of almost three years regarding the preparation of experts' opinions. The matter had been before the appeal court for four years and no judgment had yet been delivered. Although the applicant was responsible for some of the delay, the case had not been heard within a reasonable time and therefore there had been a violation of A 6(1)

Damages (ITL 8,000,000).

Cited: Guincho v P (10.7.1984), Lechner and Hess v A (23.4.1987), Pretto v I (8.12.1983), Zimmermann and Steiner v CH (13.7.1983).

Carbonara and Ventura v Italy 00/154

[Application lodged 25.5.1994; Commission report 1.7.1998; Court Judgment 30.5.2000]

Mrs Elena Carbonara, Mr Pasquale Carbonara, Mr Augusto Carbonara and Mr Costantino Ventura's late mother owned agricultural land in Noicattaro. By a decree issued on 27 May 1970, the Prefecture of Bari authorised the Noicattaro Town Council to take possession, under an expedited procedure, of land belonging to the applicants for a maximum period of two years with a view to expropriating it in the public interest in order to build a school. The school was not completed until 28 October 1972, by which time the authorised period of possession had expired. The applicants complained that they waited for several years for their land to be formally expropriated and for compensation.

Comm found unanimously V P1A1.

Court unanimously dismissed the Government's preliminary objection, found V P1A1.

Judges: Mr AB Baka, President, Mr L Ferrari Bravo, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska, Mr E Levits.

Having perused the settlement agreement and the expert's report of 6 October 1986, the Court considered that the Government had not shown that the amount paid to the applicants pursuant to the settlement agreement related to the land forming the subject-matter of the application. Consequently, the Government's preliminary objection that the applicants no longer had an interest in pursuing the application was dismissed.

The Court recalled its case-law. There had been a deprivation of possessions. The Court of Cassation held, in a decision that was final and in which it applied the constructive-expropriation rule, that there had been a transfer of property in favour of the Noicattaro Town Council; as a consequence of that decision the applicants were deprived of the possibility of obtaining damages. In those circumstances, the effect of the judgment of the Court of Cassation was to deprive the applicants of their possessions within the meaning of the second sentence of the first paragraph of P1A1. The first and most important requirement of P1A1 was that any interference by a public authority with the peaceful enjoyment of possessions should be lawful. The requirement of lawfulness meant that rules of domestic law had to be sufficiently accessible, precise and foreseeable. The case-law on constructive expropriations had evolved in a way that had led to the rule being applied inconsistently, a factor which could result in unforeseeable or arbitrary outcomes and deprive litigants of effective protection of their rights and which, as a consequence, was inconsistent with the requirement of lawfulness. Under the rule established by the Court of Cassation every constructive expropriation followed the unlawful taking of possession of the land. The Court had reservations as to the compatibility with the requirement of lawfulness of a mechanism which, generally, enabled the authorities to benefit from an unlawful situation in which the landowner was presented with a fait accompli. Compensation for deprivation of property was not paid automatically by the authorities, but had to be claimed by the landowner within five years, and that might prove to be inadequate protection. Pursuant to the constructive-expropriation rule, the Court of Cassation held that the applicants had been deprived of their land from 28 October 1972. That transfer of property to the authorities therefore occurred during the period of possession without title, automatically, following completion of the public works. That situation could not be regarded as foreseeable as it was only in the final decision, the judgment of the Court of Cassation, that the constructive-expropriation rule could be regarded as being effectively applied as the case-law rule did not bind the courts as regards its application. Consequently the applicants did not become certain that they had been deprived of their land until 26 November 1993, when the Court of Cassation's judgment was lodged with the registry.

That situation enabled the authorities to derive a benefit from taking possession of land which they had held without title since 30 June 1972. As the Court of Cassation applied the five-year limitation period from the date of completion of the works (28 October 1972), the applicants were denied the possibility that had, in principle, been available to them of obtaining damages. The interference could only be described as arbitrary and consequently was not compatible with P1A1 and accordingly, there had been a violation of it.

A 41 reserved.

Cited: Beyeler v I (5.1.2000), Brumãrescu v RO (28.10.1999), Hentrich v F (22.9.1994), Holy Monasteries v GR (9.12.1994), Iatridis v GR (25.3.1999), Lithgow and Others v UK (8.7.1986), Sporrong and Lönnroth v S (23.9.1982).

Cardarelli v Italy 92/18

[Application lodged 9.4.1986; Commission report 15.1.1991; Court Judgment 27.2.1992]

Mr Achille Cardarelli, the owner of a flat damaged by water seepage, served a summons on 23 December 1977 for proceedings before the Florence District Court against Mr M, the owner of the flat from which the seepage had originated. During the proceedings Mr M's counsel, Mr M and the applicant had died. The proceedings had not yet ended at the date of the Court's judgment.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 23 December 1977 when the proceedings were instituted against Mr M in the Florence District Court; it had not yet ended, since that court had

still to give judgment. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The case was of some complexity. The need to have recourse to expert opinions and the presence of several defendants undoubtedly made the investigating judge's task more difficult. Nevertheless, most of the delays occurred after the investigation had been terminated. Almost two years elapsed between the last hearing before the investigating judge and the hearing before the chamber. There were long delays before the trial began again. The Italian State could not be held responsible for three of them: the applicant's lawyer waited more than two months before requesting that the proceedings be resumed following Mr M's death, more than three years and eight months before notifying the court of his client's death and more than four years before requesting leave to act thereafter in his capacity as a trustee. Other delays were due to the District Court not acting diligently. Although the Government pleaded the backlog of cases in the District Court, A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. Taking the proceedings as a whole, the Court could not regard as 'reasonable' a lapse of time which was already more than fourteen years for only one level of jurisdiction.

Not necessary to apply A 50 in this instance as the applicant had not requested any just satisfaction in good time and that was not a matter for the Court to examine of its own motion.

Cited: Vocaturo v I (24.5.1991).

Cardillo v Italy 00/140

[Application lodged 7.10.1997; Court Judgment 28.4.2000]

Mr Ottaviano Ascanio Italo Cardillo complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr B Conforti, Mr G Ress, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mrs N Vajic.

The period to be taken into consideration began on 27 March 1972 and ended on 20 August 1997. It had lasted more than 25 years, four months at one level of jurisdiction including more than 24 years after the date on which Italy recognised the right of individual petition. The period could not be considered to be reasonable.

Non-pecuniary damage (ITL 70,000,000).

Cited: Bottazzi v I (28.7.1999)

Cardot v France (1991) 13 EHRR 853 91/25

[Application lodged 12.12.1983; Commission report 3.4.1990; Court Judgment 19.3.1991]

Mr Jean-Claude Cardot, the applicant, was a road haulier. He was convicted of drug offences. He complained, *inter alia*, that he had been convicted on the strength of evidence gathered in connection with proceedings to which he had not been a party and that he had not had an opportunity, either at his trial or on appeal, to challenge or have challenged those who had testified against him.

Comm found unanimously V 6(1) and 6(3)(d).

Court by majority (6–3) allowed Government's preliminary objection of non-exhaustion.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr L-E Pettiti, Mr B Walsh, Mr R Macdonald (d), Mr C Russo, Mr SK Martens (d), Mr JM Morenilla (d).

A 26 (exhaustion of domestic remedies) had to be applied with some degree of flexibility. It normally also required that the complaints intended to be made subsequently at Strasbourg should have been made to the national courts, at least in substance and in compliance with the formal requirements and time limits laid down in domestic law and, further, that any procedural means which might prevent a breach of the Convention should have been used. The applicant did

not raise his complaints before the French courts and so provide them with the opportunity of preventing or putting right the violations alleged against them. The objection that domestic remedies had not been exhausted was therefore well founded and the Court was unable to take cognisance of the merits of the case.

Cited: Barberà, Messegué and Jabardo v E (6.12.1988), Delta v F (19.12.1990), Guzzardi v I (6.11.1980).

Casadio v Italy 91/63

[Application lodged 2.2.1987; Commission report 5.3.1991; Court Judgment 3.12.1991]

Mr Alvaro Casadio was unemployed. On 8 November 1983 he took proceedings before the Rome magistrates' court against the 'Istituto Nazionale della Previdenza Sociale' (INPS) for the recognition of his entitlement to a disability pension. The investigation opened at the hearing of 14 February 1984 when the magistrates' court ordered a medical opinion. On 9 April 1985 the magistrates' court dismissed the applicant's claim. On 4 April 1986 the applicant appealed to the Rome District Court. The hearing took place on 19 April 1990 after which the appeal was dismissed. The text of the judgment was lodged with the registry on 13 July 1990. The applicant complained about the length of proceedings.

Comm found unanimously V 6(1).

Court unanimously struck the case from the list.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr SK Martens.

Notwithstanding several reminders from the registry the applicant showed no interest in the proceedings before the Court. The Court considered that there had been an implied withdrawal which constituted a 'fact of a kind to provide a solution of the matter'. There was no reason of public policy for continuing the proceedings. The Court noted its previous case-law concerning the 'reasonableness' of the length of civil proceedings in various Contracting States, including Italy and specified the nature and the extent of the obligations arising in that context from A 6(1). Accordingly, the case should be struck out of the list.

Cited: Brigandì v I (19.2.1991), Caleffi v I (24.5.1991), Capuano v I (25.6.1987), Pugliese (No 2) v I (24.5.1991), Santilli v I (19.2.1991), Vocaturo v I (24.5.1991), Zanghì v I (19.2.1991).

Casado Coca v Spain (1994) 18 EHRR 1 94/8

[Application lodged 25.5.1989; Commission report 1.12.1992; Court Judgment 24.2.1994]

Mr Pablo Casado Coca was a lawyer. After setting up his practice in 1979, he regularly placed notices advertising it in the miscellaneous advertisements pages of several Barcelona newspapers and the German Journal of Spain. He also wrote to various companies offering his services. The Barcelona Bar Council brought disciplinary proceedings against him four times resulting in two reprimands and two warnings. The applicant lodged appeals against these penalties. His application to the Barcelona Audiencia Territorial was dismissed on 11 May 1987 and on 23 September 1988 the Supreme Court dismissed his further appeal and refused to refer the case to the Constitutional Court. The applicant lodged an appeal with the Constitutional Court which on 17 April 1989 declared the appeal inadmissible. He complained of the disciplinary sanction imposed on him for having published a notice about his practice.

Comm found by majority (9–9 with the President's casting vote) V 10.

Court found by majority (7–2) NV 10.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson (jd), Mr A Spielmann, Mr N Valticos, Mrs E Palm (jd), Mr I Foighel, Mr JM Morenilla, Sir John Freeland, Mr F Bigi.

A 10 guaranteed freedom of expression to 'everyone' with no distinction being made according to whether the type of aim pursued was profit-making or not. A 10 did not apply solely to certain types of information or ideas or forms of expression, it also encompassed artistic expression,

information of a commercial nature and even light music and commercials transmitted by cable. In the present case the notices gave the applicant's name, profession, address and telephone number. They were clearly published with the aim of advertising, but they provided persons requiring legal assistance with information that was of definite use and likely to facilitate their access to justice. A 10 was therefore applicable.

Regarding the question of whether there was an interference by a public authority, the domestic law on professional associations stated that they were public-law corporations. In the case of the Bars, this status was further buttressed by their purpose of serving the public interest through the furtherance of free, adequate legal assistance combined with public supervision of the practice of the profession and of compliance with professional ethics. In addition an appeal lay against the decision to the courts. That being so, it was reasonable to hold that there was an interference by a 'public authority' with the applicant's freedom to impart information. The interference was 'prescribed by law' as interpreted by the Constitutional Court. The Bar rules were designed to protect the interests of the public while ensuring respect for members of the Bar. Under the Court's case-law, the Contracting States had a certain margin of appreciation in assessing the necessity of an interference, but that margin was subject to European supervision as regards both the relevant rules and the decisions applying them. Such a margin of appreciation was particularly essential in the complex and fluctuating area of unfair competition. The same applied to advertising. For the citizen, advertising was a means of discovering the characteristics of services and goods offered to him. Nevertheless, it could sometimes be restricted, especially to prevent unfair competition and untruthful or misleading advertising. In some contexts, the publication of even objective, truthful advertisements might be restricted in order to ensure respect for the rights of others or owing to the special circumstances of particular business activities and professions. Any such restrictions had to be closely scrutinised by the Court, which had to weigh the requirements of those particular features against the advertising in question. The applicant had received a written warning from the Barcelona Bar Council for having contravened the ban on professional advertising. Commercial undertakings such as insurance companies who were not subject to restrictions on advertising their legal consulting services could not be compared to members of the Bar in independent practice, whose special status gave them a central position in the administration of justice as intermediaries between the public and the courts. Such a position explained the usual restrictions on the conduct of members of the Bar and also the monitoring and supervisory powers vested in Bar councils. The wide range of regulations and the different rates of change in the Council of Europe's Member States indicated the complexity of the issue. Because of their direct, continuous contact with their members, the Bar authorities and the country's courts were in a better position than an international court to determine how, at a given time, the right balance could be struck between the various interests involved, namely the requirements of the proper administration of justice, the dignity of the profession, the right of everyone to receive information about legal assistance and affording members of the Bar the possibility of advertising their practices. In those circumstances, at the material time, 1982–83, the relevant authorities' reaction could not be considered disproportionate to the aim pursued. Accordingly no breach of A 10 had been made out.

Cited: Autronic AG v CH (22.5.1990), Barthold v D (25.3.1985), Castells v E (23.4.1992), Groppera Radio AG and Others v CH (28.3.1990), H v B (30.11.1987), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Markt Intern Verlag GmbH and Klaus Beermann v D (20.11.1989), Müller and Others v CH (24.5.1988), Thorgeir Thorgeirson v ISL (25.6.1992), Van der Mussele v B (23.11.1983).

Casciaroli v Italy 92/14

[Application lodged 24.12.1985; Commission report 5.12.1990; Court Judgment 27.2.1992]

Mrs Rosina Casciaroli's husband died as the result of a traffic accident. Civil and criminal proceedings were brought against those presumed responsible for the accident and their insurers.

On 4 March 1976 she entered a claim for damages in the criminal proceedings against them. The case remained pending and she complained about the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The case began on 4 March 1976 when the applicant entered a claim for damages in the criminal proceedings; it remained pending in the Venice District Court. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The case was not complex. There were several periods of stagnation in the criminal proceedings. Twenty-five months elapsed between the date on which the Venice District Court ordered further inquiries to be undertaken and that on which the investigating judge committed the defendants for trial. It then took more than four months to transmit the file to the Court of Appeal and the Court of Cassation did not hold a hearing until more than four years after the case had been brought before it. Although the Government pleaded the backlog of cases, A 6(1) imposed on Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. The parties had contributed to slowing down the civil proceedings by numerous requests for adjournments. However, a lapse of time of nearly sixteen years could not be regarded as reasonable. There had therefore been a violation of A 6(1).

Non-pecuniary damage (60 million ITL) costs and expenses (8 million ITL).

Cited: Vocaturo v I (24.5.1991).

Cassetta v Italy 99/108

[Application lodged 2.5.1997; Court Judgment 14.12.1999]

Mr Pietro Cassetta complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mrs M Tsatsa-Nikolovska, Mr A Baka.

The period to be taken into consideration began on 6 November 1991 and was still pending on 15 October 1998. It had lasted to date more than 6 years 11 months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (12,000,000 ITL), costs and expenses (3,000,000 ITL).

Cited: Bottazzi v I (28.7.1999).

Castell v France 00/98

[Application lodged 18.7.1997; Court Judgment 21.3.2000]

Mr René Castell and Mrs Lucienne Castell complained of the length of civil proceedings brought against them.

Court found unanimously V 6(1).

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr L Loucaides, Mr P Kûris, Mrs F Tulkens, Mr K Jungwiert, Mrs HS Greve.

The case was not particularly complex and the applicants had not contributed to any delay. The proceedings had lasted over 15 years, which could not be considered reasonable.

Non-pecuniary damage (FF 30,000), costs and expenses (FF 20,000).

Cited: Bouilly v F (7.12.1999), Doustaly v F (23.4.1998), Richard v F (22.4.1998), Scalvini v I (26.10.1999).

Castelli v Italy 99/109

[Application lodged 22.7.1997; Court Judgment 14.12.1999]

Mr Elia Castelli complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mrs M Tsatsa-Nikolovska, Mr A Baka.

The period to be taken into consideration began on 14 January 1992 and ended on 16 July 1997. It had lasted more than 5 years 6 months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 10,000,000), costs and expenses (ITL 3,000,000).

Cited: Bottazzi v I (28.7.1999).

Castells v Spain (1992) 14 EHRR 445 92/48

[Application lodged 17.9.1985; Commission report 8.1.1991; Court Judgment 23.4.1992]

Mr Miguel Castells was a lawyer and senator elected on the list of Herri Batasuna, a political grouping supporting independence for the Basque Country. In 1979 he wrote an article criticising the government, entitled 'Outrageous Impunity', published in the weekly magazine 'Punto y Hora de Euskalherria'. He was prosecuted, convicted of insulting the government and disqualified from public office. At trial the Spanish courts ruled that the evidence of the truth of his statements was inadmissible. He complained that his freedom of expression had been violated and that others had published similar articles without encountering difficulty.

Comm found by majority V 10.

Court unanimously rejected Government's preliminary objection and found V 10, not necessary to examine 14+10.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr R Macdonald, Mr J De Meyer (c), Mr SK Martens, Mrs E Palm, Mr R Pekkanen (c), Mr AN Loizou, Mr JA Carrillo Salcedo (c), ad hoc judge.

Regarding the Government's preliminary objection of non-exhaustion, A 26 had to be applied with some degree of flexibility and without excessive formalism. It was sufficient that 'the complaints intended to be made subsequently before the Convention organs' should have been raised 'at least in substance and in compliance with the formal requirements and time limits laid down in domestic law'. The applicant had raised his points in the Supreme Court and had invoked before the Constitutional Court, 'at least in substance', the complaints relating to A 10. The objection that the applicant had failed to exhaust domestic remedies therefore had to be dismissed.

Freedom of expression constituted one of the essential foundations of a democratic society and one of the basic conditions for its progress. It was applicable not only to 'information' or 'ideas' that were favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offended, shocked or disturbed. Such were the demands of that pluralism, tolerance and broadmindedness without which there was no 'democratic society'. Freedom of expression was especially important for an elected representative of the people. Interference with the freedom of expression of an opposition member of parliament, like the applicant, called for the closest scrutiny on the part of the Court. The prosecution and conviction were an interference with the exercise of the applicant's freedom of expression. The prosecution had a legal basis in the Criminal Code; the fact that the statute was open to different interpretations did not detract from it being prescribed by law. Considering the circumstances in Spain at the time (1979), the proceedings were brought for the legitimate aim of preventing disorder. Freedom of expression was one of the essential foundations of a democratic society and especially important for elected representatives of the people. Freedom of the press enabled the public and politicians the opportunity to participate in the free political debate which was at the very core of the concept of a democratic society. The

freedom of political debate was not absolute in nature. The limits of permissible criticism were wider with regard to the Government than in relation to a private citizen, or even a politician. In a democratic system the actions or omissions of the Government had to be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion. Furthermore, the dominant position which the Government occupied made it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means were available for replying to the unjustified attacks and criticisms of its adversaries or the media. The applicant had offered to establish that the facts recounted by him were true and well known but the Supreme Court declared such evidence inadmissible on the ground that the defence of truth could not be pleaded in respect of insults directed at the institutions of the nation. The Court attached decisive importance to the fact that the evidence was declared inadmissible; such an interference in the exercise of the applicant's freedom of expression was not necessary in a democratic society. There had therefore been a violation of A 10.

Judgment constituted sufficient just satisfaction for non-pecuniary injury, costs and expenses (ESP 3,000,000).

Cited: Airey v IRL (9.10.1979), B v F (25.3.1992), Cardot v F (19.3.1991), Guzzardi v I (6.11.1980), Handyside v UK (7.12.1976), Lingens v A (8.7.1986), Observer and The Guardian v UK (26.11.1991), Sunday Times v UK (26.4.1979).

Castillo Algar v Spain 98/92

[Application lodged 3.8.1995; Commission report 9.4.1997; Court Judgment 28.10.1998]

Mr Ricardo Castillo Algar was a lieutenant-colonel in the infantry and attached to the Spanish Legion. He was charged with having set up, to the detriment of the Armed Forces Treasury and contrary to A 189 of the Military Criminal Code, an unregulated private fund that was not subject to tax or audit by the tax authorities. He was found guilty by a chamber of the Central Military Court and sentenced him to three months and one day's imprisonment. The applicant appealed on points of law to the Supreme Court. He maintained that the chamber that had tried him could not be considered impartial as two of the judges had previously sat in the chamber that had heard his appeal against the order by which he had been charged. The Supreme Court (Military Division) dismissed the appeal. A further appeal to the Constitutional Court was also dismissed. The applicant complained that his case had not been heard by an impartial tribunal.

Comm unanimously found V 6(1).

Court unanimously dismissed Government's preliminary objection regarding non-exhaustion, found V 6(1).

Judges: Mr R Bernhardt, President, Mr F Gölcüklü, Mr F Matscher, Mr A Spielmann, Mrs E Palm, Mr JM Morenilla, Mr G Mifsud Bonnici, Mr U Lôhmus, Mr V Butkevych.

The Court noted that the purpose of the requirement that domestic remedies had to be exhausted was to afford the Contracting States the opportunity of preventing or putting right alleged violations before the allegations were submitted to the Convention institutions. The applicant had raised his complaints regarding the Central Military Court to the Supreme Court. Although the applicant had not challenged the judges concerned before the start of the trial, the courts of the respondent State could not be said to have been denied an opportunity to put right the alleged violation of A 6(1). Consequently, the Government's preliminary objection was dismissed.

The existence of impartiality had to be determined by a subjective test, that is, on the basis of the personal conviction of a particular judge in a given case, and also by an objective test, that is, ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in that respect. As regards the subjective test, the personal impartiality of a judge had to be presumed until there was proof to the contrary. In the present case there was no evidence that either judge acted on the basis of personal bias. Under the objective test, it had to be determined whether, irrespective of the judge's personal conduct, there were ascertainable facts which might raise

doubts as to his impartiality. In that respect even appearances might be of importance. What was at stake was the confidence which the courts in a democratic society had to inspire in the public, including the accused. Accordingly, any judge in respect of whom there was a legitimate reason to fear a lack of impartiality had to withdraw. In deciding whether, in a given case, there was a legitimate reason to fear that a particular judge lacked impartiality, the standpoint of the accused was important, but not decisive. What was decisive was whether the fear could be held to be objectively justified. In the present case, the fear that the trial court was not impartial stemmed from the fact that two of the judges sitting in it had previously sat in the chamber that had upheld the order on appeal. That could give rise to misgivings on the part of the accused as to the impartiality of the judges. However, whether such misgivings should be treated as objectively justified depended on the circumstances of each particular case; the mere fact that a judge has already taken decisions before the trial could not in itself be regarded as justifying anxieties as to his impartiality. The wording used by the chamber of the Central Military Court that heard the appeal, which included the two judges, could be taken to mean that it adopted the view taken by the Supreme Court that 'there was sufficient evidence to allow of the conclusion that a military offence had been committed'. The two judges subsequently sat as president and reporting judge respectively in the chamber of the Central Military Court which on 25 May 1994 found the applicant guilty and sentenced him to prison. In those circumstances the impartiality of the trial court could be open to genuine doubt and the applicant's fears in that regard could be considered objectively justified. Accordingly V 6(1).

Costs and expenses (ESP 765,600).

Cited: Akdivar and Others v TR (A 50) (1.4.1998), Botten v N (19.2.1996), Gasus Dosier und Fördertechnik GmbH v NL (23.2.1995), Hauschildt v DK (24.5.1989), Incal v TR (9.6.1998), Oberschlick v A (No 1) (23.5.1991).

Cattivera v Italy 91/60

[Application lodged 26.5.1987; Commission report 15.1.1991; Court Judgment 3.12.1991]

Mr Loreto Cattivera took proceedings on 14 June 1984 in the Rome magistrates' court against the 'Istituto Nazionale per l'Assicurazione contro gli Infortuni sul Lavoro' (INAIL) to obtain a disability pension. According to the Government, the investigation began at the hearing of 22 November 1984, but records they submitted showed that the initial hearing took place on 5 July 1985 when the magistrates' court ordered a medical opinion. After a hearing on 26 June 1986 the magistrates' court ordered the INAIL to pay the applicant the allowance prescribed for a 20% disability. The text of the decision was lodged with the registry on 25 August 1986. Following an appeal the District Court dismissed the appeal by the INAIL; the text of the judgment was lodged with the registry on 28 May 1990.

Comm found unanimously V 6(1).

Court unanimously struck case from list.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr SK Martens.

Despite several reminders from the registry the applicant showed no interest in the proceedings before the Court. There was an implied withdrawal which constituted a 'fact of a kind to provide a solution of the matter'. There was no reason of public policy for continuing the proceedings. The Court noted its previous case-law concerning the reasonableness of the length of civil proceedings in various Contracting States, including Italy, and specified the nature and the extent of the obligations arising in that context from A 6(1). Accordingly, the case should be struck out of the list.

Cited: Brigandì v I (19.2.1991), Caleffi v I (24.5.1991), Capuano v I (25.6.1987), Owners' Services Ltd v I (28.6.1991), Pugliese (No 2) v I (24.5.1991), Santilli v I (19.2.1991), Vocaturo v I (24.5.1991), Zanghì v I (19.2.1991).

Cazenave De La Roche v France 98/42

[Application lodged 28.9.1994; Commission report 27.11.1996; Court Judgment 9.6.1998]

Mrs Cazenave de la Roche's employment as a senior lecturer at the Rabat National School of Architecture in Morocco was terminated by the French and Moroccan authorities. Her application to be appointed to the town-planning teaching staff was refused. On 29 January 1988 she submitted a claim to the Minister for Foreign Affairs for compensation for the loss sustained on account of her not having become an established member of the State's architect teaching staff. On 25 October 1996, the Paris Administrative Court of Appeal dismissed the applicant's appeal; judgment was served on the applicant on 13 November 1996. She complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr C Russo, Sir John Freeland, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr K Jungwiert, Mr Lôhmus, Mr V Butkevych.

The Court repeated its case-law that 'disputes relating to the recruitment, careers and termination of service of civil servants are as a general rule outside the scope of A 6(1)'. The position was different where the claim related to a 'purely economic' right and, more especially, where the right accrued in law after a civil servant's service had ended. The refusal to establish the applicant as a State civil servant was no longer at the heart of the compensation proceedings she brought. The establishment she had sought was not a right, since it was dependent on the creation of a post by means of decrees which did not in this instance exist. Consequently, the Court considered that it did not have to take into account the issue of the applicant's status as a civil servant and the compatibility of her dismissal with her possible right to become an established civil servant. On the other hand, the applicant only brought the compensation proceedings in order to obtain reparation for the damage caused by an administrative act that she had successfully challenged by means of an application for judicial review. That action, purely for damages, was indeed open to her following the acknowledgement of her right to compensation, which arose from the finding that her dismissal had been unlawful, that is to say after the termination of her service. The issue of the award of damages to the applicant and of their quantum concerned a purely economic right. The applicant's action concerned a dispute over a 'civil right', and accordingly A 6(1) applied to the case.

The period to be taken into consideration began on 29 January 1988 with the submission of the preliminary claim to the Minister for Foreign Affairs. The proceedings lasted 8 years, 9 months and 2 weeks. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. The case was not complex. The applicant had not delayed the proceedings. The authorities were responsible for several periods of inactivity which had not been explained by the Government. There had been delays of two years and ten months for a ruling by Administrative Court, one year and three months for service of a judgment and nearly two years in the Administrative Court of Appeal. A reasonable time had been exceeded and there had therefore been a violation of A 6(1).

Non-pecuniary damage (FF 30,000), costs and expenses (FF 9,568).

Cited: De Santa v I (2.9.1997), Duclos v F (17.12.1996), Francesco Lombardo v I (26.11.1992), Huber v F (19.2.1998), Massa v I (24.8.1993), Mavronichis v CY (24.4.1998), Neigel v F 17.3.1997), X v F (31.3.1992).

Cecere v Italy 00/27

[Application lodged 8.11.1997; Court Judgment 25.1.2000]

Mrs Maria Rosaria Cecere complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 23 May 1986 and ended on 27 May 1997. It had lasted more than 11 years at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 24,000,000), costs and expenses (ITL 3,803,352).

Cited: Bottazzi v I (28.7.1999).

Ceriello v Italy 99/67

[Application lodged 21.3.1996; Commission report 27.5.1998; Court Judgment 26.10.1999]

Mrs Luciana Ceriello complained of the length of civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr L Ferrari Bravo, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mr AB Baka, Mr E Levits.

The period to be taken into consideration began on 28 September 1987 and ended on 16 December 1997. It had lasted more than 10 years 2 months and could not be considered reasonable.

Non-pecuniary damage (ITL 20,000,000), costs and expenses (ITL 5,000,000).

Cited: Bottazzi v I (28.7.1999).

Cesarini v Italy 92/64

[Application lodged 11.9.1985; Commission report 10.7.1991; Court Judgment 12.10.1992]

Mr Franco Cesarini instituted proceedings against his employer, company O, on 10 September 1982, before the Rome magistrates' court seeking a ruling that his lay-off on 14 June 1982 had been unlawful and that he was entitled to payment of his wages as from that date. The applicant had requested the Rome magistrates' court on 10 June 1982, as an emergency measure, to order the company to pay him the salary due to him from 14 June 1982 to the date of judgment. The investigative stage of the proceedings began at a hearing on 2 March 1983. On 9 February 1984 the magistrates' court dismissed the applicant's suit. On 29 March 1985 the applicant, who had been dismissed in the intervening period, appealed against the judgment. At a hearing on 18 November 1986 the Rome District Court found against the applicant. The applicant appealed to the Court of Cassation. The hearing before that court was arranged for 22 February 1989, but the applicant and company O reached a friendly settlement on 19 January 1989. The applicant withdrew his appeal and on 22 February 1989 the Court of Cassation noted the withdrawal of the action and closed the proceedings. He complained of the length of proceedings.

Comm found by majority (14–5) V 6(1).

Court found unanimously NV 6(1).

Judges: Mr R Bernhardt, President, Mr F Gölcüklü, Mr C Russo, Mr A Spielmann, Mrs E Palm, Mr JM Morenilla, Sir John Freeland, Mr AB Baka, Mr MA Lopes Rocha.

The period to be taken into consideration started on 10 June 1982, when the applicant requested the Rome magistrates' court to adopt an emergency measure. It ended on 22 February 1989, when the Court of Cassation noted that the applicant had withdrawn the action and closed the proceedings. It thus lasted for more than six years and eight months. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. There were several periods of inactivity: the magistrates' court waited seventeen months before taking a decision and the Rome District Court waited twenty months before examining the applicant's appeal. Nevertheless, having regard to the

applicant's attitude, to the fact that the case came before three different courts and to the friendly settlement, the delays that occurred did not appear substantial enough for the total length of the proceedings to be able to be regarded as excessive. There had therefore been no breach of A 6(1).

Cesky v Czech Republic 00/158

[Application lodged 23.11.1995; Court Judgment 6.6.2000]

On 6 February 1993 Mr Libor Cesky was arrested in Italy, pursuant to an extradition warrant, and on 18 February 1993 he was extradited. He was remanded in custody. His requests for release were rejected. On 10 June 1994 the Municipal Court convicted the applicant of robbery and sentenced him to 15 years' imprisonment, the confiscation of his car as well as a fine of CZK 4,372,000. The applicant appealed. On 18 February 1997 he was released because of the expiration of the four year maximum permissible period for detention on remand. Following a number of retrials and appeals, on 20 January 2000 the Municipal Court delivered its fifth judgment convicting the applicant of robbery and sentencing him to 12 years' imprisonment. The applicant's appeal was still pending before the appellate court. The applicant complained that his detention on remand had been unreasonably long.

Court found unanimously V 5(3).

Judges: Mr J-P Costa, President, Mr L Loucaides, Mr P Kûris, Mrs F Tulkens, Mr K Jungwiert, Sir Nicolas Bratza, Mrs HS Greve.

The period of detention on remand to be examined under A 5(3) included the length of the applicant's detention between 6 February 1993 and 10 June 1994, ie from the moment when he was arrested in Italy, in respect of the criminal proceedings brought against him in the Czech Republic, until the delivery of the first Municipal Court's judgment, his detention on remand between 16 January 1995 and 17 December 1996, ie from the moment when the High Court quashed the first judgment delivered by the Municipal Court until the latter delivered its second judgment, and between 17 and 18 February 1997, ie from the moment when the High Court quashed the second judgment given by the Prague Municipal Court until the applicant's release. Accordingly, the detention to be taken into consideration lasted three years, three months and seven days. The reasonableness of the length of the detention had to be assessed in each case according to its special features. Continued detention could be justified in a given case only if there were clear indications of a genuine public interest which, notwithstanding the presumption of innocence, outweighed the right to liberty. It fell in the first place to the national judicial authorities to examine the circumstances for or against the existence of such an imperative interest, and to set them out in their decisions on the applications for release. It was essentially on the basis of the reasons given in those decisions, and of the facts established by the applicant in his appeals, that the Court was called upon to decide whether or not there had been a violation of A 5(3). The persistence of a reasonable suspicion that the person arrested had committed an offence was a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer sufficed: the Court had to then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were relevant and sufficient, the Court had to also ascertain whether the competent national authorities displayed special diligence in the conduct of the proceedings. There existed a reasonable suspicion that the applicant had committed an offence. The reasons given by the domestic courts concerning the risk of absconding were sufficient and relevant and in those circumstances it was not necessary to examine the other grounds for the applicant's detention invoked by the domestic courts. However, there were a number of delays on the part of the authorities and special diligence was not displayed in the conduct of the proceedings. Accordingly, there had been a violation of A 5(3) as a result of the length of the applicant's detention on remand.

Pecuniary damage (CZK 100,000), costs and expenses (CZK 66,000). Finding of violation constituted sufficient just satisfaction for the non-pecuniary damage.

Cited: Assenov v BG (28.10.1998), B v A (28.3.1990), IA v F (23.9.1998), Nikolova v BG (25.3.1999).

Ceteroni v Italy 96/50

[Application lodged 2.12.1992; Commission report 22.2.1995; Court Judgment 15.11.1996]

On 2 April 1982 the District Court of Fermo made an insolvency order in respect of the company set up by Mr Umberto Ceteroni and his parents and also declared them personally bankrupt. On 8 and 15 June 1983 respectively, Mr A and the LM company, claiming to be creditors of the bankrupts, instituted separate proceedings before the Fermo bankruptcy judge. The judge set down hearings to enter appearances on 26 October and 9 November 1983 respectively. On the latter date the liquidator applied to the judge for leave to join the second proceedings. His application was allowed on 3 February 1987. In the preliminary stages 15 hearings were held in one case and 16 in the other; almost all adjourned at the request of the parties or by the judge of his own motion. The proceedings were stayed *sine die* because the judge had been transferred to another post and were reopened on 25 March and 7 February 1994. On 30 May 1994 the Fermo District Court struck the first case out of its list because the parties had failed to appear. The second case was heard on 11 March 1994 when the Fermo District Court allowed the company's application. The text of the judgment was deposited at the registry on 7 April 1994. The applicant complained, *inter alia*, of the length of proceedings.

Comm found unanimously V 6(1), not necessary to examine 8 or P4A2(1).

Court unanimously dismissed the Government's preliminary objection, found V 6(1), not necessary to examine 8 or P4A2.

Judges: Mr R Ryssdal, President, Mr C Russo, Mr SK Martens, Mrs E Palm, Mr AN Loizou, Mr AB Baka, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr K Jungwiert.

The Government's preliminary objection on the ground of failure to exhaust domestic remedies was dismissed. The remedy invoked by the Government of complaint to the bankruptcy judge could not be regarded as effective. In those circumstances the applicants were under no obligation to avail themselves of it. The preliminary objection was therefore unfounded in this respect. The further argument put forward by the Government regarding termination had not been put forward before the Commission and the Government was therefore estopped from relying on it.

The periods to be taken into consideration began on 8 and 15 June 1983 when applications were lodged with the Fermo bankruptcy judge by Mr A and the LM company. They ended on 30 May and 7 April 1994 respectively, when the first proceedings were struck out of the list and when the Fermo District Court's judgment was deposited with the registry in the second set of proceedings, a total of almost eleven years in the first proceedings and ten years and ten months in the second. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law. The liquidator was authorised to join the proceedings brought by the company on 3 February 1987, more than three years after his application to that effect was lodged with the judge responsible for preparing the case. In addition the transfer of the judge, who also exercised the functions of bankruptcy judge, entailed a stay of more than three years in the preparation for trial of both cases. Consequently, any attempt by the applicants to expedite the proceedings would have been bound to fail. In addition, the judge had never refused the applications for adjournment made by the liquidator and the plaintiffs. A reasonable time was exceeded and there had therefore been a violation of A 6(1).

In the circumstances of the case and considering the above findings, the Court did not consider it necessary also to determine the complaints under A 8 or P4A2.

Non-pecuniary damage (ITL 50 million to Mr Umberto Ceteroni, and ITL 25 million each to Mr Gaetano Ceteroni and Mrs Anna Maria Ceteroni), costs and expenses (ITL 20 million).

Cited: Ausiello v I (21.5.1996), Santilli v I (19.2.1991).

Ceylan v Turkey (2000) 30 EHRR 73 99/29

[Application lodged 10.2.1994; Commission report 11.12.1997; Court Judgment 8.7.1999]

The applicant, who was the president of the petroleum workers' union, wrote an article entitled 'The time has come for the workers to speak out – tomorrow it will be too late' in the 21–28 July 1991 issue of Yeni Ülke ('New Land'), a weekly newspaper published in Istanbul. On 16 September 1991, the applicant was indicted on charges of non-public incitement to hatred and hostility contrary to the Turkish Criminal Code. The National Security Court found him guilty and sentenced him to one year and eight months' imprisonment, plus a fine of TRL 100,000. The Court of Cassation dismissed the applicant's appeal. He served his sentence in full. As a consequence of his conviction, he also lost his office as president of the petrol workers' union as well as certain political and civil rights. He complained that his conviction infringed A 9 and 10.

Comm found by majority (30–2) V 10, no separate issue 10+14.

Court found by majority (16–1) V 10, unanimously no separate issue 10+14, unanimously that the applicant was estopped from bringing a complaint under 6(1).

Judges: Mr L Wildhaber, President, Mrs E Palm (jc), Mr A Pastor Ridruejo, Mr G Bonello (c), Mr J Makarczyk, Mr P Kûris, Mr J-P Costa, Mrs F Tulkens (jc), Mrs V Stráznická, Mr M Fischbach (jc), Mr V Butkevych, Mr J Casadevall (jc), Mrs HS Greve (jc), Mr AB Baka, Mr R Maruste, Mr K Traja, Mr F Gölcüklü, ad hoc judge (d).

The applicant's conviction as a result of the publication of his article amounted to an interference with the exercise of his right to freedom of expression. The conviction was based on the Turkish Criminal Code and it was therefore prescribed by law. Having regard to the sensitivity of the security situation in south-east Turkey and to the need for the authorities to be alert to acts capable of fuelling additional violence, the Court accepted that the applicant's conviction could be said to have been in furtherance of the aims of maintaining national security, preventing disorder and preserving territorial integrity. Freedom of expression constituted one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. The freedom was subject to exceptions, which had to be construed strictly, and the need for any restrictions established convincingly. 'Necessary', in A 10(2), implied the existence of a 'pressing social need'. The Contracting States had a certain margin of appreciation in assessing whether such a need existed, but that went hand in hand with European supervision. The article in issue took the form of a political speech, both in its content and in the kind of terms employed. The style was virulent and the criticism of the Turkish authorities' actions in the relevant part of the country acerbic. There was little scope under A 10(2) for restrictions on political speech or on debate on matters of public interest. The limits of permissible criticism were wider with regard to the government than in relation to a private citizen or even a politician. In a democratic system the actions or omissions of the government had to be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion. Moreover, the dominant position which the government occupied made it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means were available for replying to the unjustified attacks and criticisms of its adversaries. Nevertheless, it certainly remained open to the competent State authorities to adopt, in their capacity as guarantors of public order, measures, even of a criminal-law nature, intended to react appropriately and without excess to such remarks. Where such remarks incited to violence against an individual, a public official or a sector of the population, the State authorities enjoyed a wider margin of appreciation when examining the need for an interference with freedom of expression. The Court took into account the background to the case, particularly problems of terrorism and the recently ended Gulf War. However, it was essential to take into account that the applicant was writing in his capacity as a trade-union leader and that the article, despite its virulence, did not encourage the use of violence or armed resistance or insurrection. In addition the Court took into account in assessing the proportionality of the interference, the severity of the penalty imposed on the applicant and the fact that he lost his post and other political and civil rights. The applicant's conviction was disproportionate to the aims

pursued and accordingly not necessary in a democratic society. There had therefore been a violation of A 10.

Having regard to its conclusion that there has been a violation of A 10 taken alone the Court did not consider it necessary to examine the complaint under A 14.

As the applicant did not take the opportunity to raise his complaint under A 6(1) when the Commission was examining the admissibility of his application, he was now estopped from doing so.

Non-pecuniary damage (FF 40,000), costs and expenses (FF 15,000).

Cited: Fressoz and Roire v F (21.1.1999), Incal v TR (9.6.1998), Wingrove v UK (25.11.1996), Zana v TR (25.11.1997).

Cha'are Shalom Ve Tsedek (The Jewish Liturgical Association) v France 00/167

[Application lodged 23.5.1995; Commission report 20.10.1998; Court Judgment 27.6.2000]

The liturgical association Cha'are Shalom Ve Tsedek was an association whose aims were to organise, subsidise, encourage, revive, assist, promote and finance, in France, public Jewish worship and any other related or connected activities of a religious nature which might, directly or indirectly, lead towards the object it pursued. On 11 February 1987 the applicant association asked the Minister of the Interior to propose its approval with a view to practising ritual slaughter in accordance with the very strict religious prescriptions of its members for whom meat was not kosher unless it was *glatt* (the slaughtered animal must not have any impurity, or in other words any trace of a previous illness, especially in the lungs). This application was refused by a decision of 7 May 1987 and appeals to the Paris Administrative Court and the Conseil d'Etat were also dismissed. The applicant association alleged a violation of A 9 on account of the French authorities' refusal to grant it the approval necessary for access to slaughterhouses with a view to performing ritual slaughter. It further alleged a violation of A 14 in that only the Jewish Consistorial Association of Paris (ACIP), to which the large majority of Jews in France belonged, had received the approval in question.

Comm found by majority (14–3) V 14+9, (15–2) no separate issue under 9 taken alone.

Court found by majority (12–5) NV 9, (10–7) NV 14+9.

Judges: Mr L Wildhaber, President, Mr J-P Costa, Sir Nicolas Bratza (jd), Mr L Ferrari-Bravo, Mr L Caflisch, Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach (jd), Mr B Zupancic, Mrs N Vajic, Mr J Hedigan, Mrs W Thomassen (jd), Mrs M Tsatsa-Nikolovska (jd), Mr T Pantîru (jd), Mr AB Baka, Mr E Levits (jd), Mr K Traja (jd).

The president of the applicant association until 25 February 1999, Rabbi David Bitton, told the Court that he wished to withdraw the application. In the absence of an express request by the Government for it to strike the case out of its list, the Court did not consider it necessary to examine of its own motion the question whether, as a matter of domestic law, the new president of the applicant association, elected in March 1999, could validly act on behalf of the applicant association, since in the light of the documentary evidence produced by the association's lawyer the Court considered that it has been established that the applicant intended to pursue its application. There was therefore no reason to strike the case out of its list.

A 9 listed a number of forms which manifestation of one's religion or belief could take, namely worship, teaching, practice and observance. Ritual slaughter constituted a rite, whose purpose was to provide Jews with meat from animals slaughtered in accordance with religious prescriptions, which was an essential aspect of practice of the Jewish religion. The applicant association employed ritual slaughterers and *kashrut* inspectors who slaughtered animals in accordance with its prescriptions on the question, and it was likewise the applicant association which, by certifying as *glatt* kosher the meat sold in its members' butcher's shops, exercised religious supervision of ritual slaughter. It followed that the applicant association could rely on A 9 with regard to the French authorities' refusal to approve it, since ritual slaughter had to be considered to be covered by a right guaranteed by the Convention, namely the right to manifest one's religion in

observance, within the meaning of A 9. By establishing an exception to the principle that animals had to be stunned before slaughter, French law gave practical effect to a positive undertaking on the State's part intended to ensure effective respect for freedom of religion. The fact that the exceptional rules designed to regulate the practice of ritual slaughter permitted only ritual slaughterers authorised by approved religious bodies to engage in it did not in itself lead to the conclusion that there had been an interference with the freedom to manifest one's religion. It was in the general interest to avoid unregulated slaughter, carried out in conditions of doubtful hygiene, and it was therefore preferable, if there was to be ritual slaughter, for it to be performed in slaughterhouses supervised by the public authorities. The method of slaughter employed by the ritual slaughterers of the applicant association was exactly the same as that employed by the ACIP's ritual slaughterers, the only difference lay in the thoroughness of the examination of the slaughtered animal's lungs after death. It was essential for the applicant association to be able to certify meat not only as kosher but also as *glatt* in order to comply with its interpretation of the dietary laws, whereas the great majority of practising Jews accepted the kosher certification made under the aegis of the ACIP. There would be interference with the freedom to manifest one's religion only if the illegality of performing ritual slaughter made it impossible for ultra-orthodox Jews to eat meat from animals slaughtered in accordance with the religious prescriptions they considered applicable. But that was not the case. It was not contested that the applicant association could easily obtain supplies of *glatt* meat in Belgium. Furthermore, a number of butcher's shops operating under the control of the ACIP make meat certified *glatt* by the Beth Din available to Jews. The right to freedom of religion guaranteed by A 9 could not extend to the right to take part in person in the performance of ritual slaughter and the subsequent certification process, given that the applicant association and its members were not in practice deprived of the possibility of obtaining and eating meat considered by them to be more compatible with religious prescriptions. Since it had not been established that Jews belonging to the applicant association could not obtain *glatt* meat, or that the applicant could not supply them with it by reaching an agreement with the ACIP, in order to be able to engage in ritual slaughter under cover of the approval granted to the ACIP, the Court considered that the refusal of approval complained of did not constitute an interference with the applicant association's right to the freedom to manifest its religion.

That finding absolved the Court from the task of ruling on the compatibility of the restriction with the requirements laid down in A 9(2). However, even if that restriction could be considered an interference with the right to freedom to manifest one's religion, the measure complained of, which was prescribed by law, pursued a legitimate aim, namely protection of public health and public order, in so far as organisation by the State of the exercise of worship was conducive to religious harmony and tolerance. Furthermore, regard being had to the margin of appreciation left to Contracting States, particularly with regard to establishment of the delicate relations between the State and religions, it could not be considered excessive or disproportionate. In other words, it was compatible with A 9(2), accordingly there had been no violation of A 9 of the Convention taken alone.

A 14 only complemented the other substantive provisions of the Convention and the Protocols. It had no independent existence since it had effect solely in relation to the enjoyment of the rights and freedoms safeguarded by those provisions. The application of A 14 did not presuppose a breach of those provisions. In the light of the findings concerning the limited effect of the measure complained of and the conclusion that there had been no interference with the applicant association's freedom to manifest its religion, the Court considered that the difference of treatment which resulted from the measure was limited in scope. In so far as there was a difference of treatment, it pursued a legitimate aim, and there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Such difference of treatment as there was therefore had an objective and reasonable justification within the meaning of the Court's consistent case-law. There had accordingly been no violation of A 9 taken together with A14.

Cited: Canea Catholic Church v GR (16.12.1997), Kalaç v TR (1.7.1997), Manoussakis v GR (29.9.1996), Marckx v B (13.6.1979).

Chahal v United Kingdom (1997) 23 EHRR 413 96/54

[Application lodged 27.7.1993; Commission report 27.6.1995; Court Judgment 15.11.1996]

The applicants were an Indian Sikh family. The first applicant had entered the UK illegally in 1971 in search of employment. His wife had arrived in 1975 following their marriage; their two children were born in the UK. Mr Chahal had visited India in 1984 and claimed to have been arrested by the Punjab police, detained and tortured. He returned to the UK and was involved in political activities on behalf of the Sikh community. In October 1985 he was detained under the Prevention of Terrorism (Temporary Provisions) Act 1984 on suspicion of involvement in a conspiracy to assassinate the Indian Prime Minister, Mr Rajiv Gandhi, during an official visit to the United Kingdom. He was released for lack of evidence. He was arrested on other occasions and was either released without charge or had his convictions quashed. On 14 August 1990 the Home Secretary decided to deport Mr Chahal because his continued presence in the UK was not conducive to the public good for reasons of national security and other reasons of a political nature, namely the international fight against terrorism. He was detained in custody for deportation purposes. Mr Chahal's claim for political asylum on 16 August 1990 was refused by the Home Secretary on 27 March 1991. Because of the national security elements of the case, there was no right of appeal against the deportation order. However, on 10 June 1991, the matter was considered by an advisory panel, chaired by a Court of Appeal judge and including a former president of the Immigration Appeal Tribunal. On 25 July 1991 the Home Secretary signed an order for Mr Chahal's deportation, which was served on 29 July. Following judicial review proceedings the asylum refusal was quashed, the application further considered and a fresh decision taken to refuse asylum. Further legal proceedings followed. The first applicant remained in custody and the deportation order remained in force.

Comm found unanimously V 3 and 8 if first applicant were deported, V 5(1), V 13, by majority (16–1) not necessary to examine 5(4).

Court found by majority (12–7) V 3 if first applicant deported, (13–6) NV 5(1), unanimously V 5(4), (17–2) not necessary to consider A 8, unanimously V 13+3.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr F Gölcüklü (jpd), Mr F Matscher (jpd), Mr L-E Pettiti (pd), Mr A Spielmann, Mr J De Meyer (pc/pd), Mr N Valticos (c), Mr SK Martens (jpd), Mrs E Palm (jpd), Mr JM Morenilla, Sir John Freeland (jpd), Mr AB Baka (jpd), Mr G Mifsud Bonnici (jpd), Mr J Makarczyk (jpd), Mr D Gotchev, (jpd) Mr P Jambrek (c), Mr U Lôhmus, Mr E Levits (jpd).

A 3: Contracting States had the right to control the entry, residence and expulsion of aliens. However, expulsion by a Contracting State could give rise to an issue under A 3 where substantial grounds had been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to A 3 in the receiving country. The Court was aware of the immense difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in those circumstances, the Convention prohibited in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct. The prohibition provided by A 3 against ill-treatment was equally absolute in expulsion cases. If there were substantial grounds for believing that an individual would face a real risk of being subjected to treatment contrary to A 3 if removed to another State, then however undesirable or dangerous his activities, they could not be a material consideration in the decision to deport. The protection afforded by A 3 was wider than that provided by Articles 32 and 33 of the 1951 UN Refugee Convention. The date to be taken by the Court for its assessment of the risk to Mr Chahal if expelled to India was the date of the Court's consideration of the case. Whilst the Commission was responsible for the establishment and verification of the facts the Court was not bound by the Commission's findings of fact and was free to make its own assessment. As the UK proposed to return Mr Chahal to the airport of his choice in India, it was necessary for the Court to evaluate the risk of his being ill-treated with reference to conditions throughout India rather than in Punjab alone. Against the background of the situation in India the Court was not persuaded that the good

faith assurances of the Indian Government would provide Mr Chahal with an adequate guarantee of safety. In addition, the applicant's high profile would be more likely to increase the risk to him of harm than otherwise. Having considered all the evidence the Court found that there was a real risk of Mr Chahal being subjected to treatment contrary to A 3 if he was returned to India.

A 5: The period under consideration commenced on 16 August 1990 when Mr Chahal was first detained with a view to deportation and terminated on 3 March 1994 when the domestic proceedings came to an end with the refusal of the House of Lords to allow leave to appeal. Although he had remained in custody until the present day, the latter period had to be distinguished because during that time the Government had refrained from deporting him in compliance with the request made by the Commission under Rule 36. Considering the background of the case and bearing in mind what was at stake for the applicant and the interest that he had in his claims being thoroughly examined by the courts, none of the periods for the various decisions complained of could be regarded as excessive, taken either individually or in combination. Accordingly, there had been no violation of A 5(1)(f). The applicant's detention was lawful under national law and was effected 'in accordance with a procedure prescribed by law'. In view of the exceptional circumstances of the case and the fact that the national authorities had acted with due diligence throughout the deportation proceedings against him and that there were sufficient guarantees against the arbitrary deprivation of his liberty, the advisory panel procedure providing an important safeguard against arbitrariness, the detention complied with the requirements of A 5(1)(f). There had been no violation of A 5(1).

A 5(4): Neither the proceedings for habeas corpus and for judicial review of the decision to detain Mr Chahal before the domestic courts, nor the advisory panel procedure, satisfied the requirements of A 5(4). That shortcoming was all the more significant given that Mr Chahal had been deprived of his liberty for a length of time which gave rise to serious concern. There had been a violation of A 5(4).

A 8: The Court had no reason to doubt that the respondent Government would comply with the present judgment (deportation would constitute violation of A 3), and therefore it was not necessary to decide the hypothetical question under A 8.

A. 13: Where questions of national security were in issue, an 'effective remedy' under A 13 meant a remedy that was as effective as could be, given the necessity of relying upon secret sources of information. Neither the advisory panel nor the courts could review the decision of the Home Secretary to deport Mr Chahal to India with reference solely to the question of risk. On the contrary, the courts' approach was one of satisfying themselves that the Home Secretary had balanced the risk to Mr Chahal against the danger to national security. It followed that those could not be considered effective remedies in respect of Mr Chahal's A 3 complaint for the purposes of A 13. Having regard to the extent of the deficiencies of both the judicial review proceedings and the advisory panel, the Court could not consider that the remedies taken together satisfied the requirements of A 13 in conjunction with A 3. Accordingly, there had been a violation of A 13.

Judgment sufficient just satisfaction for non-pecuniary damage, costs and expenses (GBP 45,000 less FF 21,141).

Cited: Bouamar v B (29.2.1988), Cruz Varas and Others v S (20.3.1991), De Jong, Baljet and Van den Brink v NL (22.5.1984), E v Norway (29.8.1990), Fox, Campbell and Hartley v UK (30.8.1990), Ireland v UK (18.1.1978), Klass and Others v D (6.9.1978), Kolompar v B (24.9.1992), Leander v S (26.3.1987), Murray v UK (28.10.1994), Quinn v F (22.3.1995), Soering v UK (7.7.1989), Tomasi v F (27.8.1992), Vilvarajah and Others v UK (30.10.1991), X v UK (5.11.1981).

Chappell v United Kingdom (1990) 12 EHRR 1 89/5

[Application lodged 11.10.1982; Commission report 14.10.1987; Court Judgment 30.3.1989]

The applicant complained about the execution of an Anton Pillar order made against him by the High Court for breach of copyright. The order required him to permit the plaintiffs in the action to

search his business premises, which were also his home, to remove specified films and documents. The Anton Pillar order was executed simultaneously with a police search warrant.

Comm found by a majority (6–5) NV 8.

Court held unanimously NV 8.

Judges: Mr R Ryssdal, President, Mrs D Bindschedler-Robert, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr R Bernhardt, Mr AS Spielmann.

The parties had agreed that there had been an interference with the exercise of the applicant's right to respect for his private life and home, which had the legitimate aim of protecting the rights of others in that it defended the plaintiff's copyright against unauthorised infringement. An interference could not be regarded as in accordance with the law unless it had some basis in domestic law. There had been a sufficient legal basis for the interference, since 'law' under A 8(2) included unwritten or common law. The relevant domestic law was 'accessible' and sufficiently precise to satisfy the 'forseeability' criterion. The Anton Pillar order was granted without the defendant being notified or heard and it was essential therefore that the measure should be accompanied by adequate and effective safeguards against arbitrary interference and abuse. The grant of the order, as such, was undoubtedly necessary, having regard to the nature and scope of the applicant's business. Moreover, the order itself incorporated significant limitations on its scope; the plaintiffs had given a series of undertakings, and a series of remedies for improper exercise were available to the applicant. Although the implementation of the order was left to the plaintiff's solicitors they would be bound by undertakings and professional conduct. Certain aspects of the actual execution of the order were, however, open to criticism such as the manner of entry, the search by 16 or 17 people and simultaneous search by the police. These, however, were not so serious that the execution of the order could be regarded as disproportionate to the legitimate aim pursued.

Cited: Barthold v D (25.3.1985), Leander v S (26.3.1987), Malone v UK (2.8.1984), Olsson v S (24.3.1988).

Chassagnou and Others v France (2000) 29 EHRR 615 99/18

[Applications lodged 20.4.1994, 29.4.1995, 30.6.1995; Commission reports 30.10.1997, 4.12.1997; Court Judgment 29.4.1999]

The applicants were farmers living in various departments in France where their landholdings were included in the hunting grounds of the municipal hunters' associations. Some of the applicants were members of the Anti-Hunting Movement and of the Association for the Protection of Wildlife and opposed to hunting on ethical grounds. They sought to have their land removed from the hunting grounds of the hunters' association. Their applications for judicial review of the decision of the prefects of their regions were refused. Further appeals to the Administrative Court, Court of Appeal, Conseil d'Etat and Court of Cassation were also dismissed. They complained that they had been obliged, notwithstanding their opposition to hunting on ethical grounds, to transfer hunting rights over their land to approved municipal hunters' associations, had been made automatic members of those associations and could not prevent hunting on their properties. They further alleged that they were the victims of discrimination based on property, in that only the owners of landholdings exceeding a certain minimum area could escape the compulsory transfer of hunting rights over their land to an approved municipal hunters' association, thus preventing hunting there and avoiding becoming members of such an association.

Comm found with respect to 3 applications by majority (27–5) V P1A1, (27–5) V P1A1+14, (24–8) V 11, (22–10) V 11+14), (26–6) not necessary to examine A 9; with regard to other applications Comm found by majority (26–5) V P1A1, (24–7) V P1A1+14, (24–7) V 11, (22–9) 11+14, (24–7) no need to examine 9.

Court found by majority (12–5) V P1A1, (14–3) V P1A1+14, (12–5) V 11, (16–1) V 11+14, (16–1) not necessary to examine 9.

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr L Caflisch (pc/pd), Mr J Makarczyk, Mr P Kûris, Mr J-P Costa (d), Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach (so A 9), Mr B Zupancic (pc/pd), Mrs N Vajic, Mrs W Thomassen, Mrs M Tsatsa-Nikolovska, Mr T Pantiru (pc/pd), Mr A Baka, Mr E Levits, Mr K Traja (pc/pd).

Although the applicants had not been deprived of their right to use their property, to lease it or to sell it, the compulsory transfer of the hunting rights over their land to the hunters' association prevented them from making use of the right as they saw fit. In the present case the applicants did not wish to hunt on their land and objected to others coming onto their land to do so. Although opposed to hunting on ethical grounds, they were obliged to tolerate the presence of armed men and gun dogs on their land each year. That restriction on the free exercise of the right of use constituted an interference with the their enjoyment of their rights as the owners of property. Accordingly, the second paragraph of P1A1 was applicable in the case. The relevant law, the Loi Verdeille, assigned aims to the hunters' associations which were in the general interest to avoid unregulated hunting and encourage the rational management of game stocks. Notwithstanding the legitimate aims of the Loi Verdeille when it was adopted, the Court considered that the result of the compulsory-transfer system which it laid down had been to place the applicants in a situation which upset the fair balance to be struck between protection of the right of property and the requirements of the general interest. Compelling small landowners to transfer hunting rights over their land so that others could make use of them in a way which was totally incompatible with their beliefs imposed a disproportionate burden which was not justified under the second paragraph of A 1 of Protocol No 1. There had therefore been a violation of that provision.

A 14 had no independent existence, but played an important role by complementing the other provisions of the Convention and the Protocols. A difference in treatment is discriminatory if it 'has no objective and reasonable justification', that is if it does not pursue a 'legitimate aim' or if there is not a 'reasonable relationship of proportionality between the means employed and the aim sought to be realised'. Moreover, the Contracting States enjoyed a certain margin of appreciation in assessing whether and to what extent differences between otherwise similar situations justify a different treatment. Since the result of the difference in treatment between large and small landowners was to give only the former the right to use their land in accordance with their conscience, it constituted discrimination on the ground of property under A 14. There had therefore been a violation of P1A1 taken in conjunction with A 14.

The term 'association' in A 11 possessed an autonomous meaning; the classification in national law had only relative value and constituted no more than a starting point. The hunting associations owed their existence to the will of parliament and were associations set up in accordance with law, they were composed of hunters or the owners of land or hunting rights, and therefore of private individuals, all of whom wished to pool their land for the purpose of hunting. Their supervision by the prefect was not sufficient to support the contention that they remained integrated within the structures of the State nor could it be maintained that under the Loi Verdeille hunting associations enjoyed prerogatives outside the orbit of the ordinary law, or that they employed processes of a public authority, like professional associations. The Court considered that hunting associations were 'associations' for the purposes of A 11. The obligation to join a hunting association imposed on the applicants was an interference with the 'negative' freedom of association. The interference was prescribed by law, by the Loi Verdeille of 1964, and the Countryside Code. While hunting was an ancient activity its main purpose in the present day was to provide pleasure and relaxation to those who took part in it while respecting its traditions. The organisation and regulation of that activity might be a matter for which the State bore responsibility, particularly as regards its duty to ensure, on behalf of the community, the safety of people and property. Accordingly the legislation in issue pursued a 'legitimate aim'. The Government had not established that it was necessary to compel the applicants to become members of the hunting associations in their municipalities despite their personal convictions. With respect to the need to protect the rights and freedoms of others to ensure democratic participation in hunting, an obligation to join a hunting association which was imposed on landowners in only one municipality in four in France could not be regarded as proportionate to the legitimate aim pursued. In addition, only small properties were

pooled while large estates, both public and private, were protected from democratic participation in hunting. To compel a person by law to join an association such that it was fundamentally contrary to his own convictions to be a member of it, and to oblige him, on account of his membership of that association, to transfer his rights over the land he owned so that the association in question could attain objectives of which he disapproved, went beyond what was necessary to ensure that a fair balance was struck between conflicting interests and could not be considered proportionate to the aim pursued. There had therefore been a violation of A 11.

There was no objective and reasonable justification for the difference in treatment obliging small landowners to become members of the hunting associations but enabling large landowners to evade compulsory membership. There had been a violation of A 11 taken in conjunction with A 14.

In the light of the conclusions reached with regard to P1A1 and A 11, taken both separately and in conjunction with A 14, it was not necessary to conduct a separate examination of the case from the standpoint of A 9.

Non-pecuniary damage (FF 30,000 to each of the applicants).

Cited: Artico v I (13.5.1980), Fredin v S (No 1) (18.2.1991), Dudgeon v UK (22.10.1981), Larkos v CY (18.2.1999) Le Compte, Van Leuven and De Meyere v B (23.6.1981), Sigurdur Sigurjónsson v ISL (30.6.1993), United Communist Party of Turkey and Others v TR (30.1.1988), Young, James and Webster v UK (13.8.1981).

Chichlian and Ekindjian v France (1991) 13 EHRR 553 89/21

[Application lodged 25.4.1984; Commission report 16.3.1989; Court Judgment 29.11.1989]

Mr Ferdinand Chichlian and Mrs Jeanne Ekindjian were charged under the Customs Code with 'infringement of the legislation and the regulations governing financial relations with foreign countries', consisting in 'failure to deposit ... foreign currency' with 'an approved intermediary'. The Toulouse tribunal de grande instance acquitted them and the public prosecutor appealed. On 6 January 1983 the Toulouse Court of Appeal found the applicants guilty and sentenced them to a suspended term of six months' imprisonment and a fine. In addition, it ordered the confiscation of the sum in question. Their appeal to the Court of Cassation was dismissed. They complained that they had had no knowledge of the grounds for the customs authorities' appeal until the hearing, that they had not been informed promptly of the nature and cause of the accusation against them before the Toulouse Court of Appeal and that they had not had adequate time and facilities for the preparation of their defence.

Comm found unanimously V 6(3)(a) and 6(3)(b).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr F Matscher, Mr L-E Pettiti, Mr J De Meyer, Mr N Valticos, Mr SK Martens.

Court noted the friendly settlement and struck the case from the list.

FS (FF 100,000 to be paid to applicants), therefore SO.

Chierici v Italy 00/46

[Application lodged 1.10.1997; Court Judgment 8.2.2000]

Mrs Bianca Chierici and Mr Enrico Chierici complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr B Conforti, Mr G Ress, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mrs N Vajic.

The period to be taken into consideration began on 9 February 1979 and ended on 28 April 1999. It had lasted more than 20 years, two months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 73,000,000).

Cited: Bottazzi v I (28.7.1999).

Chorherr v Austria (1994) 17 EHRR 358 93/34

[Application lodged 14.7.1987; Commission report 21.5.1992; Court Judgment 25.8.1993]

Mr Otmar Chorherr and a friend distributed leaflets calling for a referendum on the purchase of fighter aircraft by the Austrian armed forces during a military ceremony on 26 October 1985 to mark the thirtieth anniversary of Austrian neutrality and the fortieth anniversary of the end of the Second World War. Following a commotion, the applicant and his friend were arrested at 11.15 am and taken to Central Vienna police station where administrative criminal proceedings were instituted against them. The applicant was placed in police custody and after questioning he was released at 2.40 pm. His appeal to the Constitutional Court against his arrest and the prohibition on distributing leaflets was dismissed.

Comm found by majority (12–2) NV 5, (7–7 with acting President's casting vote) V 10.

Court found unanimously NV 5, by majority (6–3) NV 10.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr F Matscher, Mr N Valticos (pd), Mr I Foighel (jpd), Mr AN Loizou (jpd), Mr MA Lopes Rocha, Mr G Mifsud Bonnici.

The Court on reviewing its case-law and considering the facts of the present case concluded that the Austrian reservation in respect of A 5 complied with A 64(2) of the Convention. Accordingly there had been no violation of A 5.

Regarding A 10, the deprivation of liberty constituted an interference. In considering whether the interference was prescribed by law the Court noted that the level of precision required of the domestic legislation, which could not in any case provide for every eventuality, depended to a considerable degree on the content of the instrument considered, the field it was designed to cover and the number and status of those to whom it was addressed. The applicant was in a position to foresee to a reasonable extent the risks inherent in his conduct. The interference was prescribed by law. Having regard to all the circumstances surrounding the actions of the applicant and the police, the Court found that the arrest pursued at least one of the legitimate aims referred to in A 10(2), namely the prevention of disorder. Contracting States enjoyed a certain margin of appreciation in assessing whether and to what extent an interference was necessary, but that margin went hand in hand with European supervision. That margin of appreciation extended in particular to the choice of the means to be used by the authorities to ensure that lawful manifestations could take place peacefully. The Court noted the nature, importance and scale of the parade which could appear to the police to justify strengthening the forces deployed to ensure that it passed off peacefully. In addition, when he chose that event for his demonstration against the Austrian armed forces, the applicant must have realised that it might lead to a disturbance requiring measures of restraint, which in this instance, were not excessive. It could not be said that the authorities overstepped the margin of appreciation which they enjoyed in order to determine whether the measures in issue were necessary in a democratic society and in particular whether there was a reasonable relationship of proportionality between the means employed and the legitimate aim pursued. There had therefore been no violation of A 10.

Cited: Barfod v DK (22.2.1989), Belilos v CH (29.4.1988), Campbell and Cosans v UK (25.2.1982), Groppera Radio AG and Others v CH (28.3.1990), Hadjianastassiou v GR (16.12.1992), Herczegfalvy v A (24.9.1992), Observer and Guardian v UK (26.11.1991), Plattform 'Ärzte für das Leben' v A (21.6.1988), Silver and Others v UK (25.3.1983), Sunday Times v UK (No 1) (26.4.1979), Weber v CH (22.5.1990).

Cifola v Italy 92/30

[Application lodged 11.9.1987; Commission report 15.1.1991; Court Judgment 27.2.1992]

Mr Attilio Cifola was a builder. On 5 March 1984 he took proceedings before the Rome District Court against the group of co-owners of a building to determine his proprietary rights over a part of the building and his claim for damages. The investigation began at the hearing on 29 May 1984. By decision of 1 March 1988 the District Court confirmed the applicant's right of property over the

disputed part of the building which it also found to be subject to a right of passage for the other co-owners. The text of the decision was lodged with the registry on 25 March 1988. He complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 5 March 1984 when the proceedings were instituted against the defendants in the Rome District Court. It ended, at the latest, on 25 March 1989, when the District Court's judgment became final, no appeal having been filed. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The investigation took a little more than twenty-five months, the trial hearing took place one year and seven months later, on 10 February 1988. The initial misunderstanding between the investigating judge and the applicant's lawyer on the question of the validity of the originating summons had taken nearly two years to resolve. In addition, there were ten months between the first hearing and the second. There was a second period of stagnation of nineteen months, between the end of the investigation and the trial hearing. However, the State could not be held responsible for the year which went by before the judgment, which was filed with the registry on 25 March 1988, became final. Taking the proceedings as a whole the Court did not regard as reasonable the lapse of time in the present case. There had therefore been a violation of A 6(1).

Judgment constituted sufficient just satisfaction for non-pecuniary damage alleged.

Cited: Pugliese (No 2) v I (24.5.1991).

Ciliz v Netherlands 00/177

[Application lodged 6.11.1995; Commission report 20.5.1998; Court Judgment 11.7.2000]

Mr Mehmet Ciliz, a Turkish national, came to The Netherlands on 31 March 1988 and married a Turkish woman there on 29 December 1988. He was granted a residence permit which enabled him to live with his spouse and to work in The Netherlands. On 27 August 1990, a son, Kürsad, was born to the applicant and his wife. The applicant and his wife separated in November 1991 and divorce proceedings were initiated. As the applicant's right to reside in The Netherlands indefinitely had been dependent on his being married and cohabiting with his spouse, he lost this right *ex jure* from the moment of separation. On 24 January 1992, he obtained an independent residence permit in order to work in The Netherlands for one year. His request to extend his residence permit was rejected in February 1993 as he was in receipt of unemployment benefits. His appeal to the State Secretary for Justice was refused, as was his appeal to The Hague Regional Court in May 1995. In the meantime, the applicant requested the Utrecht Regional Court to establish an arrangement concerning parental access to his child. The Court found such arrangements inappropriate. During his appeal he was placed in detention pending his expulsion. The first trial meeting between the applicant and Kürsad, organised by the Child Care and Protection Board, took place on 3 November 1995 while the applicant was still in detention. Despite appeals, the applicant was expelled to Turkey on 8 November 1995. The appeal proceedings concerning the formal access arrangement before the Amsterdam Court of Appeal were continued in the absence of the applicant, who had not been granted an entry visa in order to attend either more trial meetings or the hearing before the Court of Appeal. On 7 May 1998 the Court of Appeal confirmed the decision of the Utrecht Regional Court not to lay down a formal access arrangement, taking into account the fact that Kürsad and his father had not seen each other since November 1995. The applicant's further appeal to the Supreme Court was rejected on 16 April 1999. Meanwhile, on 5 January 1999, the applicant re-entered The Netherlands with a visa valid for three months. He submitted a new application for a formal access arrangement to the Utrecht Regional Court which was rejected on 15 December 1999. His appeal against that decision

was currently still pending. The applicant complained that the authorities' refusal to grant him continued residence and his subsequent expulsion had infringed A 8.

Comm found unanimously V 8.

Court found unanimously V 8.

Judges: Mrs E Palm, President, Mrs W Thomassen, Mr L Ferrari Bravo, Mr R Türmen, Mr C Bîrsan, Mr J Casadevall, Mr R Maruste.

A bond amounting to family life existed between the parents and the child born from their marriage-based relationship and was not terminated by reason of the fact that the parents separated or divorced as a result of which the child ceased to live with one of its parents. In the present case it could not be said that the applicant demonstrated at all times to what extent he valued meetings with his son. During the period immediately following the separation, he made no attempt to see his son and when he did express a desire to meet with him, he failed to keep appointments with the relevant authorities. However, contact was re-established from February 1993 and there then followed a period during which meetings took place between the applicant and his son, if not on a regular basis, then at least with some frequency. The applicant also applied to the courts on a number of occasions in order to have the matter of access determined. The events subsequent to his separation from his wife did not constitute exceptional circumstances capable of breaking the ties of family life between the applicant and his son. The decision to refuse the applicant continued residence in The Netherlands had a basis in domestic law. The measure was aimed at the preservation of the economic well-being of the country and thus served a legitimate aim. By expelling the applicant when they did, the authorities not only prejudged the outcome of the proceedings relating to the question of access but, and more importantly, they denied the applicant all possibility of any meaningful further involvement in those proceedings for which his availability for trial meetings in particular was obviously of essential importance. Moreover, when the applicant eventually obtained a visa to return to The Netherlands for three months in 1999, the mere passage of time had resulted in a de facto determination of the proceedings for access which he then instituted. The authorities, through their failure to co-ordinate the various proceedings touching on the applicant's family rights, had not, therefore, acted in a manner which had enabled family ties to be developed. In sum, the decision-making process concerning both the question of the applicant's expulsion and the question of access did not afford the requisite protection of the applicant's interests as safeguarded by A 8. The interference with the applicant's right under this provision was, therefore, not necessary in a democratic society. Accordingly, there had been a breach of that provision.

Non-pecuniary damage (NLG 25,000), legal costs (NLG 18,200 less legal aid received from Council of Europe, and, for interpretation costs, NLG 4,352.50).

Cited: Ahmut v NL (28.11.1996), Berrehab v L (21.6.1988), Keegan v IRL (26.5.1994), W v UK (8.7.1987).

Çiraklar v Turkey 98/94

[Application lodged 28.11.1991; Commission report 20.5.1997; Court Judgment 28.10.1998]

Mr Cengiz Çiraklar was a student at the University of the Aegean. On 16 March 1990 a group of students held an unauthorised demonstration in front of the buildings of the University to commemorate the deaths in 1978 of seven students from Istanbul University and the deaths of Kurds in the north of Iraq in 1988. The police intervened, dispersed the crowd and arrested the applicant together with other demonstrators and took them into police custody. On 20 March 1990 the applicant and his co-defendants appeared before the National Security Court charged with taking part in an unauthorised demonstration, offering violent resistance to the police and disseminating separatist propaganda. The National Security Court, composed of two civilian judges and a military judge with the rank of colonel, found the applicant guilty of having taken part in a demonstration on a public highway without permission and using violence against the police, and it sentenced him to two years and six months' imprisonment. Thirty of his co-defendants were convicted on the same counts. His appeal to the Court of Cassation was

dismissed. He complained that his case had not been heard by an independent and impartial tribunal.

Comm found by majority (30–1) V 6(1).

Court unanimously dismissed the Government's preliminary objection, found by majority (7–2) V 6(1), unanimously unnecessary to examine 6(3)(d).

Judges: Mr Thór Vilhjálmsson, President, Mr F Gölcüklü (d), Mr C Russo, Mr N Valticos, Mr MA Lopes Rocha (d), Mr J Makarczyk, Mr T Pantiru, Mr V Butkevych, Mr V Toumanov.

Regarding the scope of the case: the scope of the case before the Court was determined by the Commission's decision on admissibility. The Court could not therefore consider the applicant's other complaints.

Preliminary objection: the remedy of rectification of judgment suggested by the Government was not directly accessible to the applicant; parties could not themselves lodge such an application with the Court of Cassation; they had to submit an application for that purpose to Principal State Counsel at the Court of Cassation, who decided in his discretion whether or not to apply to the court. The objection of non-exhaustion of domestic remedies had therefore to be dismissed.

In order to establish whether a tribunal could be considered 'independent' for the purposes of A 6(1), regard had to be had, *inter alia*, to the manner of appointment of its members and their term of office, the existence of safeguards against outside pressures and the question whether it presented an appearance of independence. It was understandable that a civilian prosecuted in a National Security Court for offences regarded *ipso facto* as directed against Turkey's territorial or national integrity, the democratic order or national security should be apprehensive about being tried by a bench of three judges which included a regular army officer, who was a member of the Military Legal Service. Such mistrust was not sufficient for it to be held that there had been a violation of A 6(1). Regard had to be had to the safeguards afforded to the applicant by the status of the military judges who sat in National Security Courts. That status provided certain guarantees of independence and impartiality. For example, military judges underwent the same professional training as their civilian counterparts, enjoyed constitutional safeguards identical to those of civilian judges, with certain exceptions could not be removed from office or made to retire early without their consent, had to be independent and no public authority could give them instructions concerning their judicial activities or influence them in the performance of their duties. However, on the other hand the judges were servicemen who still belonged to the army, they remained subject to military discipline and assessment. Decisions relating to their appointment were to a great extent taken by the administrative authorities and the army and their term of office as National Security Court judges was only four years and could be renewed. The applicant could legitimately fear that because one of the judges of the National Security Court was a military judge, it might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. The proceedings in the Court of Cassation were not able to dispel the applicant's fears. In short, there had been a violation of A 6(1).

Having regard to its finding that the applicant's right to a fair hearing by an independent and impartial tribunal had been infringed, it was unnecessary to examine the complaint under A 6(3)(d) of refusal to hear a defence witness.

Judgment constituted sufficient just satisfaction as to alleged non-pecuniary damage.

Cited: Findlay v UK (25.2.1997), Gautrin and Others v F (20.5.1998), Incal v TR (9.6.1998), Van Orshoven v B (25.6.1997).

Ciricosta and Viola v Italy 95/51

[Application lodged 3.3.1992; Commission report 30.11.1994; Court Judgment 4.12.1995]

Mr Michelangelo Ciricosta and Mrs Rosina Viola applied to the Palmi magistrate on 4 July 1980, bringing an action for protection against new works likely to interfere with possession. The

proceedings were still pending, the magistrate had summoned the parties to appear on 24 January 1996. They complained of the length of proceedings.

Comm found by majority (10–4) NV 6(1).

Court found unanimously NV 6(1).

Judges: Mr R Bernhardt, President, Mr F Gölcüklü, Mr F Matscher, Mr C Russo, Mr A Spielmann, Mr AN Loizou, Sir John Freeland, Mr J Makarczyk, Mr D Gotchev.

The period to be taken into consideration began on 4 July 1980 when the action was brought in the Palmi magistrates' court. The summary proceedings ended on 5 March 1981, the proceedings on the merits were still pending, the next hearing having been fixed for 24 January 1996. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. The case was not complex. Only delays attributable to the State could justify a finding of failure to comply with the reasonable time requirement. In the instant case, the relevant court was responsible for a number of delays. The hearing of 3 February 1986 was postponed by the magistrate of his own motion; the hearing of 2 October 1991 did not take place because the magistrate had been transferred; then, from 8 June 1994 to 22 March 1995, the Palmi magistrates' court suspended all sittings for lack of registry staff. With the exception of the summary stage, the proceedings did not appear to have been conducted efficiently. However, the conduct of the relevant authorities was not in this case primarily responsible for the length of the proceedings. During the preparation of the case for trial on the merits, which was still pending, the applicants, either alone or in agreement with the defendant, requested at least seventeen adjournments and did not object to six adjournments requested by a witness. The applicants had never taken any steps to have their case dealt with more speedily. Even though a period of more than fifteen years for civil proceedings that were still pending may, on the face of it, appear unreasonable, the conduct of the applicants, led the Court to declare the applicants' complaint unfounded.

Cited: Monnet v F (27.10.1993), Vernillo v F (20.2.1991), Scopelliti v I (23.11.1993).

Cittadini and Ruffini v Italy 99/105

[Application lodged 13.3.1997; Court Judgment 14.12.1999]

Mr Antonio Cittadini and Ms Rosalba Ruffini complained of the length of civil proceedings.

Court found unanimously V 6(1), not necessary to examine P1A1.

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mrs M Tsatsa-Nikolovska, Mr A Baka.

The period to be taken into consideration began on 26 November 1990 and 17 January 1992 respectively. It ended on 3 July 1998. It lasted more than 7 years 7 months for the first applicant and more than six years, five months for the second applicant at one level of jurisdiction. The period could not be considered reasonable.

Having regard to the conclusion in respect of A 6(1), it was not necessary to examine P1A1.

Non-pecuniary damage (ITL 16,000,000 for each applicant).

Cited: Bottazzi v I (28.7.1999), Zanghì v I (19.2.1991).

Ciulla v Italy (1991) 13 EHRR 346 89/1

[Application lodged 5.6.1984; Commission report 8.5.1987; Court Judgment 22.2.1989]

Mr Salvatore Ciulla was prosecuted in Italy in respect of drugs offences. He was also the subject of a compulsory residence order made as a preventive measure and was detained during the proceedings to consider that application. He complained of the deprivation of liberty.

Comm found by majority (10–2) V 5(1) and 5(5).

Court unanimously dismissed Government's objection of non-exhaustion of domestic remedies, found by majority (15–2) V 5(1), (13–4) V 5(5).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert (jpd), Mr F Gölcüklü (jpd), Mr F Matscher (d), Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer, Mr N Valticos (d), Mr SK Martens, Mrs E Palm.

The Government had not raised the objection of non-exhaustion in respect of some of the claims before the Commission and were therefore estopped from raising them before the Court. With regard to the final claim the objection was without foundation.

The detention ordered on 8 May 1984 by the Milan District Court was a deprivation of liberty, so that A 5 applied to the case. A 5(1)(c) permitted deprivation of liberty only in connection with criminal proceedings. The preventive procedure was designed for purposes different from those of criminal proceedings. The compulsory residence order, unlike a conviction and prison sentence, could be based on suspicion rather than proof, and the deprivation of liberty which sometimes preceded it could not therefore be equated with pre-trial detention as governed by A 5(1)(c). The arrest of the applicant was designed to obviate the risk that he might 'evade any preventive measure that might be taken'. The exhaustive list of permissible exceptions in A 5(1) had to be interpreted strictly. There had been a violation of A 5(1).

The effective enjoyment of the right to compensation guaranteed in A 5(5) was not, in the circumstances of the case, ensured with a sufficient degree of certainty.

Judgment constituted sufficient just satisfaction for A 50.

Cited: Bozano v F (18.12.1986), Bouamar v B (29.2.1988), Brogan and Others v UK (29.11.1988), De Jong, Baljet and Van Den Brink v NL (22.5.1984), Guzzardi v I (6.11.1980), Johnston and Others v UK (18.12.1986).

Clerc v France 90/10

[Application lodged 28.8.1986; Commission report 12.7.1989; Court Judgment 26.4.1990]

The applicant was a manager of one of a number of civil engineering firms investigated on suspicion of taking anti-competitive concerted action in relation to a call for tenders. The administrative inquiry lasted from 28 June 1971 to November 1973, the judicial inquiry commenced on 4 April 1974. The applicant and other defendants were acquitted by the Criminal Court on 27 April 1987. The applicant complained about the length of the proceedings.

Commission found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Sir Vincent Evans, Mr R Macdonald, Mr SK Martens.

Court noted the friendly settlement and struck the case from the list, noting its own case-law in the area of length of detention on remand or criminal proceedings.

FS (FF 100,000 compensation) therefore SO.

Cited: B v A (28.3.1990), Baggetta v I (25.6.1987), Corigliano v I (10.12.1982), Eckle v D (15.7.1982), Foti and Others v I (10.12.1982), Milasi v I (25.6.1987), Neumeister v A (27.6.1968), Ringeisen v A (16.7.1971), Wemhoff v D (27.6.1968).

Clooth v Belgium (1992) 14 EHRR 717 91/70

[Application lodged 12.2.1987; Commission report 10.7.1990; Court Judgment 12.12.1991 (merits), 5.3.1998 (A 50)]

On 13 September 1984 Mr Serge Clooth was remanded in custody on suspicion of murder and arson. He was released after three years, two months, four days, on 17 November 1987, with no case to answer. During that time investigations had been conducted, psychiatric reports obtained (which showed him to be in need of therapy, although none was provided) and the applicant had

changed his version, so complicating the investigation. He complained about the length of detention on remand.

Comm found unanimously V 5(3).

Court found unanimously V 5(3).

Judges (merits): Mr R Ryssdal, President, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr C Russo, Mr A Spielmann, Mr J De Meyer, Mrs E Palm, Mr AN Loizou, Mr JM Morenilla.

Judges (A 50): Mr R Bernhardt, President, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr J De Meyer, Mr AN Loizou, Mr JM Morenilla.

It was the duty of national judicial authorities to ensure that pre-trial detention did not exceed a reasonable time. A *sine qua non* for continued detention was the persistence of a reasonable suspicion that the person arrested had committed an offence but after a certain time that was no longer sufficient and the Court had to establish whether the other grounds were relevant and sufficient and if the national courts had displayed special diligence. In this case the continued extension was based on fears the applicant would commit further offences, the needs of the inquiry, the risks of collusion and the fear that he would abscond. The danger of further offences had to be a plausible one and the measure appropriate in the light of the circumstances of the case, the past history and the personality of the person concerned. In the present case neither the charge nor the psychiatric report justified continued detention without accompanying therapeutic measure. This was a complicated case and the applicant had impeded and delayed the inquiries. In the long term, after initial inquiries, the continued detention could not be justified. In addition, the authorities had invoked the needs of the investigation in a general and abstract fashion which was not sufficient to justify continued detention. There were delays due to the change of investigating judge, obtaining a psychiatric report and identifying anonymous witnesses. No new evidence resulted in the applicant's release, suggesting that he could have been released earlier. No arguments were put forward to show the fear of absconding was well founded; the fear of absconding was first raised 31 months after the applicant's arrest. The length of detention on remand therefore exceeded a reasonable time.

Judgment of Brussels Court of Appeal sufficient reparation.

Cited: Matznetter v A (10.11.1969), Neumeister v A (27.6.1968), Stögmuller v A (10.11.1969), Wemhoff v D (27.6.1968), Papamichalopoulos and Others v Greece (A 50) (24.6.1993).

Clube de Futebol União de Coimbra v Portugal 98/62

[Application lodged 21.3.1995; Commission report 15.9.1997; Court Judgment 30.7.1998]

The applicant association had tendered unsuccessfully for the grant of a bingo hall concession. The association commenced proceedings on 13 October 1983 in the Supreme Administrative Court for an order quashing decisions of the Secretary of State for Tourism, following the recommendation of the Gaming Board which agreed to the provisional grant of the concession to operate a bingo hall to a sports association other than the applicant association and to a public company. Following legal proceedings, a new invitation to tender for the concession to operate the bingo hall was issued on 27 November 1994. On 1 October 1997 the applicant association brought an action in the Coimbra District Court seeking compensation for the losses it had sustained as a result of the refusal to grant it the concession. It complained about the length of proceedings before the Supreme Administrative Court.

Comm found by majority (23–7) V 6(1).

Court unanimously struck case out of the list.

Judges: Mr R Bernhardt, Mr C Russo, Mr J De Meyer, Mr JM Morenilla, Mr MA Lopes Rocha, Mr J Makarczyk, Mr P Kûris, Mr E Levits, Mr J Casadevall.

The Court took notice of the friendly settlement reached by the Government and the applicant association. There was no reason of public policy for the proceedings to continue. The Court noted its previous case-law and struck the case out of the list.

FS (PTE 2,500,000 compensation for the loss caused to the applicant association as a result of the delays in the proceedings), therefore SO.

Cited: Baraona v P (8.7.1987), Neves e Silva v P (27.4.1989).

Colacioppo v Italy 91/21

[Application lodged 11.2.1987; Commission report 5.12.1989; Court Judgment 19.2.1991]

On 1 September 1977 Mr Antonio Colacioppo, head of the National Pensions Institute, received judicial notice of the fact that he was under investigation for the offence of extortion. Following arrest, investigation, trial and appeals, on 12 November 1987 the Perugia investigating judge discharged the applicant.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr C Russo, Mr N Valticos, Mr SK Martens, Mr JM Morenilla.

The period to be taken into consideration began on 1 September 1977, the date on which the applicant received a judicial notification. It ended, at the earliest, on 12 November 1987, with the pronouncement that there was no case to answer, and, at the latest, on 15 November 1987, when the time limit for an appeal on a point of law by the prosecuting authorities against that pronouncement expired. The reasonableness of the length of proceedings was to be assessed in the light of the particular circumstances of the case. At times the proceedings did progress at a normal rate, in particular at the stage of the cassation proceedings, but a lapse of time of more than ten years and two months could not be regarded as reasonable where the case was not complex and the appellant's conduct did not give rise to any significant delays.

Non-pecuniary damage (ITL 20 million).

Cited: Obermeir v A (28.6.1990).

Colak v Italy (1989) 11 EHRR 513 88/19

[Application lodged 7.6.1982; Commission report 6.10.1987; Court Judgment 6.12.1988]

Serif Colak, a Turkish national, lived and worked in the Federal Republic of Germany for a number of years. He was arrested on 27 April 1979 on grave suspicion of attempted murder following a fight in a Frankfurt restaurant in which he injured another Turk by a knife thrust to the abdomen. The detention order was on the basis of suspicion of attempted murder. The applicant was committed for trial. He claimed that his counsel had a conversation with the President of the Assize Court outside the courtroom in which the President gave assurances that a conviction for grievous bodily harm was possible. The applicant claimed he had based his defence on that assumption. The Government disputed that allegation of the conversation. At the hearing on 10 February 1981 the Assize Court, basing its decision principally on the victim's testimony, found the applicant guilty of attempted murder and sentenced him to five years' imprisonment. The applicant appealed to the Federal Court of Justice. A formal statement from the President of the Assize Court stated that he did not recall any details of conversations with defence counsel in the corridor. The Federal Court of Justice declared the appeal unfounded. An appeal to the Federal Constitutional Court was also rejected. He complained that he had not had a fair trial.

Comm found by majority (10–2) NV 6(1).

Court found unanimously NV 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr JA Carrillo Salcedo.

The Court noted that it was impossible to establish with certainty whether the conversation between the President of the Assize Court and the accused's lawyer had taken place. Even if such a conversation did take place, the Court would have no means of ascertaining exactly what was said. The President of the Assize Court could not in any event speak on behalf of his fellow judges. According to the documentation the applicant was accused of attempted murder. At the hearing on 16 January 1981, the court did not exclude the possibility of a conviction on this charge. It merely pointed out, as it was obliged to do by law in the circumstances of the case, that a conviction for causing grievous bodily harm was also a possibility. Neither at that point, nor at any other, did the Assize Court suggest that it was no longer intending to deal with the charge of attempted murder. The applicant's lawyer knew that the Assize Court would make its ruling after its deliberations, solely on the basis of the issues raised during the hearings. Accordingly, he should have satisfied himself that the President's alleged appraisal of the situation reflected the views of the court itself. It was open to him to seek formal confirmation of those views. There had not been a violation of A 6(1).

Colman v United Kingdom (1994) 18 EHRR 119 93/28

[Application lodged 11.5.1990; Commission report 19.10.1992; Court Judgment 28.6.1993]

Dr Richard Colman was a medical practitioner in private general practice. He established in York a practice named the 'Holistic Counselling and Education Centre'. He wrote to the General Medical Council (GMC) in March 1987 seeking its advice to advertise and requesting the GMC to review the existing rules on practice advertising and professional ethics. The GMC declined to review its recently amended guidance and warned that to advertise could lead to disciplinary action against the applicant. In August 1987 the applicant instituted legal proceedings seeking a declaration that the GMC's decision and policy on the dissemination of information by doctors were unlawful. He was unsuccessful before the High Court and the Court of Appeal and his petition to the House of Lords for leave to appeal was rejected in February 1990. Following a Government White Paper and a report by the Monopolies and Mergers Commission, in May 1990 the GMC revised its advertising rules to allow, *inter alia*, the publication in the press of factual information about doctors' services.

Comm found by majority (11–8) NV 10, (18–1) NV 13.

Court noted the friendly settlement and struck the case from the list.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr J De Meyer, Mrs E Palm, Mr JM Morenilla, Sir John Freeland, Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr J Makarczyk.

The Court took formal note of the friendly settlement reached by the Government and Dr Colman. It discerned no reason of public policy why the case should not be struck out of the list.

FS (GBP 12,500 paid to applicant), therefore case struck out of the list.

Colozza v Italy (1985) 7 EHRR 516 85/1

[Application lodged 5.5.1980; Commission report 5.5.1983; Court Judgment 12.2.1985]

On 20 June 1972, the carabinieri reported Mr Giacinto Colozza, the applicant, to the Rome public prosecutor's office for various alleged offences, including fraud, committed before November 1971. They said that they had not questioned the suspect because they had failed to contact him at his last-known address. On 4 October 1973, the investigating judge issued a 'judicial notification' intended to inform the applicant of the opening of criminal proceedings against him. A bailiff attempted to serve it on the applicant at the address shown in the Registrar-General's records, but without success: he had moved – about ten years earlier according to the carabinieri and five years earlier according to the police – and had omitted to inform the City Hall of his change of residence as required by law. Meanwhile, when renewing his driving licence in September 1973, the applicant had given, as his current address, that shown in the Registrar-General's records. On 14 November 1973, after unsuccessful searches, the investigating judge declared the accused

untraceable, appointed an official defence lawyer for him and continued the investigations. The applicant was committed for trial and sentenced to six years' imprisonment and a fine of ITL 600,000. An arrest warrant was issued and he was arrested at his home in Rome on 24 September 1977. His appeals to the Rome Regional Court, the Court of Appeal and the Court of Cassation were unsuccessful. The applicant, who had been in custody since 23 September 1977 to serve his sentence, as well as other suspended sentences previously passed on him, died in prison on 2 December 1983.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr G Wiarda, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr E García de Enterría, Mr L-E Pettiti, Mr C Russo, Mr J Gersing.

Although not expressly mentioned in A 6(1), the object and purpose of the Article taken as a whole showed that a person 'charged with a criminal offence' was entitled to take part in the hearing. In addition A 6(3)(c), (d) and (e) gave guarantees which could not be exercised without the accused being present. Waiver of the exercise of a right guaranteed by the Convention must be established in an unequivocal manner. The material before the Court did not disclose that the applicant had waived exercise of his right to appear and to defend himself or that he was seeking to evade justice. When domestic law permitted a trial to be held notwithstanding the absence of a person 'charged with a criminal offence', that person should, once he became aware of the proceedings, be able to obtain, from a court which had heard him, a fresh determination of the merits of the charge. The Contracting States enjoyed a wide discretion as regards the choice of the means calculated to ensure that their legal systems were in compliance with the requirements of A 6(1). The Court's task was not to indicate those means to the States, but to determine whether the result called for by the Convention had been achieved. For that to be so, the resources available under domestic law had to be shown to be effective and a person 'charged with a criminal offence' who was in a situation like that of the applicant should not be left with the burden of proving that he was not seeking to evade justice or that his absence was due to force majeure. That remedy of lodging a late appeal did not satisfy the criteria mentioned above. Neither the Court of Appeal nor the Court of Cassation redressed the alleged violation. Thus the applicant's case was never heard, in his presence, by a 'tribunal' which was competent to determine all the aspects of the matter. Regarding the Government's claim that the applicant was to blame, the applicant could not have provided an address for service or of giving himself up as it was not established that he was aware of the proceedings instituted against him. The failure to inform the City Hall of his change of address was a regulatory offence. The consequences which the Italian judicial authorities attributed to it were manifestly disproportionate, having regard to the prominent place which the right to a fair trial held in a democratic society within the meaning of the Convention. There had therefore been a breach of A 6(1).

Damages (ITL 6,000,000).

Cited: Albert and Le Compte v B (10.2.1983), Artico v I (13.5.1980), De Cubber v B (26.10.1984), Deweer v B (27.2.1980), Goddi v I (9.4.1984), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Neumeister v A (7 5.1974).

Comingersoll SA v Portugal 00/122

[Application lodged 7.2.1997; Court Judgment 6.4.2000]

The applicant company issued enforcement proceedings against A Lda in the Lisbon Court of First Instance on 11 October 1982 to recover the outstanding amounts of bills of exchange that were not honoured. It complained of the length of proceedings, which were still pending.

Court found unanimously V 6(1).

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr C Rozakis (c), Sir Nicolas Bratza (jc), Mr M Pellonpää, Mr L Ferrari Bravo, Mr Gaukur Jörundsson, Mr G Ress, Mr L Caflisch (jc), Mr L Loucaides, Mr I Cabral Barreto, Mr W Fuhrmann, Mr B Zupancic, Mrs N Vajic (jc), Mrs W Thomassen, Mr K Traja, Mr A Kovler.

The period to be taken into consideration began on 11 October 1982, when the applicant company issued proceedings in the Lisbon Court of First Instance. Those proceedings were still pending. Consequently, the length of the proceedings to be considered was to date 17 years and approximately six months. The reasonableness of the length of proceedings was to be determined in the light of the circumstances of the case and with reference to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and what was at stake for the applicant in the dispute. Some aspects of the case were complex and the conduct of the applicant company did not justify the length of the period under review. There were delays on the part of the judicial authorities which sufficed by themselves to justify the conclusion that the length of the proceedings was unreasonable. In the light of the circumstances of the case, which were to be assessed as a whole, the Court considered that a period of 17 years and five months for a final decision that had yet to be delivered in proceedings issued on the basis of an authority to execute, which by their very nature needed to be dealt with expeditiously, could not be said to have been reasonable. It was for the Contracting States to organise their judicial system in such a way that their courts were able to guarantee everyone the right to obtain a final decision on disputes concerning civil rights and obligations within a reasonable time. The reasonable-time requirement had not been complied with in the instant case and, consequently, that there had been a violation of A 6(1).

Damage (PTE 1,500,000).

Cited: Estima Jorge v P (21.4.1998), Silva Pontes v P (23.3.1994), A 41, Dombo Beheer BV v NL (27.10.1993), Freedom and Democracy Party (ÖZDEP) v TR (8.12.1999), Guzzardi v I (6.11.1980), Immobiliare Saffi v I (28.7.1999), Papamichalopoulos and Others v GR (A 50) (31.10.1995), Vereinigung Demokratischer Soldaten Österreichs and Gubi v A (19.12.1994).

Conceição Gavina v Portugal 99/61

[Application lodged 5.9.1996; Commission report 1.7.1998; Court Judgment 5.10.1999]

Mr Manuel da Conceição Gavina complained of the length of civil proceedings.

Comm found unanimously V 6(1), no separate issue under P1A1.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr G Ress, Mr A Pastor Ridruejo, Mr V Butkevych, Mrs N Vajic, Mr J Hedigan, Mrs S Botoucharova.

The period to be taken into consideration began on 15 October 1984 and was pending before the Supreme Court. It had lasted 14 years and 11 months. The period could not be considered reasonable.

Non-pecuniary damage (PTE 3,000,000), costs and expenses (PTE 725,000).

Cited: Silva Pontes v P (23.3.1994), Teixeira de Castro v P (9.6.1998).

Conde v Portugal 00/100

[Application lodged 19.6.1997; Court Judgment 23.3.2000]

Mr Júlio Conde and Mrs Rosa Fernandes Conde complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mr I Cabral Barreto, Mr V Butkevych, Mrs S Botoucharova.

The period to be taken into consideration began on 28 July 1995 and was still pending at first instance. It had lasted four years, seven months. The period could not be considered reasonable.

Pecuniary and non-pecuniary damage (PTE 750,000 to each applicant), costs and expenses (PTE 250,000).

Cited: Silva Pontes v P (23.3.1994).

Condron v United Kingdom 00/143

[Application lodged 13.11.1996; Court Judgment 2.5.2000]

Mr William Condron and Mrs Karen Condron were heroin addicts. They were arrested on 28 April 1995 and charged with supplying heroin. A police doctor considered that although they showed signs of withdrawal symptoms, they were fit to be interviewed. Their lawyer took a different view. They were interviewed and cautioned that it might harm their defence if they did not mention when questioned something which they later relied on in court. They said that they understood the warning, but when asked to explain their actions regarding the alleged supply of drugs they simply responded 'no comment'. At trial, the police interviews were allowed in evidence. Both applicants gave evidence and said that the heroin found in the flat had been for their own personal use and had been purchased in bulk by the first applicant the evening before their arrest and that the packet they were seen handing to their neighbour had not been drugs. They said they had made no comment to police questions during interview on their solicitor's advice that they were not in a condition to do so, given their withdrawal from heroin. The judge directed the jury that it could draw inferences from the applicants' silence at interview. Both applicants were convicted and sentenced to four years' and three years' respectively. Their appeal to the Court of Appeal was dismissed on 17 October 1996. They complained that were denied a fair hearing on account of the fact that the trial judge left the jury with the option of drawing an adverse inference from their silence during police interview.

Court found unanimously V 6(1), no separate issue under 6(2), not necessary to examine 6(3)(b) and (c).

Judges: Mr J-P Costa, President, Sir Nicolas Bratza, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mrs HS Greve, Mr K Traja.

The right to silence was not an absolute right. Whether the drawing of adverse inferences from an accused's silence infringed A 6 was a matter to be determined in the light of all the circumstances of the case, having regard to the situations where inferences might be drawn, the weight attached to them by the national courts in their assessment of the evidence and the degree of compulsion inherent in the situation. Since the right to silence, like the privilege against self-incrimination, lay at the heart of the notion of a fair procedure under A 6, particular caution was required before a domestic court could invoke an accused's silence against him. It would be incompatible with the right to silence to base a conviction solely or mainly on the accused's silence or on a refusal to answer questions or to give evidence himself. Nevertheless, the right could not and should not prevent that the accused's silence, in situations which clearly called for an explanation from him, be taken into account in assessing the persuasiveness of the evidence adduced by the prosecution. In distinction to the *John Murray* case, the applicants gave evidence at their trial and their case was conducted before a jury which required direction by the trial judge on how to approach the issue of their silence during police interview. The applicants offered an explanation at their trial for their silence at the police station. The fact that the applicants' exercised their right to silence at the police station was relevant to the determination of the fairness issue. However, that fact did not of itself preclude the drawing of an adverse inference. Similarly, the fact that the issue of the applicants' silence was left to a jury could not of itself be considered incompatible with the requirements of a fair trial. It was, rather, another relevant consideration to be weighed in the balance when assessing whether or not it was fair to do so in the circumstances. The applicants were under no legal compulsion to co-operate with the police and could not be exposed to any penal sanction for their failure to do so. The police were required to administer a clear warning to the applicants about the possible implications of withholding information which they might later rely on at their trial and the presence of the applicants' solicitor throughout the whole of their interviews to advise them was an important safeguard for dispelling any compulsion to speak which may be inherent in the terms of the caution. The applicants stated that they held their silence on the strength of their solicitor's advice that they were unfit to answer questions. The issue of the applicants' lucidity at

the time of interview and the question whether the trial judge gave sufficient weight to the applicants' reliance on legal advice to explain their silence at interview had to be examined from the standpoint of his directions on the matter. The formula employed by the trial judge could not be said to reflect the balance to be struck between the right to silence and the circumstances in which an adverse inference might be drawn from silence. Provided appropriate safeguards were in place, an accused's silence, in situations which clearly called for an explanation, could be taken into account in assessing the persuasiveness of the evidence adduced by the prosecution against him. In this case the applicants put forward an explanation for their silence during interview (their lawyer's advice), but the trial judge left the jury at liberty to draw an adverse inference notwithstanding that it may have been satisfied as to the plausibility of the explanation. As the responsibility for deciding whether or not to draw such an inference rested with the jury and it was impossible to ascertain what weight, if any, was given to the applicants' silence and the safeguards in the John Murray case (reasons given, an experienced judge and review by the appellate courts) were not present, it was even more compelling to ensure that the jury was properly advised on how to address the issue of the applicants' silence. The judge was under no obligation to leave the jury with the option of drawing an adverse inference from their silence and, left with that option, the jury had a discretion whether or not to do so. The burden of proof lay with the prosecution to prove the applicants' guilt beyond reasonable doubt and the jury was informed that the applicants' silence could not 'on its own prove guilt'. However, notwithstanding the presence of those safeguards, the trial judge's omission to restrict even further the jury's discretion had to be seen as incompatible with the exercise by the applicants of their right to silence at the police station. The defects could not be remedied on appeal as the Court of Appeal had no means of ascertaining whether or not the applicants' silence played a significant role in the jury's decision to convict. In addition, the Court of Appeal was concerned with the safety of the applicants' conviction, not whether they had in the circumstances received a fair trial. The question whether or not the rights of the defence guaranteed to an accused under A 6 were secured in any given case could not be assimilated to a finding that his conviction was safe in the absence of any inquiry into the issue of fairness. In the circumstances, the jury was not properly directed and the imperfection in the direction could not be remedied on appeal. Therefore, the applicants did not receive a fair hearing within the meaning of A 6(1).

The applicants' argument under A 6(2) amounted to a restatement of their case under A 6(1). Therefore, no separate issue arose under this head.

The guarantees in A 6(3) were specific aspects of the right to a fair hearing set out in para 1. Having regard to the finding on the applicants' complaint under A 6(1), the issues which they raised from the standpoint of A 6(3)(b) and (c) amounted in reality to a complaint that they did not receive a fair hearing. For that reason, it was unnecessary to examine them.

Costs and expenses (GBP 15,000).

Cited: Edwards v UK (16.12.1992), John Murray v UK (8.2.1996), Rowe and Davis v UK (16.2.2000).

Constantinescu v Romania 00/168

[Application lodged 4.4.1995; Commission report 19.4.1999; Court Judgment 27.6.2000]

Mr Mihail Constantinescu was president of a teachers' union. He was prosecuted following the publication in the press of comments he made regarding an internal dispute in the union and the functioning of the judicial system. He referred to three teachers, members of the union who had refused to return money belonging to the union, as *delapidatori*, receivers of stolen goods. On 10 October 1994 he was convicted by the Bucharest District Court and ordered to pay damages. He complained of an infringement of his rights under A 10 and that he had not had a fair trial contrary to A 6(1).

Comm found unanimously V 6(1), by majority (21–7) NV 10.

Court unanimously dismissed the Government's preliminary objection regarding victim, found by majority (5–2) that applicant could claim to be a victim of A 10, unanimously V6(1), (6–1) NV 10.

Judges: Mrs W Thomassen, President, Mr L Ferrari Bravo, Mr Gaukur Jörundsson, Mr R Türmen, Mr J Casadevall (So), Mr B Zupancic.

On 4 February 2000 the Supreme Court had quashed the conviction and acquitted the applicant. However, that could not be considered as adequate reparation. The applicant had not been awarded any compensation for his conviction and the damages he paid had not been reimbursed. The applicant could claim to be a victim and the Government's preliminary objection that he could not claim to be a victim was dismissed.

The Bucharest District Court had ruled on the merits of the criminal accusation against the applicant and found him guilty of defamation without affording him an opportunity to give evidence and defend his case. The applicant should have been heard by the District Court as it was the first court to convict him in proceedings aimed at establishing whether he was guilty of a criminal offence. There had been a violation of A 6(1).

The applicant's conviction constituted an interference. It was prescribed by law and pursued a legitimate aim of the protection of the reputation or rights of others. The applicant's remarks had been made in the context of a debate on the independence of the trade unions and the functioning of the judicial system and were therefore in the public interest. However, the use of the word *delapidatori* to describe people guilty of the offence of receiving stolen goods was apt to offend the teachers, as they had not been convicted by a court. The applicant could have voiced his criticism and contributed to the public debate on trade union problems without using the word *delapidation*. The resulting interference was proportionate to the legitimate aim pursued. The penalty imposed, a fine of 50,000 lei and 500,000 lei non-pecuniary damage to each teacher, was not disproportionate. The Bucharest court had not overstepped its margin of appreciation and there had been no violation of A 10.

Pecuniary and non-pecuniary damage (FF 15,000), costs and expenses (FF 20,000 less FF 10,806.00).

Cited: Botten v N (19.2.1996), Dalban v RO (28.9.1999), Ekbatani v S (26.5.1988), Fejde v S (29.10.1991), Lingens v A (8.7.1986), Pelissier and Sassi v F (25.3.1999).

Contrada v Italy 98/64

[Application lodged 4.11.1994; Commission report 10.7.1997; Court Judgment 24.8.1998]

The applicant, a senior police officer, was at the time of his arrest Deputy Director of the Civil Secret Service for Sicily, in Palermo. He had previously been, *inter alia*, Head of the Criminal Investigation Police and Principal Private Secretary to the Anti-Mafia High Commission. He was detained on 24 December 1992 at Palermo Military Prison under a warrant issued the previous day by the investigating judge accused of involvement in a mafia-type organisation on the basis of statements of several pentiti (former members of the Mafia who had decided to co-operate with the authorities). All the pentiti had themselves been charged with or convicted of involvement in a mafia-type organisation and, in some cases, other offences, such as drug trafficking or murder. He made numerous requests for release. His release was finally ordered on 31 July 1995. Following conviction, in a judgment of 5 April 1996, which was filed with the court registry on 17 October 1996, the Palermo District Court sentenced the applicant to ten years' imprisonment for aiding and abetting from the outside a mafia-type organisation. The applicant's appeal before the Palermo Court of Appeal began on 11 June 1998 and following a hearing on 2 July the appeal was adjourned to 22 October 1998. He complained of the length of detention.

Comm found by majority (17–15) V 5(3).

Court found by majority (8–1) NV 5(3).

Judges: Mr R Bernhardt, President, Mr F Gölcüklü. Mr C Russo, Mr J De Meyer, Mr N Valticos, Mr AN Loizou (d), Mr MA Lopes Rocha, Mr K Jungwiert, Mr T Pantiru.

Regarding the scope of the case, the Commission had declared the complaint under A 5(1)(c) inadmissible as it considered that the national authorities had a wide margin of appreciation in deciding what weight should be attached to the statements that had led to the applicant's arrest. Although the applicant complained from the outset that he had been detained for an unreasonable period the complaint under A 3 concerned the actual conditions of detention (solitary confinement in military prison), not its length. The Court had no jurisdiction to hear those complaints, as the first complaint was identical to the one declared inadmissible by the Commission and the second was a new complaint, unconnected to the complaint under A 5(3).

The period to be considered began on 24 December 1992, when the applicant was arrested, and ended on 31 July 1995, when his release was ordered by the Palermo District Court. It had therefore lasted for two years, seven months, seven days. The authorities considered on ten occasions whether the applicant should remain in detention. The reasons given by them for refusing to release him were that there was a risk that he would commit further offences or abscond and that evidence would be tampered with and witnesses suborned. The Code of Criminal Procedure created a presumption that there was a risk that a suspect would abscond, commit further offences or tamper with evidence in cases concerning serious offences such as those with which the applicant was charged. On all the evidence, although the risk of the applicant's absconding diminished during the course of the investigation, the dangers of his committing further offences, tampering with evidence or exerting pressure constituted in the instant case relevant and sufficient grounds for his being detained throughout the period. With regard to the conduct of the proceedings, the public prosecutor's office had to take a number of highly complex steps in the investigation, including checking the statements of the pentiti in minute detail, obtaining many items of evidence, hearing witnesses – in particular, police officers and judges engaged in the fight against the Mafia – and obtaining international judicial assistance. The trial court heard evidence from no less than 250 witnesses or people being tried for offences connected with those of which the applicant was accused. Seven pentiti were, for security reasons, questioned in the Rome and Padua prisons in which they were detained. Three confrontations were organised. Between 4 November and 29 December 1994 all thirteen hearings were devoted to hearing evidence from the applicant. The right of an accused in detention to have his case examined with particular expedition should not hinder the efforts of the courts to carry out their tasks with proper care. In the instant case, with the exception of the analysis of the data relating to the applicant's mobile telephones, which could and should have been carried out earlier, and the excessive workload referred to by the trial court on 31 March 1995, the Court saw no particular reason to criticise the relevant national authorities' conduct of the case, especially as, when the maximum periods of detention pending trial were extended, the trial court offered to increase the rate of the hearings, but the defence declined. In addition detailed inquiries were necessary in the particularly sensitive and complicated cases involving presumed members of the Mafia, or persons suspected of supporting that organisation from within State institutions. The authorities who dealt with the case could reasonably base the detention in issue on relevant and sufficient grounds and they had conducted the proceedings without delay. There had therefore been no violation of A 5(3).

Cited: Guerra and Others v I (19.2.1998), Muller v F (17.3.1997), W v CH (26.1.1993).

Michael Edward Cooke v Austria 00/67

[Application lodged 12.8.1994; Commission report 20.5.1998; Court Judgment 8.2.2000]

Mr. Michael Edward Cooke was arrested on 10 March 1993 in Austria, on suspicion of having killed his friend Ms W, with whom he had gone to Austria on holiday. Following trial, he was convicted of murder on 18 November 1993 by a jury. He was sentenced to 20 years' imprisonment. The applicant filed a plea of nullity with the Supreme Court, challenging the decisions of the lower court. He also appealed the severity of his sentence. On 26 January 1994, the Supreme Court issued a summons for the hearing on the plea of nullity and the appeals, indicating that, at the hearing on the plea of nullity, the applicant, being incarcerated, could only appear through his official defence

counsel and that, at the hearing of the appeals, he would not be brought to court. On 17 February 1994 the Supreme Court held the hearing on the plea of nullity and the appeals in the absence of the applicant and rejected his pleas. He complained that he was not present at the hearing before the Supreme Court.

Comm found V 6(1) and 6(3)(c).

Court found unanimously not necessary to decide the Government's preliminary objections in respect of the applicant's complaint that he was not present at the hearing of his plea of nullity, dismissed the Government's preliminary objections in respect of the applicant's complaint that he was not present at the hearing of his appeal, found V 6(1)+6(3)(c), NV former 25(1) and 34.

Judges: Mr J-P Costa, President, Mr P Kûris, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mrs Hs Greve, Mr K Traja.

The parties' arguments were closely linked to the well-foundedness of the applicant's substantive complaint under A 6(1) and (3)(c) and therefore the plea of non-exhaustion was joined to the merits.

A person charged with a criminal offence should, as a general principle, based on the notion of a fair trial, be entitled to be present at the first-instance hearing. However, the personal attendance of the defendant did not necessarily take on the same significance for an appeal hearing. Regard had to be had in assessing this question to, *inter alia*, the special features of the proceedings involved and the manner in which the defence's interests were presented and protected before the appellate court, particularly in the light of the issues to be decided by it and their importance for the applicant. The hearing before the Supreme Court involved both a plea of nullity and appeals against sentence. In dealing with nullity proceedings, the Supreme Court was primarily concerned with questions of law that arose in regard to the conduct of the trial and other matters. The presence of the accused was not generally required. In the present case, the applicant's plea of nullity related to procedural and legal matters, he was represented by official defence counsel and general apprehensions were not sufficient to cast doubt on the effectiveness of his representation at the hearing. Accordingly, there were no special circumstances warranting his personal presence and his absence from the Supreme Court hearing was not in breach of A 6. In the appeals against sentence, the Supreme Court was called upon to examine whether the sentence of 20 years' imprisonment was to be reduced or to be increased to life imprisonment. The Supreme Court had regard to the applicant's personality and character, including his state of mind at the time of the offence, his motive and his dangerousness and aggressiveness in general. Taking into account the gravity of what was at stake for the applicant, the case could not be properly examined without gaining a personal impression of the applicant and it was therefore essential to the fairness of the proceedings that he be present at the hearing of the appeals and afforded the opportunity to participate, together with his defence counsel. Although his official defence counsel had not requested that the applicant be summoned to the hearing of the appeals, having regard to all the circumstances of the case, and in particular the gravity of what was at stake for the applicant, the respondent State was under a positive duty to ensure the applicant's presence in order to enable him to defend himself in person as required by A 6(3)(c). There had not been a failure to exhaust domestic remedies in that regard. There was a breach of A 6(1) in conjunction with A 6(3)(c).

The Court had jurisdiction to examine the applicant's complaints which related to incidents which occurred partly before the Commission's decision on admissibility of 10 April 1997 and partly after the taking of that decision. In that respect the timing of an applicant's complaint under former A 25 (now A 34) did not give rise to any issue of admissibility under the Convention. Moreover, insofar as the applicant's allegations were based on facts which occurred prior to the Commission's admissibility decision, the applicant made a complaint under former A 25 in his observations of 10 July 1996. Thus, notwithstanding the fact that the Commission had not examined the issue, the Court had jurisdiction to do so. The Government's approach to the applicant's former defence counsel, who no longer represented the applicant in the proceedings before the Commission, might be undesirable, but could not be regarded as pressure on the applicant to withdraw or modify his complaint, or as a contact designed to dissuade or discourage the applicant from

pursuing a Convention remedy. The applicant had not adduced any proof as regards the alleged overhearing of his telephone conversations, nor had he submitted any direct proof of the alleged opening of letters by the prison administration. There was nothing to show that the applicant was in any way frustrated in the exercise of his right of petition. The facts of the present case did not disclose that the applicant has been hindered in the effective exercise of his right of individual petition under former A 25 (now A 34).

Non-pecuniary damage (GBP 1,000), costs and expenses (GBP 12,000).

Cited: Akdivar and Others v TR (16.9.1996), Belziuk v PL (25.3.1998), Ekbatani v S (26.5.1988), Ergi v TR (28.7.1998), Helmers v S (29.10.1991), Kremzow v A (21.9.1993), Petra v RO (23.9.1998), Stanford v UK (23.2.1994), Tanrikulu v TR (8.7.1999).

Cooperativa Parco Cuma v Italy 92/34

[Application lodged 25.3.1986; Commission report 5.3.1991; Court Judgment 27.2.1992]

The applicant, a building association, served a summons on 3 November 1980 in the Naples District Court against the co-owners of the building for whose construction it had been responsible, claiming payment of sums which it was owed as part of the joint expenditure. The applicant association complained about the length of proceedings, the next hearing for which was scheduled for 25 March 1992.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 3 November 1980, when the proceedings were instituted against the defendants in the Naples District Court. It had not yet ended as that court still had to give judgment. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The investigation took more than eight years and three months during which the applicant association caused one adjournment. A further two years elapsed before the date fixed for the trial hearing, which was finally to be held on 25 March 1992, at the earliest. There were delays before the judge ordered certain witnesses to be called and delays before the witness was examined; one witness was never examined. The District Court waited until 8 July 1987 before finding that the summons of 3 November 1980 had not been served on certain defendants and it did not file its order until 25 September 1987. Although the Government pleaded the backlog of cases, A 6(1) imposed a duty on Contracting States to organise their legal systems in such a way that their courts could meet each of its requirements. Taking the proceedings as a whole, the Court could not regard as 'reasonable' a lapse of time which already amounted to more than eleven years and was still pending at first instance.

Judgment constituted sufficient just satisfaction for non-pecuniary damage, costs and expenses (ITL 3,090,334).

Cited: Capuano v I (25.6.1987), Vocaturo v I (24.5.1991).

Corigliano v Italy (1983) 5 EHRR 334 82/8

[Applications lodged 29.10.1973, 21.6.1975, 20.7.1978; Commission report 16.3.1981; Court Judgment 10.12.1982]

Mr Clemente Corigliano, the applicant, was a lawyer. In March 1973, during demonstrations in Reggio, the police arrested Mr A in a shop belonging to the applicant and in the latter's presence. The applicant gave evidence at the trial of Mr A directly contradicting that of the police officers who had made the arrest. The Court upheld their version of the facts. On 2 April the applicant lodged a complaint with the Reggio public prosecutor's office against two judicial officers who

accused them of various offences in respect of the trial of Mr A. The public prosecutor decided to commence proceedings against the applicant for aggravated slander. The applicant received judicial notification on 7 December 1973 that criminal proceedings had been brought against him. The applicant was convicted following trial and given a suspended sentence of eighteen months' imprisonment. Following the applicant's appeal, the Messina Court of Appeal acquitted the applicant at a hearing on 19 February 1980. The applicant complained, *inter alia*, about the length of proceedings.

Comm found unanimously V 6(1).

Court unanimously rejected Government's preliminary objections, found V 6(1).

Judges: Mr G Wiarda, President, Mrs D Bindschedler-Robert, Mr D Evrigenis, Mr J Pinheiro Farinha, Sir Vincent Evans, Mr C Russo, Mr R Bernhardt.

The Government's preliminary objections under A 27(1)(b) (the applicant's third application was 'substantially the same' as the 2 previous applications, which had been declared inadmissible by the Commission) and A 26 (non-exhaustion of domestic remedies) had only been raised after the Commission's admissibility decision of 2 October 1979. The Government were estopped from relying on them. Regarding the objection that the applicant could not be regarded as a 'victim' within the meaning of A 25(1): the Court recalling its case-law noted that the word 'victim' in A 25 denoted the person directly affected by the act or omission in issue, the existence of a violation being conceivable even in the absence of prejudice; prejudice was relevant only in the context of A 50. It was undeniable that the duration of the proceedings in question directly affected the applicant, albeit doubtless not constituting one of his major sources of concern.

In criminal matters, in order to assess compliance with the reasonable time requirement in A 6(1) the moment of 'charge' had to be ascertained. Whilst 'charge', for the purposes of A 6(1), could in general be defined as 'the official notification given to an individual by the competent authority of an allegation that he had committed a criminal offence', it could in some instances take the form of other measures which carried the implication of such an allegation and which substantially affected the situation of the suspect. In this case the judicial notification issued by the public prosecutor attached to the Messina Regional Court was served on the applicant on 7 December 1973. Judicial notification was intended to give the person affected official notice of the commencement of criminal proceedings against him and of his entitlement to appoint a defending lawyer within three days. The Court took that date as the date from which there was a 'charge' within the meaning of A 6(1). The period ended on 19 February 1980, the day the Messina Court of Appeal rendered the final judgment of acquittal. The reasonableness of the length of the proceedings had to be assessed in each instance according to the particular circumstances. The present case concerned proceedings that lasted more than six years. The legal issues involved were in themselves relatively simple. The applicant's behaviour did not appreciably contribute to prolonging the proceedings. The procedure at first instance lasted approximately seven months which did not appear unduly long, especially in view of the fact that it began to run during the legal vacation. Similarly the time taken regarding the proceedings before the Messina Court of Appeal did not appear unreasonable. However, the preliminary investigation phase of the proceedings beginning with the committal for trial had lasted four years, seven months. Without further explanation from the Government, the Court found that delay to be unjustified and incompatible with A 6(1).

Claim for monetary compensation for the alleged pecuniary and non-pecuniary damage rejected, travel and subsistence expenses in coming to Strasbourg (ITL 2,200,000) awarded.

Cited: Artico v I (13.5.1980), Deweer v B (27.2.1980), Eckle v D (15.7.1982), Guzzardi v I (6.11.1980), Neumeister v A (27.6.1968), Ringeisen v A (16.7.1971), Wemhoff v D (27.6.1968).

Cormio v Italy 92/11

[Application lodged 17.7.1987; Commission report 5.3.1991; Court Judgment 27.2.1992]

Mr Armando Cormio entered an agreement with Mr B and then emigrated to Australia, conferring a general power of attorney on his brother. On 6 January 1984 his brother commenced proceedings against Mr B, who had refused to conclude the agreement. The parties settled the dispute out of court in 1989 and the case was struck from the list. The applicant complained about the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously NV 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 6 January 1984, when the proceedings against Mr B were instituted in the Rome District Court. It ended on 27 October 1989, when the District Court struck the case out of its list. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The investigation took almost three years and five months, after which approximately twenty-one months elapsed before the trial hearing. In respect of the first period the expert opinion had complicated the investigation. The investigating judge had displayed diligence in replacing the expert as soon as he had established that the expert had not submitted his report by the prescribed date. During the second period the parties failed to appear before the trial court, which accordingly struck the case out of the list and they concluded an out-of-court settlement which removed any dispute between them. In the light of all the circumstances of the case and in particular the fact that the dispute was settled out of court, the delays which occurred in the proceedings were not so substantial as to violate A 6(1).

Cited: Capuano v I (25.6.1987).

Coscia v Italy 00/127

[Application lodged 28.10.1996; Commission report 4.3.1999; Court Judgment 11.4.2000]

Mr Luciano Coscia complained of the length of civil proceedings. .

Court found unanimously V 6(1).

Judges: Mrs E Palm, President, Mr L Ferrari Bravo, Mr Gaukur Jörundsson, Mr R Türmen, Mr B Zupancic, Mr MT Pantîru, Mr R Maruste.

The period to be taken into consideration began on 7 July 1989 and ended on 25 March 1999. It had lasted more than 9 years 8 months at three levels of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 12,000,000), costs and expenses (ITL 1,000,000).

Cited: Bottazzi v I (28.7.1999).

Cossey v United Kingdom (1991) 13 EHRR 622 90/20

[Application lodged 24.3.1984; Commission report 9.5.1989; Court Judgment 27.9.1990]

The applicant was born in 1954 and registered as a male, under the male Christian names of Barry Kenneth. By the age of 15 or 16, she understood that, although she had male external genitalia, she was psychologically of the female sex. She changed her name by deed poll to Caroline, a change which she confirmed by deed poll in March 1973. Since July 1972 she had been known under that name for all purposes, had dressed as a woman and had adopted a female role. In December 1974 she underwent gender reassignment surgery in a London hospital, to render the external anatomy nearer that of the female gender. In 1976 she was issued with a UK passport as a female. From

about 1979 to 1986 she was a successful fashion model. In 1983 Miss Cossey and Mr L, an Italian national whom she had known for some fourteen months, wished to marry each other. By letter of 22 August 1983, the Registrar General informed the applicant that such a marriage would be void as a matter of English law, because it would classify her as male notwithstanding her anatomical and psychological status. Reply to a further enquiry by the applicant stated that she could not be granted a birth certificate showing her sex as female, since such a certificate records details as at the date of birth. The engagement was broken. A subsequent purported marriage to a Mr X at a ceremony conducted at a London synagogue was declared by the High Court in January 1990 to have been void. She complained that she could not claim full recognition of her changed status or enter a valid marriage with a man.

Comm found by majority (10–6) V 12, NV 8.

Court found by majority (10–8) NV 8, (14–4) NV 12.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert (jpd), Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald (jpd), Mr C Russo (jpd), Mr R Bernhardt, Mr A Spielmann (jpd), Mr SK Martens (d), Mrs E Palm (jd), Mr I Foighel (jd), Mr R Pekkanen (jd), Mr JM Morenilla Rodriguez.

The Court recalled that it had been confronted with similar issues in the Rees case. The Court was not persuaded that the fact Miss Cossey had a male partner wishing to marry her and that Mr Rees had no such partner was a material difference in the case. Nor was it material that Miss Cossey was a male-to-female transsexual whereas Mr Rees a female-to-male transsexual. Therefore the present case was not materially distinguishable on its facts from the Rees case. Although the Court was not bound by its previous judgments, it usually followed and applied its own precedents, in the interests of legal certainty and the orderly development of the Convention case-law. Nevertheless, that would not prevent the Court from departing from an earlier decision if it was persuaded that there were cogent reasons for doing so. Such a departure might, for example, be warranted in order to ensure that the interpretation of the Convention reflected societal changes and remained in line with present-day conditions. The Court remained of the opinion, which it expressed in the Rees judgment, that the refusal to alter the register of births or to issue birth certificates whose contents and nature differed from those of the original entries could not be considered as an interference. In determining whether or not a positive obligation existed on the State, regard had to be had to the fair balance that had to be struck between the general interest of the community and the interests of the individual. The basis of the UK system for the registration of births was designed as a record of historical facts and the need to strike a fair balance could not justify an alteration of the system. An annotation to the birth register, recording the change of sexual identity, would establish only that he belonged thenceforth, not from birth, to the other sex. The annotation could not constitute an effective safeguard to ensuring the integrity of his private life as it would reveal the change in question. Those points made in Rees were equally cogent in the present case. In addition, the register could not be corrected to record a complete change of sex since that was not medically possible. There had been no violation of A 8. The Court was conscious of the seriousness of the problems facing transsexuals and the distress they suffered. Since the Convention always has to be interpreted and applied in the light of current circumstances, it was important that the need for appropriate legal measures in this area should be kept under review.

Regarding A 12, the Court noted its judgment in Rees. The right to marry guaranteed by A 12 referred to the traditional marriage between persons of opposite biological sex. Miss Cossey did not dispute that she had not acquired all the biological characteristics of a woman but challenged the exclusively biological criteria for determining a person's sex for the purposes of marriage and submitted that there was no good reason for not allowing her to marry a man. Her inability to marry a woman did not stem from any legal impediment and in that respect it could not be said that the right to marry had been impaired as a consequence of the provisions of domestic law. Regarding her inability to marry a man, the criteria adopted by English law were in this respect in conformity with the concept of marriage to which the right guaranteed by A 12 referred. Although some Contracting States would now regard as valid a marriage between a person in Miss Cossey's

situation and a man, the developments which had occurred to date could not be said to evidence any general abandonment of the traditional concept of marriage. In these circumstances, the Court did not consider that it was open to it to take a new approach to the interpretation of A 12. There was no violation of A 12.

Cited: Inze v A (28.10.1987), Johnston v IRL (18.12.1986), Lithgow v UK (8.7.1986), Rees v UK (17.10.1986).

Costello-Roberts v UK (1995) 19 EHRR 112 93/14

[Application lodged 17.1.1986; Commission report 8.10.1991; Court Judgment 25.2.1993]

The applicant, aged 7, was a boarding pupil at an independent preparatory school. The school operated a system whereby corporal punishment was administered after receiving five demerit marks. Three days after being told he would be punished for his fifth demerit, the applicant received from the headmaster three strikes on the bottom through his shorts with a rubber-soled gym shoe, with no other persons being present. The applicant submitted that this corporal punishment constituted a breach of A 3 and also violated his right to respect for his private and family life guaranteed by A 8. In addition he claimed that, contrary to A 13, he had no effective domestic remedies for these Convention complaints.

Comm found by a majority (9–4) V 8, (11–2) V 13, (9–4) NV 3.

Court held by a majority (5–4) NV 3, unanimously NV 8, NV 13.

Judges: Mr R Ryssdal, President (jpd), Mr R Bernhardt, Mr Thór Vilhjálmsson (jpd), Mr F Gölcüklü, Mr F Matscher (jpd), Mr R Macdonald, Mr F Bigi, Sir John Freeland (c), Mr L Wildhaber (jpd).

In order for punishment to be 'degrading' and in breach of A 3, the humiliation or debasement involved had to attain a particular level of severity and had to be other than that usual element of humiliation inherent in any punishment. Assessment of this minimum level of severity depended on all the circumstances. Factors such as the nature and context of the punishment, the manner and method of its execution, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim had to all be taken into account. In this case the applicant was a young boy punished in accordance with the disciplinary rules in force within the school in which he was a boarder, and beyond the expected consequences of purely disciplinary measures, he had adduced no evidence of any severe or long-lasting effects as a result of the treatment complained of. A punishment which did not occasion such effects may fall within A 3, provided that in the particular circumstances of the case it may be said to have reached the minimum threshold of severity required. While the Court had misgivings about the automatic nature of the punishment and the three-day wait before its imposition, the minimum level of severity had not been attained.

Whilst there might be circumstances in which A 8 could be regarded as affording, in relation to disciplinary measures, a protection going beyond that given by A 3, having regard to the purpose and aim of the Convention taken as a whole, and bearing in mind that sending a child to school necessarily involved some degree of interference with his or her private life, the treatment complained of did not entail adverse effects for the applicant's physical or moral integrity sufficient to bring it within the scope of the prohibition contained in A 8.

Given that it would have been open to the applicant to institute civil proceedings for assault and that, if successful, the English courts would have been in a position to grant him appropriate relief in respect of the punishment which he had received, and that the effectiveness of a remedy for the purposes of A 13 did not depend on the certainty of a favourable outcome, there was no breach of A 13.

Cited: 'Belgian Linguistic' case (9.2.1967), Boyle and Rice v UK (27.4.1988), Campbell and Cosans v UK (25.2.1982), Ireland v UK (18.1.1978), James and Others v UK (21.2.1986), Kjeldsen, Busk, Madsen and Pedersen v DK (7.12.1976), Niemietz v D (16.12.1992), Pine Valley Developments Ltd and Others v IRL (29.11.1991), Soering v UK (7.7.1989), Tyrer v UK (25.4.1978), Van der Mussele v B (23.11.1983), X and Y v NL (26.3.1985), Y v UK (29.10.1992), Young, James and Webster v UK (13.8.1981).

Couez v France 98/67

[Application lodged 8.7.1993; Commission report 21.5.1997; Court Judgment 24.8.1998]

Mr Guy Couez had a heart attack on 20 January 1989 during the annual cross-country race held by the company of mobile security police units to which he belonged. He took sick leave and asked that his heart attack and the subsequent periods of sick-leave should be recognised as work-related so that he would be covered by the rules applicable to police officers injured in the execution of their duty. On 20 January 1992 the applicant brought proceedings in the Amiens Administrative Court to challenge the decision of the medical board refusing to regard his sick-leave as having been due to a work-related accident. On 28 June 1996 the Administrative Court quashed the decisions. On 18 March 1992 Mr Couez had also brought proceedings in the Amiens Administrative Court to challenge the decision sending him on compulsory unpaid leave of absence. His appeal to the Nancy Administrative Court of Appeal in respect of those proceedings was still pending.

Comm found unanimously V 6(1).

Court found by majority (7–2) V 6(1).

Judges: Mr F Gölcüklü, President (d), Mr L-E Pettiti (d), Mr A Spielmann, Mr N Valticos, Mr R Pekkanen (c), Mr J Makarczyk, Mr K Jungwiert, Mr E Levits, Mr V Butkevych.

Disputes relating to the recruitment, careers and termination of service of civil servants were as a general rule outside the scope of A 6(1). That provision was nevertheless applicable where the claim in issue related to a 'purely economic' right – such as payment of salary or pension – or an 'essentially economic' one. The outcome of the applicant's claims were bound to have a decisive effect on his economic rights, since if the Administrative Court had quashed the authorities' refusal to regard his sick-leave as having been due to a work-related accident, the rules on civil servants injured in the execution of their duty would have been applied to him and also he would not have been sent on compulsory unpaid leave of absence. The Court therefore found that the dispute between the applicant and the authorities did not put in issue the authorities' special rights; if he had succeeded in his claim, the State would have been obliged to apply those arrangements to him in accordance with the legislation in force. The Court consequently concludes that the applicant's claims were civil ones within the meaning of A 6(1).

The first set of proceedings, concerning the authorities' refusal to regard the applicant's sick-leave as having been due to a work-related accident, began on 20 January 1992 with the application to the Amiens Administrative Court and ended on 28 June 1996, when that court gave judgment. It therefore lasted four years, five months and eight days. The applicant's appeal against the interlocutory order of 31 May 1995 was still pending in the Nancy Administrative Court of Appeal. The second set of proceedings, relating to the unpaid leave of absence, began on 18 March 1992, the date of the application to the Amiens Administrative Court, and was still pending in the Nancy Administrative Court of Appeal. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. There was inactivity attributable to the judicial authorities in connection with the first set of proceedings. A reasonable time had been exceeded and there had therefore been a violation of A 6(1).

Cited: Abenavoli v I (2.9.1997), Ceteroni v I (15.11.1996), De Santa v I (2.9.1997), Higgins and Others v F (19.2.1998), Huber v France (19.2.1998), Lapalorcia v I (2.9.1997), Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993), Neigel v F (17.3.1997), Nicodemo v I (2.9.1997).

Covitti v Italy 91/65

[Application lodged 14.5.1987; Commission report 5.3.1991; Court Judgment 3.12.1991]

Mrs Bianca Maria Covitti took proceedings before the Rome Magistrates' court on 21 May 1982 against the 'Istituto Nazionale della Previdenza Sociale' in order to establish her disability pension right. The investigation opened at the hearing of 10 November 1982 followed by other hearings. On 15 October 1985 the magistrates' court dismissed the applicant's claim. The applicant's appeal was dismissed by the Rome District Court on 28 March 1991. The text of the judgment was filed with the registry on 13 April 1991. She complained of the length of proceedings.

Comm found unanimously V 6(1).

Court unanimously struck the case from the list.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr SK Martens.

Despite several reminders the applicant had shown no interest in the proceedings before the Court. That was an implied withdrawal which constituted a 'fact of a kind to provide a solution of the matter'. The Court discerned no reason of public policy for continuing the proceedings. It noted its case-law on the question of 'reasonableness' of the length of civil proceedings in various Contracting States, including Italy.

Cited: Brigandì v I (19.2.1991), Caleffi v I (24.5.1991), Capuano v I (25.6.1987), Owners' Services Ltd v I (28.6.1991), Pretto and Others v I (8.12.1983), Pugliese (No 2) v I (24.5.1991), Santilli v I (19.2.1991), Vocaturo v I (24.5.1991), Zanghì v I (19.2.1991).

Coyne v United Kingdom 97/70

[Application lodged 23.11.1994; Commission report 25.6.1996; Court Judgment 24.9.1997]

Mr Paul Matthew Coyne, joined the Royal Air Force (RAF) in 1990. Following a police investigation into his financial activities in Germany, he was charged with various offences of forgery and deception pursuant to the Air Force Act 1955. He was tried by RAF court martial in Brüggen. The convening officer was the Air Officer Commanding No 2 Group, RAF, Rheindahlen and as such was the senior commander of all air force personnel serving in Germany. The convening officer convened a district court martial, appointing all three members of the court martial by name. The prosecuting officer was appointed by the convening officer from the Directorate of Legal Services and was also within the convening officer's chain of command. A judge advocate was appointed by the Judge Advocate General's Office. The applicant was found guilty and sentenced to nine months' detention, dismissal from the air force and reduction to the ranks. His petition to the confirming officer, appeal to the Defence Council and to the Courts Martial Appeal Court were rejected. He complained of the fairness of the proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr Ryssdal, President, Mr F Gölcüklü, Mr C Russo, Mr A Spielmann, Mr I Foighel, Mr R Pekkanen, Sir John Freeland, Mr MA Lopes Rocha, Mr L Wildhaber.

The Court recalled its judgment in *Findlay* where it found that a court martial convened pursuant to the Army Act 1955 did not meet the requirements of independence and impartiality set by A 6(1), in view in particular of the central part played in its organisation by the convening officer. There were no significant differences between the part played by the convening officer in the organisation of the applicant's court martial, under the Air Force Act 1955, and that of Mr Findlay, under the Army Act 1955. For the reasons expressed in the *Findlay* judgment, the court martial which dealt with the applicant's case was not independent and impartial within the meaning of A 6(1).

Finding of violation constituted sufficient just satisfaction for the non-pecuniary damage, costs and expenses (GBP 6,000 less FF 10,566).

Cited: Findlay v UK (25.2.1997).

Crémieux v France (1993) 16 EHRR 357 93/4

[Application lodged 11.3.1985; Commission report 8.10.1991; Court Judgment 25.2.1993]

Mr Paul Crémieux, the applicant, was chairman and managing director of a wholesale wine firm. In October 1976 in the course of an investigation into the company, customs officers seized documents relating to business transactions. Between 27 January 1977 to 26 February 1980, the customs authorities under the Customs Code carried out eighty-three investigative operations in the form of interviews and of raids on the company head office, on the applicant's home and at other addresses of his and on the homes of other people, during which further items were seized. In November 1982 the applicant was charged with offences against the legislation and regulations governing financial dealings with foreign countries. Following an agreement customs agreed to compound with those charged and the judge issued a discharge order on 16 June 1987. The applicant's subsequent appeal proceedings to have the reports and seizures declared null and void were dismissed.

Comm found by majority (11–7) NV 8, unanimously NV 6(3) or 10.

Court unanimously rejected Government's preliminary objection, found by majority (8–1) V 8, not necessary to consider 6(3), 10.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson (d), Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr N Valticos, Mr JM Morenilla, Mr MA Lopes Rocha, Mr L Wildhaber.

Regarding the Government's preliminary objection of non-exhaustion, the applicant had brought proceedings to have customs reports on the searches and seizures declared null and void and pursued them to a conclusion, without omitting to plead A 8. He could not be criticised for not having made use of a legal remedy, suggested by the Government, which would have been directed to essentially the same end, was hardly ever used and would in any case probably have failed. The objection was therefore dismissed.

The search and seizure interfered with the applicant's rights to respect for private life, home and correspondence. As the interferences were incompatible with A 8 in other respects the Court did not consider it necessary to determine the issue of whether they were in accordance with the law. The interferences had a legitimate aim in that they were in pursuit of 'the economic well-being of the country'. Contracting States had a certain margin of appreciation in assessing the need for an interference, but that went hand in hand with European supervision. The exceptions provided for in A 8(2) had to be interpreted narrowly and the need for them in a given case had to be convincingly established. States encountered serious difficulties in the prevention of capital outflows and tax evasion owing to the scale and complexity of banking systems and financial channels and to the immense scope for international investment. As a result it may be necessary for them to have recourse to measures such as house searches and seizures in order to obtain physical evidence of exchange-control offences and, where appropriate, to prosecute those responsible. Nevertheless, the relevant legislation and practice had to afford adequate and effective safeguards against abuse. The authorities had very wide powers; in particular, they had exclusive competence to assess the expediency, number, length and scale of inspections. In the absence of any requirement of a judicial warrant the restrictions and conditions provided for in law appeared too lax and full of loopholes for the interferences with the applicant's rights to have been strictly proportionate to the legitimate aim pursued. There had therefore been a breach of A 8.

The alleged infringements of the rights of the defence (A 6(3)) and of freedom of expression (A 10) related to the same facts as those which the Court had held to have contravened A 8 and in the circumstances it was therefore unnecessary to consider them separately.

Judgment constituted sufficient just satisfaction for non-pecuniary damage, costs and expenses (FF 50,000).

Cited: Klass and Others v D (6.9.1978).

Croissant v Germany (1993) 16 EHRR 135 92/60

[Application lodged 3.12.1987; Commission report 7.3.1991; Court Judgment 25.9.1992]

Mr Klaus Croissant, the applicant, was a lawyer facing criminal proceedings in the Stuttgart Regional Court in connection with his activities as the lawyer of various members of the 'Red Army Faction' (RAF). He was initially represented by two lawyers of his choice, Mr B and Mr K. They were subsequently designated, at his request, to represent him as court-appointed defence counsel. On an application by the prosecuting authority, the President of the Regional Court designated as third court-appointed defence counsel, Mr H, a lawyer practising in Stuttgart. The applicant objected to the appointment of a third defence counsel and to the choice of the person concerned (Mr H was a member of the Social Democratic Party which the applicant fundamentally opposed). Mr H for his part asked to be relieved of his duties in the case. Both applications were dismissed by the Regional Court on 1 March 1978. At the trial, which lasted seventy-three days, the applicant was represented by the three court-appointed defence counsel. He was convicted of supporting a criminal organisation and sentenced to two years and six months' imprisonment; he was also barred from practising his profession for a period of four years and ordered to pay the costs and expenses, including those which he had been compelled to incur himself. His appeals and requests to have the debts cancelled were rejected.

Comm found unanimously NV 6(1) regarding fees of Mr B and Mr K, by majority (7–4) NV 6(1) regarding fees of Mr H.

Court found unanimously NV 6(1)+6(3)(c) regarding obligation to pay the fees of the first two court-appointed lawyers, by majority (8–1) NV 6(1)+6(3)(c) regarding appointment of the third lawyer and the obligation to his fees.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr F Gölcüklü, Mr F Matscher, Mr B Walsh, Mr J De Meyer (so), Mr SK Martens, Mr JM Morenilla, Mr F Bigi.

The requirement that a defendant be assisted by counsel at all stages of the Regional Court's proceedings and to appoint more than one defence counsel was not incompatible with the Convention. However, before nominating more than one counsel a court should pay heed to the accused's views as to the number needed, especially where, as in Germany, he would in principle have to bear the consequent costs if he was convicted. An appointment that run counter to those wishes will be incompatible with the notion of fair trial under A 6(1) if, even taking into account a proper margin of appreciation, it lacked relevant and sufficient justification. Avoiding interruptions or adjournments corresponded to an interest of justice which was relevant in the present context and might justify an appointment against the accused's wishes. In addition the nomination of Mr H had the aim of ensuring that the applicant was adequately represented throughout his trial, having regard to its probable length and to the size and complexity of the case. Notwithstanding the importance of a relationship of confidence between lawyer and client, the right to be defended by counsel of his own choosing could not be considered to be absolute. It was necessarily subject to certain limitations where free legal aid was concerned and also where, as in the present case, it was for the courts to decide whether the interests of justice required that the accused be defended by counsel appointed by them. The national courts had to have regard to the defendant's wishes in appointing defence counsel. However, those wishes could be overridden when there were relevant and sufficient grounds for holding that that was necessary in the interests of justice. The appointment of the three lawyers could not be held to have been incompatible with the requirements of A 6(3)(c) and 6(1) taken together.

The right to free legal assistance under A 6(3)(c) was not absolute; such assistance was to be provided only if the accused had not sufficient means to pay. Under German law a convicted person was in principle always bound to pay the fees and disbursements of his court-appointed lawyers, that being held to be a normal consequence of the conviction. It was only in the enforcement procedure that followed the final judgment that the financial situation of the convicted person played a role; in that respect, it was immaterial whether he had sufficient means

during the trial, only his situation after the conviction being relevant. That system had not adversely affected the fairness of the proceedings. The national courts were entitled to consider it necessary to appoint the three lawyers and the amounts claimed for them were not excessive. The reimbursement order was not incompatible with A 6(3)(c) and there had been no violation of A 6.

Cited: Luedicke, Belkacem and Koç v D (28.11.1978), Pakelli v D (25.4.1983).

Cruz Varaz and Others v Sweden (1992) 14 EHRR 1 91/26

[Application lodged 5.10.1989; Commission report 7.6.1990; Court Judgment 20.3.1991]

The applicants, Mr Hector Cruz Varas, his wife Mrs Magaly Maritza Bustamento Lazo and their son Richard Cruz, Chilean citizens, applied for political asylum in Sweden. Their applications were refused and they appealed submitting additional evidence, including medical evidence and psychological reports of the third applicant, the son. The first applicant, the father, complained that if returned he would be tortured in Chile, he complained about the separation from his family as a result of the expulsion and of non-compliance with obligations under A25(1). The first applicant was deported on the same day the Commission gave the rule 36 decision (that is, indicating that it was desirable for Sweden not to deport the applicants until the Commission had examined the application.) The second and third applicants went into hiding.

Comm found by majority (8–5) NV 3, unanimously NV 8, by majority (12–1) failure to comply with 25(1) by not following the Commission's rule 36 request not to expel the first applicant.

Court found by majority (18–1) NV 3, unanimously NV 8, by majority (10–9) NV 25(1).

Judges: Mr R Ryssdal, President, Mr J Cremona (d), Mr Thór Vilhjálmsson (d), Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh (d), Sir Vincent Evans, Mr R Macdonald (d), Mr C Russo, Mr R Bernhardt (d), Mr A Spielmann, Mr J De Meyer (d/so), Mr SK Martens (d), Mrs E Palm, Mr I Foighel (d), Mr AN Loizou, Mr JM Morenilla (d).

The Court recalled its Soering judgment where it had held that the decision by a Contracting State to extradite a fugitive might give rise to an issue under A 3 where substantial grounds had been shown for believing that the person concerned, if extradited, faced a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country. That principle also applied to expulsion decisions and to cases of actual expulsion. The Court took into account the medical evidence submitted by the applicants; however, doubt had been cast on the applicants' credibility. The Swedish authorities had particular knowledge and experience in evaluating claims of the present nature by virtue of the large number of Chilean asylum-seekers who had arrived in Sweden since 1973. The final decision to expel the applicant was taken after thorough examinations of his case by the National Immigration Board and by the Government. Substantial grounds had not been shown for believing that the first applicant's expulsion would expose him to a real risk of being subjected to inhuman or degrading treatment on his return to Chile in October 1989. Accordingly there had been no breach of A 3. Ill-treatment had to attain a minimum level of severity if it was to fall within the scope of A 3. The assessment of that minimum was relative; it depended on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim. Although the first applicant was considered to be suffering from a post-traumatic stress disorder prior to his expulsion and his mental health appeared to deteriorate following his return to Chile, no substantial basis had been shown for his fears. Accordingly his expulsion did not exceed the threshold set by A 3.

A 8: Although the expulsion of all three applicants was ordered by the Swedish Government, the second and third applicants went into hiding. The evidence adduced did not show that there were obstacles to establishing family life in their home country. In those circumstances responsibility for the resulting separation of the family could not be imputed to Sweden. Accordingly there had been no 'lack of respect' for the applicants' family life in breach of A 8.

Rule 36 had the status of a rule of procedure, the Commission could not order interim measures; compliance with Rule 36 was based on good faith co-operation and no power to order interim measures could be derived from A 25.

Cited: Abdulaziz, Cabales and Balkandi v UK (28.5.1985), Ireland v UK (18.1.1978), Johnston v IRL (18.12.1986) Soering v UK (7.7.1989).

Curley v United Kingdom 00/106

[Court Judgment 28.3.2000]

In 1979, Brian Curley, then aged 17, was convicted of murder and sentenced to be detained during Her Majesty's pleasure. The 'tariff' part of the applicant's sentence, attributable to deterrence and punishment, was set at 8 years, and expired in 1987. Following the expiry of his tariff, reviews were held by the Parole Board on a number of occasions. Following the fourth review in January 1991, the applicant absconded from prison. Following his recapture on 6 July 1993, the fifth review by the Parole Board, in August 1995, recommended that the applicant be given a provisional release date of 12 months hence. The Secretary of State did not accept the recommendation. The applicant's leave to apply for judicial review of the Secretary of State's decision was refused by a single judge of the High Court on 26 April 1996. On 12 August 1996, the applicant was notified that, pursuant to interim measures introduced by the Secretary of State on 23 July 1996, the applicant's case would be referred back to the Parole Board for review in the form of an oral hearing at which the applicant would be entitled to legal representation. That review took place on 7 February 1997 and, by letter dated 14 February 1997, the Parole Board recommended the applicant's release. The Home Secretary followed the recommendation and released the applicant on 7 May 1997. The applicant complained that he had no review of the lawfulness of his continued detention in compliance with A 5(4) or the possibility of obtaining compensation for a breach of that right as required by A 5(5).

Court found unanimously V 5(4), V 5(5), NV 3.

Judges: Mr J-P Costa, Sir Nicolas Bratza, Mr L Loucaides, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

Prisoners detained during Her Majesty's Pleasure were entitled, after the expiry of their 'tariff', to have the lawfulness of their continued detention reviewed by a court offering the necessary judicial guarantees; in particular, the power to order release and adversarial proceedings. The applicant's tariff expired in 1987. Before his eventual release in May 1997, the applicant did not receive a review by a body fulfilling this criterion as the Parole Board, even under the interim arrangements, did not have the power to order the applicant's release. In those circumstances, the applicant did not receive a review which was decided by a court or which was decided speedily. It was unnecessary to examine separately the claim that there was excessive delay in implementing the interim arrangements. There had therefore been a breach of A 5(4).

It was not contested by the Government that the violation could not give rise to an enforceable claim for compensation before the domestic courts. Therefore there had been a violation of A 5(5).

There was no indication that the lack of any review complying with A 5(4) was sufficiently severe in its effects to disclose treatment contrary to A 3. There was therefore no breach of that provision.

Non-pecuniary damage (GBP 1,500), costs and expenses (GBP 3664.40 less FF 4,100).

Cited: Hussain v UK (21.2.1996), Singh v UK (21.2.1996).

D

D v United Kingdom 97/24

[Application lodged 15.2.1996; Commission report 15.10.1996; Court Judgment 2.5.1997]

The applicant was born in St Kitts and had lived there most of his life. He arrived in the UK on 21 January 1993 in possession of cocaine with a street value of about GBP 120,000. He was arrested, charged, remanded in custody and subsequently prosecuted for being knowingly involved in the fraudulent evasion of the prohibition on the importation of controlled drugs of class A. He pleaded guilty on 19 April 1993 and was sentenced on 10 May 1993 to six years' imprisonment. In August 1994, while serving his prison sentence, the applicant was diagnosed as HIV positive and as suffering from AIDS. On 20 January 1996, immediately prior to his release on licence, on 24 January, the immigration authorities gave directions for his removal to St Kitts. The applicant applied to remain in the UK on compassionate grounds since his removal to St Kitts would entail the loss of the medical treatment which he was currently receiving, thereby shortening his life expectancy. The request was refused on 25 January 1996 by the Chief Immigration Officer. His application for leave to apply for judicial review was rejected and the Court of Appeal dismissed his appeal. The applicant complained that his proposed removal to St Kitts would be in violation of A 2, A 3 and A 8 and that he had been denied an effective remedy to challenge the removal order in breach of A 13.

Comm found by majority (11–7) V 3 if the applicant were to be removed to St Kitts, unanimously unnecessary to examine 2, no separate issue under 8, by majority (13–5) NV 13.

Court found unanimously V3 regarding implementation of the decision to remove applicant to St Kitts, necessary to examine 2, no separate issue under 8, NV 13.

Judges: Mr R Ryssdal, President, Mr C Russo, Mr A Spielmann, Mr J De Meyer, Sir John Freeland, Mr AB Baka, Mr P Kûris, Mr U Lôhmus, Mr J Casadevall.

The Court recalled that Contracting States had the right to control the entry, residence and expulsion of aliens. It also noted the gravity of the offence committed by the applicant and was aware of the problems confronting Contracting States in their efforts to combat the harm caused to their societies through the supply of drugs from abroad. However, in exercising their right to expel such aliens Contracting States had to have regard to A 3 which enshrined one of the fundamental values of democratic societies. A 3 prohibited in absolute terms torture or inhuman or degrading treatment or punishment and its guarantees applied irrespective of the reprehensible nature of the conduct of the person in question. The Court had sufficient flexibility to address the application of A 3 to other contexts than those in which the risk to the individual of being subjected to any of the proscribed forms of treatment emanated from intentionally inflicted acts of the public authorities in the receiving country or from those of non-State bodies in that country when the authorities there were unable to afford him appropriate protection. To limit the application of A3 in that manner would be to undermine the absolute character of its protection. In this case the source of the risk of proscribed treatment in the receiving country stemmed from factors which could not engage either directly or indirectly the responsibility of the public authorities of that country, or which, taken alone, did not in themselves infringe the standards of A 3. The applicant was in the advanced stages of a terminal and incurable illness. At the date of the hearing there had been a marked decline in his condition. The limited quality of life he now enjoyed resulted from the availability of sophisticated treatment and medication in the United Kingdom and the care and kindness administered by a charitable organisation. He had been counselled on how to approach death and had formed bonds with his carers. The abrupt withdrawal of those facilities would entail the most dramatic consequences for the applicant. His removal would hasten his death. There was a serious danger that the conditions of adversity which awaited him in St Kitts would further reduce his already limited life expectancy and subject him to acute mental and physical suffering. Any medical treatment which he might hope to receive there could not contend with the infections which he might possibly contract on account of his lack of shelter and of a proper diet as well as exposure to the health and sanitation problems which beset the population of St Kitts. There was no evidence that his cousin in St Kitts would be willing or in a position to attend to the

needs of a terminally ill man. There was no evidence of any other form of moral or social support. Nor had it been shown whether he would be guaranteed a bed in either of the hospitals on the island which cared for AIDS patients. In view of those exceptional circumstances and bearing in mind the critical stage now reached in the applicant's fatal illness, the implementation of the decision to remove him to St Kitts would amount to inhuman treatment by the respondent State in violation of A 3. In addition the respondent State has assumed responsibility for treating the applicant's condition since August 1994. He had become reliant on the medical and palliative care which he was at present receiving and was no doubt psychologically prepared for death in an environment which was familiar and compassionate. Although it could not be said that the conditions in the receiving country were themselves a breach of the standards of A 3, his removal would expose him to a real risk of dying under most distressing circumstances and would thus amount to inhuman treatment. The Court emphasised that aliens who had served their prison sentences and were subject to expulsion could not in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance provided by the expelling State during their stay in prison. However, in the very exceptional circumstances of this case and given the compelling humanitarian considerations at stake, it had to be concluded that the implementation of the decision to remove the applicant would be a violation of A 3.

A 2: the complaints raised by the applicant under A 2 could not be dissociated from the complaints under A 3 in respect of the consequences of the impugned decision for his life, health and welfare. Having regard to the finding that the removal of the applicant to St Kitts would give rise to a violation of A 3 it was not necessary to examine the complaint under A 2.

A 8: having regard to the finding under A 3, the complaints under A 8 did not raise any separate issue.

In previous cases the Court had considered judicial review proceedings to be an effective remedy in relation to the complaints raised under A 3 in the contexts of deportation and extradition. A court in the exercise of its powers of judicial review had power to quash a decision to expel or deport an individual to a country where it was established that there was a serious risk of inhuman or degrading treatment, on the ground that in all the circumstances of the case the decision was one that no reasonable Secretary of State could take. In addition, the Court of Appeal had the power to afford the applicant the relief he sought. The fact that it did not do so was not a material consideration since the effectiveness of a remedy for the purposes of A 13 did not depend on the certainty of a favourable outcome for an applicant. The applicant thus had available to him an effective remedy in relation to his complaints under A 2, 3 and 8. Accordingly there had been no breach of A 13.

Costs and expenses (GBP 35,000 less FF 33,216).

Cited: Ahmed v A (17.12.1996), Chahal v UK (15.11.1996), Soering v UK (7.7.1989), Vilvarajah and Others v UK (30.10.1991).

D'Onofrio v Italy 00/38

[Application lodged 27.10.1997; Court Judgment 25.1.2000]

Mr Francesco D'Onofrio complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 7 November 1979 and ended on 28 May 1998. It had lasted 18 years, six months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 30,000,000), costs and expenses (ITL 3,000,000).

Cited: Bottazzi v I (28.7.1999).

Dal Sasso v Italy 91/68

[Application lodged 15.10.1987; Commission report 5.3.1991; Court Judgment 3.12.1991]

Mrs Ernestina Dal Sasso, who was unemployed, took proceedings against the Istituto Nazionale della Previdenza Sociale before the Rome magistrates' court on 8 March 1985 in order to establish her disability pension right. At a hearing on 27 May 1986 the magistrates' court dismissed the claim. The applicant's appeal to the Rome District Court was dismissed with the text of the judgment being lodged with the registry on 4 October 1990. The applicant complained about the length of the civil proceedings.

Comm found unanimously V 6(1).

Court unanimously struck the case from the list.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr SK Martens.

Despite several reminders the applicant had shown no interest in the proceedings before the Court. There was no reason of public policy for continuing the proceedings. The Court noted its previous cases in which it had considered the question of the 'reasonableness' of the length of civil proceedings in various Contracting States, including Italy. Accordingly, the case should be struck out of the list.

Cited: Brigandì v I (19.2.1991), Caleffi v I (24.5.1991), Capuano v I (25.6.1987), Owners' Services Ltd v I (28.6.1991), Pretto and Others v I (8.12.1983), Pugliese (No 2) v I (24.5.1991), Santilli v I (19.2.1991), Vocaturo v I (24.5.1991), Zanghì v I (19.2.1991).

Dalban v Romania 99/54

[Application lodged 20.4.1995; Commission report 22.1.1998; Court Judgment 28.9.1999]

Mr Ionel Dalban was a journalist who ran a local weekly magazine until his death on 13 March 1998. On 23 September 1992 an article by the applicant exposed a series of frauds allegedly committed by Mr GS, the chief executive of a State-owned agricultural company; the article also made mention of RT. GS and RT laid an information against the applicant under the Criminal Code on the basis that what he had written was defamatory. On 24 June 1994 the Court of First Instance convicted the applicant of criminal libel, giving him a suspended sentence of three months' imprisonment and ordering him to pay 300,000 lei (ROL) to RT and GS, who were claiming damages in the same proceedings. Further, the applicant was banned from practising his profession for an indefinite period. His appeal was dismissed by the County Court although the ban was set aside. The applicant continued to publish information concerning the fraud allegedly committed by GS, as did other newspapers. On 2 March 1999 the Supreme Court acquitted the applicant in respect of the conviction for libelling GS. In respect of the libel of RT, the court quashed the conviction and, while holding that the applicant had been rightly convicted, decided to discontinue the proceedings in view of his death.

Comm found unanimously V 10, by majority (31–1) not necessary to examine 6(1).

Court found unanimously widow and heir had standing for proceedings and that widow could claim to be a 'victim', V 10, not necessary to examine 6(1).

Judges: Mr Wildhaber, President, Mr A Pastor Ridruejo, Mr L Ferrari Bravo, Mr J Makarczyk, Mr P Kûris, Mr R Türmen, Mr J-P Costa, Mrs F Tulkens, Mrs V Stráznická, Mr M Fischbach, Mr V Butkevych, Mrs HS Greve, Mr AB Baka, Mr R Maruste, Mr E Levits, Mrs S Botoucharova, Mrs Beoteliu, ad hoc judge.

The applicant having been convicted of libel, his widow had a legitimate interest in obtaining a ruling that her late husband's conviction constituted a breach of the right to freedom of expression, on which he had relied in the Commission proceedings. She had standing to continue the proceedings in the applicant's stead. Consequently, the Government's application for the case to be

struck out was dismissed. The Supreme Court's quashing of the applicant's conviction did not provide adequate redress as required by the Court's case-law. The decision to discontinue the proceedings in relation to RT was due solely to the applicant's death. That did not constitute any acknowledgement, whether explicit or implicit, on the part of the national authorities that there had been a violation of A 10. The applicant's widow could claim to be a 'victim' for the purposes of A 34.

The applicant's conviction constituted interference by public authority with the applicant's right to freedom of expression, the interference had been prescribed by law and had pursued a legitimate aim, the protection of the reputation of others. Whether the interference was necessary in a democratic society depended on whether the interference complained of corresponded to a pressing social need, whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it were relevant and sufficient. The articles in issue concerned a matter of public interest, namely the management of State assets and the manner in which politicians fulfilled their mandate. Although the press must not overstep certain bounds, in particular in respect of the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty was nevertheless to impart information and ideas on all matters of public interest. Journalistic freedom also covered possible recourse to a degree of exaggeration, or even provocation. In cases such as the present one, the national margin of appreciation was circumscribed by the interest of democratic society in enabling the press to exercise its rightful role of 'public watchdog' in imparting information of serious public concern. It would be unacceptable for a journalist to be debarred from expressing critical value judgments unless he or she could prove their truth. In the instant case there was no proof that the description of events given in the articles was totally untrue and was designed to fuel a defamation campaign against GS and RT. In relation to the legitimate aim pursued, convicting the applicant of a criminal offence and sentencing him to imprisonment amounted to disproportionate interference with the exercise of his freedom of expression as a journalist. Accordingly, there had been a violation of A 10.

Having regard to the conclusion reached in respect of the complaint under A 10, it was not necessary to examine the case under A 6(1).

Non-pecuniary damage (FF 20,000).

Cited: Amuur v F (25.6.1996), Bladet Tromsø and Stensaas v N (20.5.1999), Fressoz and Roire v F (21.1.1999), Lingens v A (8.7.1986).

Dalia v France 98/3

[Application lodged 3.11.1994; Commission report 24.10.1996; Court Judgment 19.2.1998]

Mrs Aïcha Dalia, an Algerian national, arrived in France when she was about 17 to join her parents and siblings. On 10 May 1985 the Nanterre tribunal de grande instance passed a sentence of twelve months' immediate imprisonment on Mrs Dalia for offences against the dangerous drugs legislation and ordered her deportation and permanent exclusion from French territory. She appealed to the Versailles Court of Appeal which reconsidered the case and passed the same sentence. In April 1986 she married a French national. Following a police summons, she was convicted on 29 July 1987, sentenced to three months' imprisonment and excluded from France for one year for having remained there in spite of the permanent exclusion order imposed by the Versailles Court. She left France on 14 August 1987 for Algeria. She returned to France on 15 July 1989. On 5 November 1989 a court granted the applicant and her husband a divorce. On 6 June 1990 she gave birth to a boy who had French nationality; she had parental responsibility for him. Her applications to have the permanent exclusion order lifted were rejected. She complained that returning her to Algeria would amount to treatment contrary to A 3 and that the court's refusal to lift the exclusion order infringed her right to respect for her private and family life as secured in A 8.

Comm found unanimously NV 3, by majority (21–9) NV 8.

Court by majority (7–2) dismissed the Government's preliminary objection, found (6–3) NV 8, unanimously NV 3.

Judges: Mr R Bernhardt (d), President, Mr Thór Vilhjálmsson, Mr L-E Pettiti (pd), Mr J De Meyer (d), Mr JM Morenilla, Mr L Wildhaber, Mr D Gotchev, Mr P Kûris (pd), Mr E Levits (d).

The only remedies which A 26 required to be exhausted were those that related to the breaches alleged and at the same time were available and sufficient. The existence of such remedies had to be sufficiently certain not only in theory but also in practice, failing which they would lack the requisite accessibility and effectiveness; it fell to the respondent State to establish that those various conditions are satisfied. The Government did not produce any evidence to support their argument concerning the sufficiency and effectiveness of the remedy. The appeal on points of law which the applicant could have lodged at the time against the judgment of 4 October 1994 did not meet the requirement of effectiveness. The preliminary objection was therefore dismissed.

The applicant had been living in France since the age of about 17, except for a period of twenty-three months. She gave birth in France to a child who, at birth, had French nationality and for whom she had parental responsibility. The Versailles Court of Appeal's refusal in 1994 of her application to lift the exclusion order made against her in 1985 amounted to an interference with her right to respect for her private and family life. The permanent exclusion order was in accordance with the law being based on the Public Health Code. The interference sought to achieve the aim of 'the prevention of disorder or crime'. It was for the Contracting States to maintain public order, in particular by exercising their right to control the entry and residence of aliens. To that end they had the power to deport aliens convicted of criminal offences. However, their decisions in that field had to be necessary in a democratic society, that is to say justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued. The applicant's family ties were therefore essentially in France. However having lived in Algeria until about the age of 17 she had maintained certain family relations, spoke the local language and established social and school relationships. In those circumstances, her Algerian nationality was not merely a legal fact but reflected certain social and emotional links. Therefore the interference was not so drastic as that which might result from the expulsion of applicants who were born in the host country or first went there as young children. In support of her application to have the exclusion order lifted, the applicant had relied on the fact that she was the mother of a French child. That situation was created at a time when she was in France illegally and she could not have been unaware of the resulting insecurity, the fact of her motherhood could not therefore be decisive. The fact that she took part in dangerous drug trafficking weighed heavily in the balance. In the circumstances the refusal to lift the exclusion order could not be regarded as disproportionate to the legitimate aim pursued. There had therefore been no violation of A 8.

The facts of the case did not establish that enforcement of the exclusion order would cause the applicant suffering of such intensity as to constitute inhuman or degrading treatment within the meaning of A 3. There had been no violation of A 3.

Cited: Bouchelkia v F (29.1.1997), C v B (7.8.1996), El Boujaïdi v F (26.9.1997), Mehemi v F (26.9.1997), Vernillo v F (20.2.1991).

Darby v Sweden (1991) 13 EHRR 774 90/23

[Application lodged 20.11.1984; Commission report 9.5.1989; Court Judgment 23.10.1990]

Dr Peter Darby, was a Finnish citizen of British origin, born in 1926, employed as a doctor by the Swedish State Railways in Gävle, Sweden. He rented a flat in the town, but spent the weekends with his family on the island of Lemland in the neutral and demilitarised Finnish archipelago of Åland at the southern end of the Gulf of Bothnia. Whilst he worked in Sweden his income was, in accordance with the convention between Sweden and Finland for the avoidance of double taxation, liable to Swedish tax with deductions for the cost of maintaining two homes as well as for travel expenses to and from Åland. On 1 January 1979 the law was amended, with the result that the deductions previously allowed were no longer permitted and he now had to pay the full

municipal tax, including a special tax to the Lutheran Church of Sweden. He was informed by the tax authorities that he could not claim any reduction of the church tax unless he was formally registered as resident in Sweden. His appeal against the tax decision was dismissed by the Joint Municipal Tax Court. His appeals to the Administrative Court of Appeal and the Supreme Administrative Court were dismissed.

Comm found by majority (10–3) V 9, (9–4) V 14+9, (11–2) not necessary to examine 14+P1A1.

Court found unanimously V 14+P1A1, not necessary to examine 9 or 14+9.

Judges: Mr R Ryssdal, President, Mr L-E Pettiti, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mrs E Palm, Mr I Foighel.

The duty to pay tax fell within P1A1, accordingly, A 14 was also applicable. A14 protected individuals placed in similar situations from discrimination in their enjoyment of their rights under the Convention and its Protocols. However, a difference in the treatment would only be discriminatory if it had no objective and reasonable justification, that is if it did not pursue a 'legitimate aim' and if there was no 'reasonable relationship of proportionality between the means employed and the aim sought to be realised'. As regards his right to an exemption under the Dissenters Tax Act, the applicant was in a situation similar to that of other non-members of the Church who were formally registered as residents in Sweden. According to the Government Bill which gave raise to the Dissenters Tax Act, the reason why the right to exemption was reserved for persons formally registered as residents was that the case for reduction could not be argued with the same force in regard to persons who were not so registered as it could in regard to those who were, and that the procedure would be more complicated if the reduction was to apply to non-residents. The Government Bill did not mention the special situation which the amendments would create for non-residents under the Dissenters Tax Act. In fact the Government stated at the hearing before the Court that they did not argue that the distinction in treatment had a legitimate aim. In the circumstances the measure complained of could not be seen as having had any legitimate aim under the Convention and accordingly, there had been a violation of A 14 taken together with P1A1.

Having regard to the above conclusion it was not necessary to examine the applicant's complaint under A 9 or 14.

Pecuniary damage (SEK 8,000), costs and expenses (SEK 90,000).

Cited: Inze v A (28.10.1987).

Darnell v United Kingdom (1994) 18 EHRR 205 93/44

[Application lodged 2.12.1988; Commission report 13.5.1992; Court Judgment 26.10.1993]

Dr Royce Darnell, had been unemployed since the Trent Regional Health Authority terminated his employment as a consultant microbiologist and Director of the Public Health Laboratory in Derby. On 10 August 1984 he commenced proceedings in the Industrial Tribunal seeking reinstatement, re-engagement and damages for dismissal. In its reserved decision of 23 February 1990, the Tribunal held that the dismissal of the applicant was not unfair. The applicant's appeal to the Employment Appeal Tribunal was dismissed on 8 April 1993. The applicant complained about the length of the proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr B Walsh, Mr C Russo, Mr N Valticos, Mr SK Martens, Mrs E Palm, Mr AN Loizou, Sir John Freeland, Mr AB Baka.

The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. As the Government conceded that there had been a violation, it was not necessary to rule on the dispute as to the starting date of the period to be taken into consideration in the present case. Even if the

Government's position were adopted that, at the earliest, it should start to run from 10 August 1984, the date of the initial application to the Industrial Tribunal, the lapse of time of nearly nine years until the Employment Appeal Tribunal gave its reserved judgment on 8 April 1993 could not be regarded as reasonable. There had therefore been a violation of A 6(1).

Non-pecuniary damage (GBP 5,000), costs and expenses (GBP 3,922.11 less FF 6,025).

Daud v Portugal 98/22

[Application lodged 5.3.1993; Commission report 2.12.1996; Court Judgment 21.4.1998]

Mr Juan Carlos Daud, an Argentine citizen, was arrested at Lisbon Airport as he arrived from Rio de Janeiro, carrying a false passport and a suitcase containing 1.5 kg of cocaine. He was interviewed in the presence of an officially assigned lawyer and an interpreter. He was detained pending trial. He made unsuccessful applications in respect of the preliminary investigation stage of his trial. He was convicted and sentenced to nine years' imprisonment for drug trafficking and using a false passport and an order for costs made against him. On 4 August 1995 he died in Caxias prison hospital. In his application to the Commission he complained that he had not had a fair hearing, owing, in particular, to the inadequate legal assistance he had received, the shortcomings of his officially assigned lawyer, the refusal of his application for a judicial investigation and his application to bring evidence and the poor quality of the interpreting at the hearing.

Comm found by majority (26–3) V 6(3)(c)+6(1), (27–2) NV 6(3)(e)+6(1).

Court found unanimously V 6(1)+6(3)(c), unnecessary to consider 6(1)+6(3)(e).

Judges: Mr F Gölcüklü, President, Mr C Russo, Mr I Foighel, Sir John Freeland, Mr MA Lopes Rocha, Mr L Wildhaber, Mr J Makarczyk, Mr J Casadevall, Mr P Van Dijk.

The Court recalling its previous case-law noted that the Convention was designed to guarantee not rights that were theoretical or illusory but rights that were practical and effective, and assigning counsel did not in itself ensure the effectiveness of the assistance he might afford an accused. Nevertheless, a State could not be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes. It followed from the independence of the legal profession from the State that the conduct of the defence was essentially a matter between the defendant and his counsel, whether counsel was appointed under a legal aid scheme or privately financed. The competent national authorities were required under A 6(3)(c) to intervene only if a failure by legal aid counsel to provide effective representation was manifest or sufficiently brought to their attention in some other way. In the present case the first officially assigned lawyer, before reporting sick, had not taken any steps as counsel for the applicant, who tried unsuccessfully to conduct his own defence. The second lawyer, whose appointment the applicant learned of only three days before the beginning of the trial at the Criminal Court, did not have the time she needed to study the file, visit her client in prison if necessary and prepare his defence. The time between notification of the replacement of the lawyer and the hearing was too short for a serious, complex case in which there had been no judicial investigation and which led to a heavy sentence. The Supreme Court did not remedy the situation, since in its judgment it declared the appeal inadmissible on account of an inadequate presentation of the grounds. Consequently the applicant did not have the benefit of a practical and effective defence as required by A 6(3)(c). The Court had to ascertain whether it was for the relevant authorities, while respecting the fundamental principle of the independence of the Bar, to act so as to ensure that the applicant received the effective benefit of his right, which they had acknowledged. In his letter of 15 December 1992, after more than eight months had elapsed, the applicant asked the court for an interview with his lawyer, who had still not contacted him. Because the letter was written in a foreign language, the judge disregarded the request. Yet the request should have alerted the relevant authorities to a manifest shortcoming on the part of the first officially assigned lawyer, especially as the latter had not taken any steps since being appointed in March 1992. The court should have inquired into the manner in which the lawyer was fulfilling his duty and possibly replaced him sooner, without waiting for

him to state that he was unable to act for the applicant. Furthermore, after appointing a replacement, the Lisbon Criminal Court, which must have known that the applicant had not had any proper legal assistance until then, could have adjourned the trial on its own initiative. The fact that the second officially assigned lawyer did not make such an application was of no consequence. The circumstances of the case required that the court should not remain passive. Taken as a whole those considerations amounted to a failure to comply with the requirements of A 6(1) in conjunction 6(3)(c) from the stage of the preliminary inquiries until the beginning of the hearings before the Lisbon Criminal Court.

The applicant's complaint before the Commission of the poor quality of the interpreting during the proceedings had not been raised before the Court and accordingly it was not necessary to consider A 6(1) in conjunction 6(3)(e).

JS for non-pecuniary damage.

Cited: Artico v I (13.5.1980), FCB v Italy (28.8.1991), Goddi v I (9.4.1984), Imbrioscia v CH (24.11.1993), Kamasinski v A (19.12.1989).

De Becker v Belgium (1979–80) 1 EHRR 43 62/1

[Application lodged 1.9.1956; Commission report 28.4.1960; Court Judgment 27.3.1962]

Mr Raymond De Becker, a Belgian journalist, was convicted of collaborating with the German occupying forces between 1940 and 1943. The death penalty imposed on him in 1946 was commuted to life imprisonment and reduced to 17 years in 1950. The conviction involved forfeiture of certain civil and political rights (including, eg, the right to vote, practise as a barrister, teach, work on a newspaper or in broadcasting or run a business). He was released in 1951 on condition that he did not live in France or engage in politics.

Comm found V10.

Court struck case from the list.

Judges: Mr R Cassin, President, Mr A Verdross, Mr G Maridakis, Mr A Ross (d), Mr T Wold, Mr KF Arik, Baron L Fredericq, ad hoc judge.

Following amendments to the Penal Code the applicant withdrew his application. Court noted the concordant opinions of the Commission, Government and applicant and struck the case from the list.

De Blasiis v Italy 99/97

[Application lodged 26.11.1996; Court Judgment 14.12.1999]

Mr Giovanni De Blasiis complained of the length of criminal proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska, Mr Ab Baka, Mr E Levits.

The period to be taken into consideration began on 3 March 1993 and finished on 11 May 1999. It had lasted six years, two months, eight days. The period could not be considered reasonable.

Non-pecuniary damage (ITL 15,000,000), costs and expenses (ITL 5,000,000).

Cited: Eckle v D (15.7.1982), IA v F (23.9.1998), Nikolova v BG (25.3.1999), Pelissier and Sassi v F (25.3.1999), Philis v GR (No 2) (27.6.1997), Portington v GR (23.9.1998).

De Cubber v Belgium (1985) 7 EHRR 236, (1991) 13 EHRR 422 84/13

[Application lodged 10.10.1980; Commission report 5.7.1983; Court Judgment 26.10.1984 (merits), 14.9.1987 (A 50)]

Mr Albert De Cubber was a sales manager. On 4 April 1977, he was arrested by the police at his home and taken to Oudenaarde, where he was questioned in connection with a car theft. Warrants

of arrest for forgery and uttering forged documents were issued against the applicant; one of the warrants was issued by Mr Pilate, an investigating judge who was later one of the three judges presiding at the applicant's trial. On 29 June 1979 the applicant was acquitted on two counts and convicted on the remainder, note being taken of the fact that he was a recidivist. He was sentenced to imprisonment and fined. His appeal to the Court of Cassation was allowed in part, but dismissed on the question of the impartiality of the judge. He complained, *inter alia*, that the Oudenaarde criminal court had not constituted an impartial tribunal within the meaning of A 6(1) since one of the judges, Mr Pilate, had previously acted as investigating judge in the same case.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr G Wiarda, President, Mr W Ganshof van der Meersch, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Sir Vincent Evans, Mr R Bernhardt.

Impartiality could be tested in various ways: a distinction should be drawn between a subjective approach that was endeavouring to ascertain the personal conviction of a given judge in a given case, and an objective approach, that was determining whether he offered guarantees sufficient to exclude any legitimate doubt in that respect. The personal impartiality of a judge was to be presumed until there was proof to the contrary, and in the present case no such proof was to be found in the evidence adduced before the Court. Regarding the objective approach, appearances might be important. What was at stake was the confidence which the courts in a democratic society had to inspire in the public and, above all, as far as criminal proceedings were concerned, in the accused. An investigating judge had very wide-ranging powers. Under Belgian law the preparatory investigation, which was inquisitorial in nature, was secret and was not conducted in the presence of both parties. It was understandable that an accused might feel some unease should he see on the bench of the court called upon to determine the charge against him the judge who had ordered him to be placed in detention on remand and who had interrogated him on numerous occasions during the preparatory investigation, albeit with questions dictated by a concern to ascertain the truth. Through his investigation, the judge in question, unlike his colleagues, would already have acquired well before the hearing a particularly detailed knowledge of the files which he had assembled. Consequently, it was quite conceivable that he might, in the eyes of the accused, appear, first, to be in a position enabling him to play a crucial role in the trial court and, secondly, even to have a pre-formed opinion which was liable to weigh heavily in the balance at the moment of the decision. In addition, the criminal court might have to review the lawfulness of measures taken or ordered by the investigating judge. The accused might view with some alarm the prospect of the investigating judge being actively involved in this process of review. Therefore, the impartiality of the Oudenaarde court was capable of appearing to the applicant to be open to doubt. A restrictive interpretation of A 6(1) – notably in regard to observance of the fundamental principle of the impartiality of the courts – would not be consonant with the object and purpose of the provision, bearing in mind the prominent place which the right to a fair trial holds in a democratic society within the meaning of the Convention.

The Government argued that the proceedings before the Oudenaarde court fell outside the ambit of A 6(1). A 6(1) concerned primarily courts of first instance; it did not require the existence of courts of further instance. Its fundamental guarantees had also to be provided by any courts of appeal or courts of cassation which a Contracting State may have chosen to set up. However, even when that was the case, it did not follow that the lower courts did not have to provide the required guarantees. Such a result would be at variance with the intention underlying the creation of several levels of courts, namely to reinforce the protection afforded to litigants. The present case involved a criminal trial. The possibility existed that a higher or the highest court might, in some circumstances, make reparation for an initial violation of one of the Convention's provisions: that was precisely the reason for the existence of the rule of exhaustion of domestic remedies, contained in A 26. The particular defect in question in the present case did not bear solely upon the conduct of the first-instance proceedings: its source being the composition of the Oudenaarde criminal

court, the defect involved matters of internal organisation and the Court of Appeal did not cure that defect since it did not quash on that ground the judgment of 29 June 1979 in its entirety. Contracting States were under the obligation to organise their legal systems so as to ensure compliance with the requirements of A 6(1). The applicant was the victim of a breach of A 6(1).

Damages (BEF 100,000), costs and expenses (BEF 178,221).

Cited: Adolf v A (26.3.1982), Albert and Le Compte v B (10.2.1983), Campbell and Fell v UK (28.6.1984), Delcourt v B (17.1.1970), Guincho v I (10.7.1984), Guzzardi v I (6.11.1990), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Öztürk v D (21.2.1984), Piersack v B (1.10.1982), Sutter v CH (22.2.1984), Van Oosterwijck v B (6.11.1980).

De Geouffre de la Pradelle v France 92/79

[Application lodged 2.2.1987; Commission report 4.9.1991; Court Judgment 16.12.1992]

Mr Raymond de Geouffre de la Pradelle was a lawyer and landowner. On 3 April 1980 the Minister for the Environment and Quality of Life commenced proceedings to designate the land in the Montane valley as an area of outstanding beauty and of public interest. The applicant's land was affected and he was informed of that by letter on 12 May 1980. The applicant objected in a letter of 22 May 1980 to the Prefect of Corrèze. A public inquiry was opened. On 4 July 1983, following a favourable report by the National Places of Interest Commission, the Prime Minister, after consulting the Conseil d'Etat, issued a decree designating the Montane valley as an area of outstanding beauty. On 27 October 1983 the applicant applied to the Conseil d'Etat for judicial review of the decree. On 7 November 1986 the Conseil d'Etat dismissed the application as being out of time. The applicant complained of a breach of his right of access to a court in that the authorities had notified him of the designation decision only after the period within which any appeal had to be brought had expired.

Comm found by majority (7–5) V 6, unanimously not necessary to examine 13.

Court unanimously rejected Government's preliminary objection, by majority (8–1) found V 6(1), unanimously not necessary also to examine 13.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson (d), Mr L-E Pettiti, Mr B Walsh, Mr SK Martens (c), Mr I Foighel, Mr AN Loizou, Mr F Bigi, Sir John Freeland.

A 26 (non-exhaustion of remedies) had to be applied with some degree of flexibility and without excessive formalism. The applicant had drawn the Conseil d'Etat's attention to arguments which amounted to complaining, in substance, of an infringement of the rights secured in A 6 and 13 and had thereby given the Conseil d'Etat an opportunity to prevent or remedy the alleged breaches, in accordance with the purpose of A 26. Accordingly the preliminary objection was dismissed.

The 'right to a court' enshrined in A 6 was not an absolute one. It could be subject to limitations, but those should not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right was impaired. The law resulting from the legislation on the conservation of places of interest taken together with the case-law on the classification of administrative acts was extremely complex. The proceedings involving the applicant lasted over two and a half years (7 October 1980 to 4 July 1983). The applicant was entitled to expect a coherent system that would achieve a fair balance between the authorities' interests and his own; in particular, he should have had a clear, practical and effective opportunity to challenge an administrative act that was a direct interference with his right of property. Before the designation proceedings were commenced, the applicant had obtained the authorities' consent to a scheme for a miniature hydroelectric power station on his land. The Prefect had not notified him of the impugned decree until two months and one day later. Although the time allowed for appealing started to run from the moment of publication in the Official Gazette, this was an isolated judgment of which only a summary had appeared in another publication. In the circumstances, the system was therefore not sufficiently coherent and clear and the applicant did not have a practical, effective right of access to the Conseil d'Etat.

In view of the decision concerning A 6 not necessary to consider A 13, the requirements of which are less strict than those of A 6 and were in this instance absorbed by them.

Damage (FF 100,000), costs and expenses (FF 75,000).

Cited: Cardot v F (19.3.1991), Castells v E (23.4.1992), Mellacher and Others v A (19.12.1989), Philis v GR (27.8.1991).

De Haan v Netherlands 97/44

[Application lodged 5.8.1993; Commission report 15.5.1996; Court Judgment 26.8.1997]

Ms Klaziena Wilhelmina de Haan, worked at a dry cleaner's from 1987 and from 1989 developed physical complaints which caused her to take sick-leave. She received sick-pay for a period. After being informed by the Occupational Association for the Chemical Industry that her entitlement to sick-pay would be terminated she appealed to the Groningen Appeals Tribunal. The Tribunal followed the permanent medical expert procedure whereby the applicant was examined by a permanent medical expert attached to the Appeals Tribunal, a general practitioner. On 11 September 1990 the acting president of the Appeals Tribunal, Judge S, dismissed the appeal. The applicant filed an objection. Judge S was officiating at the appeal hearing and rejected the applicant's submission that he withdraw and further rejected the substantive appeal objection. The applicant's further appeal to the Central Appeals Tribunal on 6 September 1991 was subsequently rejected.

Comm found unanimously V 6(1).

Court found by majority (6–3) V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher (d), Mr J De Meyer (d), Mr I Foighel, Mr AN Loizou, Mr AB Baka, Mr MA Lopes Rocha, Mr D Gotchev, Mr P Van Dijk (d).

The Court noted that in the permanent medical expert procedure under the Appeals Act, the sole responsibility for taking the decision fell to the president of the Appeals Tribunal, even when he did no more than ratify the opinion of the permanent medical expert. The procedure was not comparable to criminal proceedings *in absentia* in which the accused was neither present nor represented. It involved a medical examination of the applicant who could make any comments to a medical expert and was thus actively involved in the establishment of the expert's opinion which was to be the basis of the acting president's decision. The applicant also had unlimited access to the Appeals Tribunal. In considering the impartiality of a tribunal regard had to be had to the personal conviction and behaviour of a particular judge and also to whether there were afforded sufficient guarantees to exclude any legitimate doubt in that respect. Regarding the subjective aspect, there was nothing in the case to indicate any prejudice or bias on the part of the Judge S. However, the judge presided over a tribunal, composed of a professional judge assisted by two lay judges, called upon to decide on an objection against a decision for which he himself was responsible. The applicant's fears were therefore objectively justified. However, there would be no violation of A 6(1) if the decision of the Appeals Tribunal were subject to subsequent control by a judicial body that had full jurisdiction and provided the guarantees of A 6. The Central Appeals Tribunal was not able to reassess the medical evidence and to decide the issue in dispute. However, the possibility existed that a higher or the highest tribunal might, in some circumstances, make reparation for an initial violation of one of the Convention's provisions. The Central Appeals Tribunal had the power to quash the decision appealed against on the ground that the composition of the Appeals Tribunal had not been such as to guarantee its impartiality and to refer the case back to the Appeals Tribunal for rehearing if necessary. However, it had declined to do so and, as a consequence, did not cure the failing in question. There had therefore been a violation of A 6(1).

Finding of violation constituted sufficient just satisfaction for non-pecuniary damage, costs and expenses (NLG 33,794.88 less FF 14,553).

Cited: Albert and Le Compte v B (10.2.1983), British-American Tobacco Company Ltd v NL (20.11.1995), De Cubber v B (26.10.1984), Diennet v F (26.9.1995), Feldbrugge v NL (29.5.1986), Oberschlick v A (No 1) (23.5.1991), Thomann v CH (10.6.1996).

De Haes and Gijsels v Belgium (1998) 25 EHRR 1 97/7

[Application lodged 12.3.1992; Commission report 29.11.1995; Court Judgment 4.2.1997]

Mr Leo De Haes and Mr Hugo Gijsels were editor and journalist respectively for the weekly magazine Humo. On 26 June, 17 July, 18 September and 6 and 27 November 1986 the applicants published five articles in which they criticised judges of the Antwerp Court of Appeal at length and in virulent terms for having, in a divorce suit, awarded custody of the children to the father, Mr X, a Belgian notary who had previously been accused of incest and of abusing the children although it had been found then that there was no case to answer. Mr X had instituted proceedings for criminal libel against the complaint but they had been acquitted. On 17 February 1987 three judges and an advocate-general of the Antwerp Court of Appeal, instituted proceedings against Mr De Haes and Mr Gijsels in the Brussels tribunal de première instance seeking compensation for the damage caused by the statements in the articles which were described as very defamatory. The court found against the applicants. They appealed to the Brussels Court of Appeal which affirmed the judgment. Their appeal to the Court of Cassation was dismissed on 13 September 1991.

Comm found by majority (6–3) V 10, unanimously V 6, NV 8.

Court found by majority (7–2) V 10, unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher (pd), Mr J De Meyer, Mr I Foighel, Mr JM Morenilla (pd), Sir John Freeland, Mr AB Baka, Mr K Jungwiert, Mr U Lôhmus.

The judgment against the applicants amounted to an interference with their exercise of their freedom of expression, that interference had been prescribed by law and had pursued at least one of the legitimate aims in A 10(2), the protection of the reputation or rights of others, in this instance the rights of the judges and Advocate-General who brought proceedings. The Court repeated that the press played an essential role in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty was nevertheless to impart, in a manner consistent with its obligations and responsibilities, information and ideas on all matters of public interest, including those relating to the functioning of the judiciary. The courts, as the guarantors of justice, had to enjoy public confidence. Accordingly they had to be protected from destructive attacks that were unfounded, especially in view of the fact that judges were subject to a duty of discretion that precluded them from replying to criticism. It was primarily for the national authorities to determine the need for an interference with the exercise of freedom of expression. The articles contained detailed information based on thorough research. The applicants had not failed in their professional obligations by publishing what they had learned about the case. The press had to impart information and ideas of public interest. Not only did the press have the task of imparting such information and ideas: the public also had a right to receive them. Freedom of expression was applicable not only to 'information' or 'ideas' that were favourably received or regarded as inoffensive or as a matter of indifference but also to those that offended, shocked or disturbed the State or any section of the community. In addition, journalistic freedom also covered possible recourse to a degree of exaggeration, or even provocation. The accusations in question amounted to an opinion, whose truth, by definition, was not susceptible of proof. Although such an opinion might be excessive, in particular in the absence of any factual basis, it was not so in this instance. Although the applicants' comments were severely critical, they appeared proportionate to the reaction caused by the matters alleged in their articles. Regarding the journalists' polemical and even aggressive tone, which the Court did not approve, it had to be remembered that A 10 protected not only the substance of the ideas and information expressed but also the form in which they are conveyed. Having had regard to the seriousness of the circumstances of the case and of the issues at stake, the necessity of the interference with the exercise of the applicants' freedom of expression had not been shown, except as regards the allusion to the past history of the father of one of the judges in question. There had therefore been a breach of A 10.

The principle of equality of arms required that each party had to be afforded a reasonable opportunity to present his case under conditions that did not place him at a substantial disadvantage vis-à-vis his opponent. The outright rejection by the Brussels tribunal de première instance of the application to study the reports of the professors whose examinations had prompted the writing of the articles put the journalists at a substantial disadvantage vis-à-vis the plaintiffs. There was therefore a breach of the principle of equality of arms. That finding alone constituted a breach of A 6(1) and it was therefore unnecessary to examine the other complaints raised by the applicants under A 6(1).

Pecuniary damage (BEF 113,101), costs and expenses (BEF 851,697). JS for non-pecuniary damage.

Cited: Ankerl v CH (23.10.1996), Goodwin v UK (27.3.1996), Jersild v DK (23.9.1994), Lingens v A (8.7.1986), Prager and Oberschlick v A (26.4.1995).

De Jong, Baljet and van den Brink v Netherlands (1986) 8 EHRR 20 84/5

[Applications lodged 3.8.1979, 17.12.1980; Commission report 11.10.1982; Court Judgment 22.5.1984]

Mr Tjeerd de Jong and Mr Jan Herman Henricus Baljet were drafted as conscript soldiers in an infantry battalion of the Netherlands Armed Forces, which was designated to leave on a mission as part of the United Nations Peace Corps in the Lebanon. Fearing that they might be forced to use violence against other human beings, the applicants lodged applications with the Minister of Defence to be recognised as conscientious objectors and subsequently refused to obey orders to participate in a military exercise. They were placed under arrest by their commanding officer and accused of insubordination contrary to the Military Penal Code. They both appeared before the auditeur-militair and were referred for trial before the Military Court, and at the same time their release was ordered. The Minister of Defence granted them the status of conscientious objectors and they were discharged from military service. Their appeals and requests for compensation were rejected. Mr Gerrit van den Brink was forcibly drafted as a conscript soldier on his failure to register in due time. On arrival at a training centre, he refused to take receipt of and put on a military uniform. Being a 'total objector' he never submitted to any request to be granted the status of conscientious objector. He was placed under arrest by his commanding officer accused of the offence of insubordination contrary to the Military Penal Code. He appeared before the auditeur-militair and was referred for trial before the Military Court. It was decided that he should be kept in custody. The Military Court convicted him and sentenced him to 18 months' imprisonment. He appealed unsuccessfully to the Supreme Military Court. His appeal to the Supreme Court was dismissed.

Comm found unanimously NV 5(1), 5+14, by majority (13–1) V 5(3), (9–1 with four abstentions) V 5(4), not necessary to examine 13 or 18.

Court unanimously rejected the Government's preliminary objection, found NV 5(1), V 5(3), 5(4), NV 5+14, not necessary to examine 13 or 18.

Judges: Mr R Ryssdal, President, Mr G Wiarda, Mr J Cremona, Mrs D Bindschedler-Robert, Mr F Gölcücklü, Mr L-E Pettiti, Mr B Walsh.

The Government's preliminary objection of non-exhaustion of domestic remedies was rejected on grounds of estoppel as the remedies had not been raised at all or sufficiently clearly and precisely before the Commission or did not constitute available and sufficient remedies. 'Victim' in A 25 denoted the person directly affected by the act or omission in issue, the existence of a violation being conceivable even in the absence of detriment. Consequently, the relevant deduction from sentence did not in principle deprive the applicant of his status as an alleged 'victim', it was a matter to be taken into consideration solely for the purpose of assessing the extent of any prejudice he may have suffered.

A 5(1)(c) set out three alternative circumstances in which detention might be effected for the purpose of bringing a person before the competent legal authority, among which was included reasonable suspicion of having committed an offence. In making the need to maintain discipline

amongst other servicemen an additional condition, the Military Code did not lay down a further instance to those listed in A 5(1) of the Convention where deprivation of liberty was permitted, but a further requirement to be satisfied under Netherlands law before a serviceman could be placed or kept in custody on suspicion of having committed an offence. There was no evidence in the cases that the deprivation of liberty of any of the applicants was 'unlawful' and so incompatible with A 5 in the sense of being arbitrary or not being in conformity with the purpose of the restrictions permitted by A 5(1)(c). Accordingly no breach of A 5(1) has been established in the case.

The Court recalled its previous case-law under A 5(3). The 'officer', who could be either a judge or an official in the public prosecutor's department had to offer guarantees befitting the 'judicial' power conferred on him by law. The 'officer' was not identical with the 'judge' but had to have some of the latter's attributes, that is to say he had to satisfy certain conditions each of which constituted a guarantee for the person arrested. The officer had to be independent of the executive and of the parties. There was a procedural requirement placing the 'officer' under the obligation of hearing the individual brought before him and a substantive requirement imposing on him the obligation of reviewing the circumstances militating for or against detention, of deciding, by reference to legal criteria, whether there were reasons to justify detention and of ordering release if there were no such reasons. In determining Convention rights consideration had to be given to looking beyond the appearances and the language used and concentrating on the realities of the situation. However, formal, visible requirements stated in the 'law' were especially important for the identification of the judicial authority empowered to decide on the liberty of the individual in view of the confidence which that authority had to inspire in the public in a democratic society. In this case there was no official directive or policy instruction to auditeurs-militair and referring officers regarding interpretation of the Military Code, only a purely internal practice of no binding force. That was not sufficient to constitute authority given by 'law' to exercise the requisite 'judicial power' contemplated by A 5(3). In addition, the auditeur-militair did not enjoy the kind of independence demanded by A 5(3). Although independent of the military authorities, the same auditeur-militair could be called upon to perform the function of prosecuting authority after referral of the case to the Military Court. He would thereby become a committed party to any criminal proceedings subsequently brought against the serviceman on whose detention he was advising prior to referral for trial. Consequently, the procedure followed in the applicants' cases before the auditeur-militair did not provide the guarantees required by A 5(3). Mr de Jong and Mr Baljet were released on the day they were referred for trial and were thus held in custody for 7 and 11 days respectively without being brought before a judge or judicial officer. The issue of promptness had to be assessed in each case according to its special features. In the particular circumstances, even taking due account of the exigencies of military life and military justice the intervals in question could not be regarded as consistent with the required 'promptness' under A 5(3). Mr van den Brink was referred for trial six days after his arrest, the limits under A 5(3) had therefore been exceeded. As that was decisive to establish non-compliance with A 5(3) it was unnecessary to examine the subsequent procedure followed in his case.

The guarantee assured by A 5(4) was of a different order from, and additional to, that provided by A 5(3). The Military Court could be regarded as a 'court' for the purposes of A 5(4) in the sense of enjoying the necessary independence and offering sufficient procedural safeguards appropriate to the category of deprivation of liberty being dealt with. The applicants had been in custody for 7, 11 and 6 days respectively before being referred for trial and hence without a remedy. Having regard to the exigencies of military life and military justice, the length of absence of access to a court was in each case such as to deprive the applicant of his entitlement to bring proceedings to obtain a 'speedy' review of the lawfulness of his detention. The first two applicants were released on being referred for trial, and the third applicant, although maintained in detention, did not take advantage of the possibility of seeking release under the Military Code following his referral for trial. However the breach of A 5(4) had already occurred before the applicant was in the position of having access to a remedy before the Military Court. There had therefore been a breach of A 5(4) in each case.

The applicants did not maintain the complaint under A 13 before the Court. In addition, in the light of its conclusions on A 5(4), it was not necessary to examine whether there had been a failure under the less strict requirements of A 13.

The applicants' complaint appeared to be directed more against the processing of their requests to be recognised as conscientious objectors than against their deprivation of liberty as such. However, even if a distinction was made between the applicants and other servicemen in an otherwise comparable position, the circumstances of that impending mission provided an objective and reasonable justification. There had accordingly been no breach of A 14 taken in conjunction with A 5.

The complaints under A 18 were not raised before the Court and it was not therefore necessary to examine them.

Damages (NLG 300 awarded to each applicant).

Cited: 'Belgian Linguistic' case (23.7.1968), Corigliano v I (10.12.1982), De Wilde, Ooms and Versyp v B (18.6.1971), Deweer v B (27.2.1980), Duinhof and Duijf (22.5.1984), Eckle v D (15.7.1982), Engel and Others v NL (8.6.1976), Foti and Others v I (10.12.1982), Ireland v UK (18.1.1978), Lawless v IRL (1.7.1961), Marckx v B (13.6.1979), Matznetter v A (10.11.1969), Neumeister v A (27.6.1968), Piersack v B (1.10.1982), Schiesser v CH (4.12.1979), Stögmüller v A (10.11.1969), Van Droogenbroeck v B (24.6.1982, 25.4.1983), Van Oosterwijck v B (6.11.1980), Wemhoff v D (27.6.1968), Winterwerp v NL (24.10.1979).

De Micheli v Italy 93/9

[Application lodged 27.2.1987; Commission report 13.1.1992; Court Judgment 26.2.1993]

Mrs Roberta De Micheli was served with an injunction granted to the company Z by the President of the Udine District Court on 29 July 1986 ordering her to pay the company the sum of ITL 700 million. The applicant appealed against the order and commenced proceedings against the company Z by a writ of summons served on 16 September 1986. Judgment dated 25 October 1990 was deposited with the registry on 17 December 1990 and the decision became final on 25 March 1991. She complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr N Valticos, Mr SK Martens, Mrs E Palm, Mr F Bigi.

The period to be taken into account began on 16 September 1986, when the Z company was summonsed before the Udine District Court and ended on 25 March 1991 when the judgment of that court became final. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The case was not a complex one. There were two periods during which the proceedings stagnated, namely from 8 June 1987 to 21 November 1988 and from 11 December 1989 to 25 October 1990. During the first of the above-mentioned periods, the applicant unsuccessfully requested that the date of the hearing be brought forward. As regards the Government's argument based on the excessive workload of the competent court, A 6(1) imposed on the Contracting States the duty to organise their judicial systems in such a way that their courts could meet each of its requirements. Having regard to what was at stake in the dispute for the applicant and to the fact that the case was heard at only one level of jurisdiction, the Court could not consider reasonable the time which elapsed in the proceedings. There had therefore been a violation of A 6(1).

Non-pecuniary damage (ITL 25,000,000), costs and expenses (ITL 4,271,300).

Cited: Tusa v I (27.2.1992).

De Moor v Belgium (1994) 18 EHRR 372 94/20

[Application lodged 26.6.1990; Commission report 8.1.1993; Court Judgment 23.6.1994]

Mr Jérôme De Moor, a member of the Belgian army, retired in 1981 with the rank of capitaine-commandant. On 7 July 1983 he gained a law degree. His application for enrolment on the list of

pupil advocates was rejected by the Bar Council. The Chairman of the Bar Association informed Mr de Moor of the decision in a letter of 23 November 1983. He stated that it was consistent with the practice followed by Bar Councils according to which persons who had completed a full career outside the Bar were not admitted to the list of pupil advocates. His subsequent application to the Conseil d'Etat to have the decision set aside was unsuccessful. He complained that the Hasselt Bar Council had not been impartial. He further complained that the proceedings before the Bar Council had lacked fairness and had not been conducted in public and that the length of the proceedings in the Conseil d'Etat had been excessive.

Comm found unanimously V 6(1).

Court unanimously rejected Government's preliminary objection, found V 6(1).

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr F Matscher, Mr B Walsh, Mr J De Meyer, Mrs E Palm, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr J Makarczyk.

Regarding the applicability of A 6(1), the case was similar to that of *H v B*; the question raised before the Hasselt Bar Council concerned the determination of a right.

The Government were estopped from relying on the objection of non-exhaustion not raised before the Commission. With regard to the other preliminary objections, the application to take the oath could not be regarded as a remedy; although Mr de Moor applied to the Commission without waiting for the judgment of the Conseil d'Etat, that did not mean that the Commission's decision on the admissibility of the application was premature or that any legitimate interest of the respondent State was harmed. The applicant instituted the proceedings before the Conseil d'Etat and pursued them to their conclusion. He could not be criticised for not having had recourse to legal remedies which would have been directed essentially to the same end and would in any case not have offered better chances of success. The preliminary objection was therefore unfounded.

The Bar Council under the Judicial Code enjoyed a very wide discretion in dealing with an application for enrolment on the list of pupil advocates. Nevertheless, a decision rejecting an application had to be based either on the failure to comply with the conditions laid down in the Judicial Code (nationality, diploma, the taking of the oath), or on the fact that the candidate fell within one of the categories of incompatibility or was unfit or incompetent to practise the profession of advocate. The refusal to enrol the applicant should have been founded on his unfitness or his professional incompetence. Although the auditeur, in his report, took the view that incapacity should be ascertained on the basis of the specific and concrete circumstances in which the previous activities of the person concerned were carried out, no mention was made of any such circumstances, and the contested decision had no legal justification. The Bar Council did not give the applicant's case a fair hearing inasmuch as the reason it gave for refusing to enrol him was not a legally valid one. At the material time no remedy was available to the applicant. No public hearing was held to examine Mr de Moor's application and the Bar Council's decision was not delivered in public. The applicant was entitled to public proceedings, as there was no reason justifying their being held in private. The proceedings did not satisfy the requirements of A 6(1). In the light of that finding it was not necessary for the Court to rule on the complaint based on the Bar Council's lack of impartiality.

Regarding the length of the proceedings in the Conseil d'Etat, the period to be taken into consideration began on 29 November 1983, when the application to have the Bar Council's decision set aside was filed; it ended on 31 October 1991 with the delivery of the Conseil d'Etat's judgment. It therefore lasted 7 years and 11 months. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. There had been periods of delay and inactivity including a period of almost 5 years of total inactivity. The applicant's conduct was not open to criticism. The complexity of the case and the sensitive nature of the question put to the Conseil d'Etat did not explain the period of just over four years during which judgment was reserved. The intervention of the National Bar Association, one month before the first hearing on 12 October 1987, was not sufficient to justify the delay in the proceedings. Nor did the death of the judge-

rapporteur, the departure of another judge and the retirement of the President justify the above-mentioned lapse of time. Accordingly there had been a violation of A 6(1).

Non-pecuniary damage (BEF 400,000), costs and expenses (BEF 40,000).

Cited: A v F (23.11.1993), H v B (30.11.1987), Ringeisen v A (16.7.1971), Tomasi v F (27.8.1992).

De Salvador Torres v Spain (1997) 23 EHRR 601 96/43

[Application lodged 11.1.1993; Commission report 21.2.1995; Court Judgment 24.10.1996]

Mr José Antonio de Salvador Torres, had been the head administrator of a public hospital in Barcelona. In 1983 criminal proceedings were brought against him. The Barcelona investigating judge found that the facts disclosed the offence of embezzlement of public funds carried out by a person entrusted with funds belonging to a public institution. The applicant was committed for trial in the Barcelona Audiencia Provincial. In a judgment of 12 September 1988, the Audiencia Provincial convicted the applicant of the offence of simple embezzlement and sentenced him to 18 months' imprisonment. The Audiencia Provincial did not find any aggravating circumstance of general application. The public prosecutor and the hospital appealed on points of law, the applicant did not appeal. The Supreme Court quashed the judgment being appealed and convicted the applicant of the offence of simple embezzlement with the aggravating circumstance that he had taken advantage of the public nature of his position in performing the duties entrusted to him. The Supreme Court sentenced the applicant to 5 years' imprisonment. The Constitutional Court declared the applicant's subsequent appeal inadmissible. The applicant complained that he had not been given a fair hearing as he was never formally charged with the aggravating circumstance found to be established in his final sentence.

Comm found unanimously V 6(1)+(3)(a).

Court found unanimously NV 6(3)(a).

Judges: Mr R Ryssdal, President, Mrs E Palm, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr P Kûris.

The public nature of the applicant's position was an intrinsic element of the original accusation of embezzlement of public funds and hence known to the applicant from the very outset of the proceedings. He had, accordingly, to be considered to have been aware of the possibility that the Audiencia Provincial and the Supreme Court would find that this underlying factual element could, in the less severe context of simple embezzlement, constitute an aggravating circumstance for the purpose of determining the sentence. There had therefore been no infringement of the applicant's right under A 6(3)(a) to be informed of the nature and cause of the accusation against him.

Cited: Gea Catalán v E (10.2.1995).

De Santa v Italy 97/51

[Application lodged 24.5.1993; Commission report 28.11.1995; Court Judgment 2.9.1997]

Mr Maurizio de Santa, secretary of the municipal welfare agency, applied on 27 December 1977 to the Friuli-Venezia Giulia Regional Administrative Court for judicial review of a decision of his employer's board of governors, assigning to him a level of remuneration lower than that to which he considered himself to be entitled on the basis of the collective agreements on contracts of employment negotiated at national level by the unions concerned. In a judgment of 10 June 1994, the text of which was deposited with the registry on 29 November 1994, the Consiglio di Stato dismissed the applicant's appeal. He complained of the length of proceedings.

Commission found by majority (24–5) V 6.

Court by majority (7–2) found V 6(1).

Before the administrative courts the applicant asserted a purely economic right, namely the level of salary laid down in the collective agreements, which had, moreover, been applied to the other employees of the municipal welfare agency. The private-law features of the case predominated over the public-law features. Accordingly A 6(1) was applicable. The period to be taken into consideration began on 27 December 1977, the date of the application to the Administrative Court and ended on 29 November 1994, when the judgment of the Consiglio di Stato was deposited with the registry, that was nearly 17 years. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the parties. Two lengthy periods were attributable to the authorities. The first of these lasted more than four years, between the application to the Administrative Court and that court's order for certain documents to be filed. The second lasted over ten years and five months, between the applicant's appeal and the date on which the Consiglio di Stato's judgment was deposited with the registry. Accordingly, a 'reasonable time' was exceeded and there had therefore been a breach of A 6(1).

Non pecuniary damage (ITL 25,000,000), costs and expenses (ITL 10,000,000).

Cited: Ceteroni v I (15.11.1996).

De Wilde, Ooms and Versyp v Belgium (1979-80) 1 EHRR 373 71/1

[Applications lodged 17.6.1966, 20.5.1966, 16.8.1966; Commission report 19.7.1969; Court Judgment 18.11.1970 (procedure), 18.6.1971 (merits), 10.3.1972 (A 50)]

Under Belgian law vagrants, persons with no fixed abode, no means of subsistence and no regular trade or profession, were brought before the police court and after a hearing could be placed at the disposal of the Government to be detained in a vagrancy centre, for not less than two and not more than seven years or, could be placed at the disposal of the Government to be detained in an assistance home for an indeterminate period which in no case could exceed a year.

Mr Jacques De Wilde, had been in the Foreign Legion, was in receipt of war disablement pension and a military retirement pension and worked from time to time as an agricultural labourer. On 18th April 1966 he reported to the Charleroi police station and declared that he had unsuccessfully looked for work and that he had neither a roof over his head nor money. On 19 April, at about 10 am, the police court at Charleroi, placed the applicant at the disposal of the Government to be detained in a vagrancy centre for two years. He regained his freedom on 16 November 1966. His detention had lasted a little less than seven months, of which three months were spent serving a prison sentence in respect of a criminal offence.

On 21 December 1965, Franz Ooms, reported to the police at Namur, in order to be treated as a vagrant unless one of the social services could find him employment where he could be provided with board and lodging while waiting for regular work. On the same day the police court at Namur, placed him at the disposal of the Government to be detained in an assistance home. He was released *ex officio* on 21 December 1966.

Mr Edgard Versyp, was a draughtsman. On 3 November 1965 he appeared before the police at Brussels asking to be sent to a welfare settlement. The police court in Brussels placed him at the disposal of the Government to be detained in a vagrancy centre for two years. He was released on 10th August 1967 after one year, nine months and six days of detention.

Comm found by majority (9–2) V 4, (9–2) V 5(4), (10–1) V 8, unanimously NV 3, (10–1) NV 5(1), unanimously 5(3) inapplicable, (10–1) 6(1) inapplicable, (10–1) A 6(3) inapplicable, unanimously 7 inapplicable, unanimously not necessary to consider 13.

Court found it had jurisdiction to deal with the issues and dismissed the Government's preliminary objections. Court found unanimously NV 5 (1), 5(3) not applicable, by majority (9–7) V 5(4) in that the applicants had no remedy open to them before a court against the decisions ordering their detention,

(15–1) NV 5(4) by reason of the rejection of the requests for release, unanimously not called upon to pronounce on 6, unanimously 7 NA, unanimously NV 4, (15–1) NV 8, unanimously NV 3+13.

Judges (procedure): Sir Humphrey Waldock, Mr H Rolin (c), Mr R Cassin, Mr AEV Holmbäck, Mr A Verdross, Mr G Maridakis, Mr E Rodenbourg, Mr ANC Ross, Mr T Wold, Mr G Balladore Pallieri, Mr H Mosler, Mr M Zekia, Mr A Favre (d), Mr J Cremona, Mr S Bilge, Mr G Wiarda, Mr S Sigurjónsson.

Judges (merits): Sir Humphrey Waldock, President, Mr H Rolin, Mr R Cassin, Mr AEV Holmbäck (so), Mr A Verdross (so), Mr E Rodenbourg (so), Mr ANC Ross (so), Mr T Wold (so), Mr G Balladore Pallieri (so), Mr H Mosler, Mr M Zekia (so), Mr A Favre (so), Mr J Cremona, Mr S Bilge (so), Mr G Wiarda, Mr S Sigurjónsson (so).

Judges (A 50): Sir Humphrey Waldock, President, Mr G Balladore Pallieri, Mr R Cassin, Mr AEV Holmbäck (so), Mr A Verdross (so), Mr H Rolin, Mr E Rodenbourg, Mr ANC Ross (so), Mr T Wold (so), Mr H Mosler (so), Mr M Zekia (so), Mr A Favre, Mr J Cremona, Mr G Wiarda, Mr S Sigurjónsson.

The jurisdiction of the Court extended to all cases concerning the interpretation and application of the Convention referred to it by the parties. It was therefore impossible to see how questions concerning the interpretation and application of A 26 raised before the Court during the hearing of a case should fall outside its jurisdiction. The rule of exhaustion of domestic remedies, which dispensed States from answering before an international body for their acts before they had had an opportunity to put matters right through their own legal system, was one of the generally recognised principles of international law to which A 26 made specific reference. The Commission decision to accept an application was not binding on the Court. The Court had jurisdiction to examine the questions of non-exhaustion and of delay raised in the present cases. Contracting States could waive the rule of exhaustion of domestic remedies, the essential aim of which was to protect their national legal order, but not after the case had been referred to the Court. In the present case the Government was not precluded from raising before it the Court the objection of non-exhaustion of domestic remedies as regards the orders of the magistrates at Charleroi, Namur and Brussels. However, the submission that the applicant Versyp was out of time, was never made before the Commission nor even before the Court during the written procedure and they were therefore precluded from submitting that Versyp's application was out of time. The rule of exhaustion of domestic remedies demanded the use only of such remedies as were available to the persons concerned and were sufficient. It was for the Government to indicate the remedies which, in its view, were available to the persons concerned and which ought to have been used by them until they had been exhausted. According to the settled legal opinion which existed in Belgium up to 7 June 1967 recourse to the Conseil d'Etat against the orders of a magistrate was thought to be inadmissible. The applicants could not be reproached for conduct in 1965 and 1966 which conformed with that view. Once the case-law was reversed the applicants were not in a position to benefit from the possible remedy it seemed to open up because, the time-limit on the procedure before the administrative division of the Conseil d'Etat had expired. Therefore the preliminary objection of non-exhaustion of domestic remedies was not well-founded and was dismissed.

The fact that a person may have been driven to give himself up to the police to be detained did not necessarily mean that the person so asking was in a state of vagrancy or was a professional beggar or that his state of vagrancy resulted from idleness, drunkenness or immorality. Insofar as the wishes of the applicants were taken into account, they could not remove or disguise the mandatory, as opposed to contractual, character of the decisions complained of. The right to liberty was too important in a democratic society within the meaning of the Convention for a person to lose the benefit of the protection of the Convention for the single reason that he gave himself up to be taken into detention. Detention might violate A 5 even although the person concerned might have agreed to it. When the matter was one which concerned public order within the Council of Europe, a scrupulous supervision by the organs of the Convention of all measures capable of violating the rights and freedoms which it guaranteed was necessary in every case. Nor did the fact that the applicants reported voluntarily in any way relieve the Court of its duty to see whether there had been a violation of the Convention.

The Convention did not contain a definition of the term 'vagrant'. The definition in the Belgian Criminal Code of vagrants as persons with no fixed abode, no means of subsistence and no regular trade or profession fell within the exception provided for in A 5(1)(e). The applicants had the character of a 'vagrant' and could, under A 5(1)(e), be made the subject of a detention provided that it was ordered by the competent authorities and in accordance with the procedure prescribed by Belgian law. The Court did not find either irregularity or arbitrariness in the placing of the three applicants at the disposal of the Government and it had no reason to find the resulting detention incompatible with A 5(1)(e).

The applicants were arrested and detained not under sub-para (c) of the first paragraph of A 5 but under sub-para (e) and therefore para (3) was not applicable to them.

Where the decision depriving a person of his liberty was one taken by an administrative body, there was no doubt that A 5(4) obliged the Contracting States to make available to the person detained a right of recourse to a court; but there was nothing to indicate that the same applied when the decision was made by a court at the close of judicial proceedings. From an organisational point of view the magistrate was a 'court'. The magistrate was independent both of the executive and of the parties to the case. The use of the word 'court' in the Convention denoted bodies which exhibited not only common fundamental features, of which the most important was independence of the executive and of the parties to the case, but also the guarantees of judicial procedure. The deprivation of liberty complained of by the applicants resembled that imposed by a criminal court. Therefore, the procedure applicable should not have provided guarantees markedly inferior to those existing in criminal matters. The procedure in question was affected by the administrative nature of the decision to be given. The procedure undoubtedly presented certain judicial features, such as the hearing taking place and the decision being given in public, but they were not sufficient to give the magistrate the character of a 'court' within the meaning of A 5(4) when due account was taken of the seriousness of what was at stake, namely a long deprivation of liberty attended by various shameful consequences. Therefore it did not by itself satisfy the requirements of A 5(4) and a remedy should have been open to them. The applicants had no access either to a superior court or to the Conseil d'Etat. There was therefore a violation of A 5(4) in that the three applicants did not enjoy the guarantees contained in that paragraph. Regarding the rejection of the requests for release addressed by the applicants to the administrative authorities, the applicants could have appealed to the Conseil d'Etat. The requests looked to the Minister of Justice to use his discretionary power. Whatever action was taken thereafter fell completely outside the application of the provision of A 5(4). There had not therefore been any violation of A 5(4) on that point at issue.

During the hearing before the magistrates, the applicants were not dealt with in accordance with the requirements of A 5(4) and that conclusion made it superfluous to examine whether A 6 was applicable.

A 7 was not relevant. Simple vagrancy was not an 'offence' under Belgian law and the magistrate did not find the applicants 'guilty' nor impose a 'penalty' on them.

Despite finding a violation of A 5(4) the Court did not consider that it had to deduce therefrom a violation of A 4. A 4(3)(a) authorised work ordinarily required of individuals deprived of their liberty under A 5(1)(e). No violation had been found of A 5(1)(e). The duty to work imposed on the three applicants had not exceeded the ordinary limits, within the meaning of A 4(3)(a), because it aimed at their rehabilitation and was based on a general standard which found its equivalent in several member States of the Council of Europe. The Belgian authorities did not therefore fail to comply with the requirements of A 4.

The supervision of the applicants' correspondence constituted an interference under A 8, was in accordance with the law. In the light of the information given to it, the Court found that the competent Belgian authorities did not transgress in the present cases the limits of the power of appreciation which A 8(2) left to the Contracting States: even in cases of persons detained for vagrancy, those authorities had sufficient reason to believe that it was necessary to impose

restrictions for the purpose of the prevention of disorder or crime, the protection of health or morals, and the protection of the rights and freedoms of others. There was nothing to indicate that there was any discrimination or abuse of power to the prejudice of the applicants.

Having regard to the facts before it, there was no suggestion of a violation of A 3.

In the light of the ruling that the applicants were not dealt with in a manner compatible with the requirements of A 5(4) the Court did not consider that it had to enquire whether there had been a violation of A 13.

Regarding the applicants' other complaints, the Court found that A 3–8 of the Convention were directly applicable in Belgian law. If, therefore, the applicants considered that the administrative decisions put in issue had violated the rights guaranteed by those articles, they could have challenged them before the Conseil d'Etat.

Damages claim (by majority 14–1) not well-founded.

Cited: De Becker v B (27.3.1962), 'Belgian Linguistic' case (9.2.1967), Lawless v IRL (14.11.1960), Matznetter v A (10.11.1969), Neumeister v A (27.6.1968), Stögmüller v A (10.11.1969).

Debboub alias Husseini Ali v France 99/81

[Application lodged 10.9.1997; Court Judgment 9.11.1999]

Mr Ismaël Debboub alias Ali Husseini was arrested on 8 November 1994 and detained pending trial in connection with a police operation concerning a support network for Islamic terrorist groups. His applications for release were rejected. His trial began on 1 September 1998. On 22 January 1999 he was convicted and sentenced to five years' imprisonment. He complained of the length of his pre-trial detention of approximately four years.

Court found unanimously V 5(3).

Judges: Sir Nicolas Bratza, president, Mr J-P Costa, Mr P Kûris, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 12 November 1994, and ended on 22 January 1999, a period of four years, two months, 10 days. The considerations relevant to the initial decision to keep the applicant in custody, namely the risk of his absconding or colluding with other defendants and the danger he presented for public order, became progressively less persuasive and did not suffice to justify such a lengthy period of detention pending trial. Moreover, in the later decision the courts merely affirmed, but did not establish that there was a risk that co-defendants would collude. While it was true that the case was complex, the courts did not appear to have aced with due expedition. There had accordingly been a violation of A 5(3).

Present judgment constituted sufficient just satisfaction for the damages alleged. Costs and expenses (FF 30,000).

Cited: IA v F (23.9.1998), Letellier v F (26.6.1991), Neumeister v A (27.6.1968), Toth v A (12.12.1991).

Debled v Belgium (1995) 19 EHRR 506 94/27

[Application lodged 17.11.1988; Commission report 16.2.1993; Court Judgment 22.9.1994]

Dr Georges Debled was a urologist. From 1982 to 1984 patients of his complained to the medical association, the Brabant Ordre des médecins, that the fees he charged were excessive. The Provincial Council summoned the applicant to appear before it on 5 March 1985. He filed pleadings but then withdrew from the hearing. The Council found most of the charges against the applicant had been substantiated and suspended him from practice for a year. The applicant appealed to the Appeals Board of the Ordre des médecins. He sought an adjournment of the hearing and in the meantime, on 3 November 1986, he applied to the Court of Cassation for a transfer of jurisdiction, claiming that there were reasonable grounds for suspecting the Appeals Board of bias. In a judgment of 21 May 1987 the Court of Cassation ruled the application for a transfer of jurisdiction inadmissible. The applicant's challenge to some of the members of the

Appeals Board was rejected. On 29 September 1987 the Appeals Board gave its decision *in absentia* since the applicant had not made any further appearances before it, partly allowing and partly dismissing the appeal. The applicant's further appeals were dismissed by the Appeals Board and the Court of Cassation on 13 April 1989. He complained that he had not had a hearing by an independent and impartial tribunal.

Comm found unanimously NV 6(1).

Court found unanimously NV 6(1).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr Thór Vilhjálmsson, Mr F Matscher, Mr C Russo, Mr J De Meyer, Mr N Valticos, Mrs E Palm, Sir John Freeland.

The participation of judges in a decision concerning challenges against one of their colleagues could pose problems if identical challenges had been directed against them. But the special circumstances of the present case had to be taken into account. The applicant had challenged several members of the Appeals Board; their exclusion from all the decisions concerning those challenges would have paralysed the whole disciplinary system. He based each of his complaints concerning the challenged members on almost identical grounds, which were general and abstract in nature and were inferred from their membership of the medical unions or their alleged connections with the unions. No reference was made to specific, material facts that could have revealed personal animosity or hostility towards him. Such vague objections could not be regarded as well-founded. Accordingly, there had been no breach of A 6(1).

Cited: Albert and Le Compte v B (10.2.1983), Olsson v S (No 2) (27.11.1992).

Delcourt v Belgium (1979–80) 1 EHRR 69/3

[Application lodged 20.12.1965; Commission report 1.10.1968; Court Judgment 17.1.1970]

Mr Emile Delcourt was a company director. On 21 September 1964, he was found guilty by the Bruges Court of Summary Jurisdiction on 36 out of 41 counts of obtaining money by menaces, fraud and fraudulent conversion, and sentenced to a year's imprisonment and a fine of BEF 2,000. On 17 March 1965, the Court of Appeal in Ghent rejected the applicant's appeal and increased his principal sentence to five years' imprisonment and further decided that on serving his sentence, he should be 'placed at the disposal of the Government' for 10 years. The applicant's appeal to the Court of Cassation was dismissed on 21 June 1965. He complained that a member of the procureur général's department had attended private deliberations of the Court of Cassation, thus contravening the principle of equality of arms.

Comm found by majority (7–6) NV 6(1).

Court found unanimously NV 6(1).

Judges: Sir Humphrey Waldock, President, Mr H Rolin, Mr T Wold, Mr M Zekia, Mr A Favre, Mr J Cremona, Mr G Wiarda.

Although the judgment of the Court of Cassation could only confirm or quash decisions and not reverse or replace them, the judgment might rebound in different degrees on the position of the person concerned. A judgment in cassation sometimes had even more direct repercussions on the fate of an accused. If the highest court dismissed the appeal in cassation, the acquittal or conviction became final. If the Court of Cassation allowed the appeal without ordering the case to be sent back, then by its own sole decision it put an end to the prosecution. A criminal charge was not really 'determined' as long as the verdict of acquittal or conviction had not become final. Criminal proceedings formed an entity and had to, in the ordinary way, terminate in an enforceable decision. Proceedings in cassation were one special stage of the criminal proceedings and their consequences might prove decisive for the accused. It would therefore be hard to imagine that proceedings in cassation fell outside the scope of A 6(1). A 6(1) did not compel the Contracting States to set up courts of appeal or of cassation. Nevertheless, a State which did institute such courts was required to ensure that persons amenable to the law should enjoy before those courts the fundamental guarantees contained in A 6. A 6(1) was therefore applicable to the proceedings in cassation.

The principle of equality of arms was only one feature of the wider concept of fair trial by an independent and impartial tribunal. The applicant could claim full equality of treatment as against the procureur général's departments at the courts of appeal and cassation. The information given to the Court showed that the applicant did not suffer from any discrimination in that respect. The procureur général's department at the Belgian Court of Cassation did not ordinarily conduct public prosecutions, nor did it bring cases before that court, nor did it either have the character of respondent and it could not, therefore, be considered as a party. Justice had not only to be done, but had also to be seen to be done, but that did not amount to proof of a violation of the right to a fair hearing. Looking behind appearances, the Court did not find the realities of the situation to be in any way in conflict with that right. The procureur général's department at the Court of Cassation functioned wholly independently of the Minister of Justice. Thus, the Minister had no power to compel the procureur général to make his submissions one way or the other, while he had the power to direct the institution of prosecutions by the procureur général's departments attached to the courts of first instance and appeal. The procureur général at the Court of Cassation exercised supervision over the officers of the procureur général's departments at the courts of first instance and appeal only in regard to matters of doctrine and did not give them injunctions or instructions. Nor was the procureur général at the Court of Cassation the virtual adversary of the accused whose conviction or acquittal might lead to an appeal in cassation; nor did he become their actual adversary when he submitted in open court that their arguments should not be accepted. Even in the absence of a prosecuting party, a trial would not be fair if it took place in such conditions as to put the accused unfairly at a disadvantage. A close examination of the legislation in issue as it was applied in practice did not, however, disclose any such result. The procureur général's department at the Court of Cassation was an adjunct and an adviser of the Court; it discharged a function of a quasi-judicial nature. By the opinions which it gave according to its legal conscience, it assisted the Court to supervise the lawfulness of the decisions attacked and to ensure the uniformity of judicial precedent. Examination of the facts showed that those considerations were not abstract or theoretical but were indeed real and actual. Nor could the independence and impartiality of the Court of Cassation itself be adversely affected by the presence of a member of the procureur général's department at its deliberations once it had been shown that the procureur général himself was independent and impartial. The system now challenged dated back for more than a century and a half. While the long standing of a national legal rule could not justify a failure to comply with the present requirements of international law, it might under certain conditions provide supporting evidence that there had been no such failure. The Court was of the opinion that that was the case here. There had been no violation in that respect.

The new complaints of the applicant had not previously been raised. However, they were ill-founded. The fact that the procureur général's department at the Court of Cassation expressed its opinion at the end of the hearing, without having communicated it in advance to the parties, was explained by the very nature of its task as noted above. A 6 did not require, even by implication, that an accused should have the possibility of replying to the purely legal submissions of an independent official attached to the highest court in Belgium as its assistant and adviser. Having regard, therefore, to the nature of the proceedings before the Belgian Court of Cassation, it had not been established that the applicant did not receive a fair hearing before that court.

Cited: 'Belgian Linguistic' case (23.7.1968), Matznetter v A (10.11.1969), Neumeister v A (27.6.1968), Wemhoff v D (27.6.1968).

Delicata v Italy 00/57

[Application lodged 15.12.1996; Court Judgment 8.2.2000]

Mr Mario Delicata complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska.

The period to be taken into consideration began on 29 October 1981 and ended on 11 July 1996. It had lasted more than 14 years, eight months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 50,000,000).

Cited: Bottazzi v I (28.7.1999).

Delta v France (1993) 16 EHRR 574 90/29

[Application lodged 4.8.1984; Commission report 12.10.1989; Court Judgment 19.12.1990]

Mr Michel Sophie Delta was a French citizen who was born in Guadeloupe. On 29 March 1983 he was arrested in connection with a robbery which had occurred at an underground station that evening. The victim and her friend made statements. The Paris public prosecutor considered that a judicial investigation was unnecessary and used the direct committal procedure. Although summoned by the prosecution, the two girls did not attend the trial and gave no reasons for their failure to do so. The court did not take any steps to have them brought before it. On 5 May the court passed a sentence of three years' imprisonment on him. His appeals to the Paris Court of Appeal and Court of Cassation (Criminal Division) were dismissed. He complained that he had not had a fair trial as his conviction was based solely on statements made to the police by witnesses whom neither he nor his counsel had been able to examine.

Comm found unanimously V 6(1)+6(3)(d).

Court found unanimously V 6(1)+6(3)(d), not necessary to examine 6(2), no jurisdiction to examine 6(3)(b), 17 and 18.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr L-E Pettiti, Mr R Macdonald, Mr C Russo, Mr J De Meyer.

Although the victim of the offence and her friend did not testify in court in person, they were to be regarded for the purposes of A 6(3)(d) as witnesses, a term to be given an autonomous interpretation, as their statements were before the court, which took them into account. The admissibility of evidence was primarily a matter for regulation by national law, and, as a general rule, it was for the national courts to assess the evidence before them. Accordingly, the Court's task under the Convention was to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair. In principle, the evidence had to be produced in the presence of the accused at a public hearing with a view to adversarial argument. That did not mean, however, that in order to be used as evidence statements of witnesses should always be made at a public hearing in court: to use as evidence such statements obtained at the pre-trial stage was not inconsistent with A 6(3)(d) and A 6(1) provided the rights of the defence had been respected. Those rights required that an accused should be given an adequate and proper opportunity to challenge and question a witness against him, either at the time the witness made his statement or at some later stage of the proceedings. The applicant had never had an adequate opportunity to examine the witnesses whose evidence was taken into account by the courts at first instance and on appeal, as the file contained no other evidence. The applicant was therefore unable to test the witnesses' reliability or cast doubt on their credibility. The applicant had not therefore received a fair trial.

The alleged disregard of the presumption of innocence concerned the same facts and consequences that the Court had held to be contrary to A 6(1) and A 6(3)(d) and therefore no separate examination of it was necessary.

Complaints under A 6(3)(b), 17 and 18 were not raised before the Commission and accordingly the Court had no jurisdiction to consider them.

Damages (FF 100,000).

Cited: Bezicheri v I (25.10.1989), Kostovski v NL (20.11.1989), Windisch v A (27.9.1990).

Demai v France (1995) 20 EHRR 89 94/38

[Application lodged 15.10.1993; Commission report 18.5.1994; Court Judgment 28.10.1994]

Mr Christian Demai, a haemophiliac, had received frequent blood transfusions. A blood test on 22 July 1985 showed that he had been infected with HIV. On 8 December 1989 he submitted a preliminary claim for compensation to the Minister for Solidarity, Health and Social Protection, who refused it on 30 March 1990. On 25 May 1990 he lodged an application with the Versailles Administrative Court. On 24 July 1991 the Conseil d'Etat assigned the case to the Paris Administrative Court, the court designated to deal with all the applications lodged by infected haemophiliacs. The court ordered the appointment of an expert, who examined the applicant on 8 April 1993. Concurrently, on 8 October 1992, the Compensation Fund for Haemophiliacs and Transfusion Patients offered the applicant compensation. On March 1994 the Paris Administrative Court on 2 March 1994 made an award to the applicant, the judgment was served on the applicant on 18 April 1994 and no appeal was lodged against it. The applicant complained that his case had not been heard within a reasonable time.

Comm found unanimously V 6(1).

Court unanimously struck case out of list.

Judges: Mr R Ryssdal, President, Mr L-E Pettiti, Mr Walsh, Mr R Macdonald, Mr R Pekkanen, Mr AN Loizou, Sir John Freeland, Mr G Mifsud Bonnici, Mr U Lôhmus.

The Court took note of the friendly settlement reached by the Government and the applicant. It discerned no reason of public policy why the case should not be struck out of the list.

FS (compensation of FF 200,000, payment of costs and expenses).

Cited: Karakaya v F (26.8.1994), Vallée v F (26.4.1994), X v F (31.3.1992).

Demicoli v Malta (1992) 14 EHRR 47 91/37

[Application lodged 22.5.1987; Commission report 15.3.1990; Court Judgment 27.8.1991]

Mr Carmel Demicoli was the editor of a political satirical periodical 'NOT in the people's interest'. On 3 January 1986 he published an article on a parliamentary debate in the Maltese House of Representatives, in which, *inter alia*, he described a Minister as a clown. On 13 January 1986 the two Members of Parliament referred to in the article brought the article to the attention of the House of Representatives as an alleged breach of privilege. The applicant appeared before the House of Representatives with his lawyer and was found guilty of breach of privilege. The House fined him MTL 250 and ordered him to publish their conclusion in his paper. He claimed a breach of A 6.

Comm found unanimously V 6(1).

Court unanimously rejected the Government's preliminary objection, found V 6(1), not necessary to examine A 6(2).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson (c), Mr J Pinheiro Farinha (c), Sir Vincent Evans, Mr R Bernhardt, Mr A Spielmann (c), Mr N Valticos, Mr I Foighel.

Preliminary objection of non-exhaustion rejected. In determining whether the breach of privilege proceedings for defamatory libel could be regarded as criminal within A 6(1), the Court had to consider the State's classification, the nature of the offence and the degree of severity of the penalty. The proceedings taken against the applicant for an act done outside the House were to be distinguished from other types of breach of privilege proceedings which could be said to be disciplinary in nature in that they related to the internal regulation and orderly functioning of the House. The relevant measure could potentially affect anyone in the population. The measure provided for the imposition of a penal sanction and not a civil claim for damages. The particular breach of privilege in question was therefore akin to a criminal offence under the Press Act. The maximum penalty the applicant risked was imprisonment of not more than 60 days or a fine not

exceeding MTL 500 or both. What was at stake was sufficiently important to warrant classifying the offence with which the applicant was charged as a criminal one under the Convention. The Maltese Parliament had power to impose disciplinary measures and to govern its own internal affairs. The offence could therefore be classified as criminal. A 'tribunal' was characterised by its judicial function, it also had to satisfy the requirements of independence, in particular of the executive, impartiality, duration of its members' terms of office, guarantees afforded by its procedure. The House of Representatives exercised a judicial function in determining the applicant's guilt. The test of impartiality had to be determined according to a subjective test, that is, on the basis of the personal conviction or interest of a particular judge in a given case, and according to an objective test, namely ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in that respect. In this context even appearances may be of a certain importance, particularly as far as criminal proceedings were concerned. The two Members of the House criticised in the article and who raised the breach of privilege in the House had participated throughout in the proceedings against the accused, including the finding of guilt and the sentencing. The impartiality of the adjudicating body therefore appeared open to doubt and the applicant's fears in that connection were justified. Accordingly, there had been a breach of A 6(1).

In view of the above finding of a violation of A 6(1), it was not necessary to examine A 6(2).

Costs and expenses (MTL 5,000) awarded.

Cited: Belilos v CH (29.4.1988), Bricmont v B (7.7.1989), Campbell and Fell v UK (28.6.1984), Engel v NL (8.6.1976), Hauschildt v DK (24.5.1989), Öztürk v D (21.2.1984), Weber v CH (22.5.1980), Zanghí v I (19.2.1991).

Demir and Others v Turkey 98/77

[Application lodged 12.2.1993; Commission report 29.5.1997; Court Judgment 23.9.1998]

Mr Demir, a businessman, and Mr Süsin, a councillor, were respectively the chairman and former secretary of the Ydil branch of the People's Social Democratic Party (SHP). Mr Kaplan was a correspondent and member of the executive committee of the Ydil branch of the People's Republican Party. On 26 January 1993 they were arrested with others and placed in police custody. On 27 January 1993 the security police sent the applicants to the forensic medicine centre to be examined. On 12 February 1993 the applicants' lawyer lodged a complaint with the prosecuting authorities complaining of the length of time spent in police custody. On 18 February the applicants were brought before the single judge of the Criminal Court, who ordered them to be placed in pre-trial detention. On 11 June 1993 the public prosecutor filed submissions with the National Security Court against 35 defendants, including the applicants, whom he accused of being active members of an illegal organisation, the PKK (Workers' Party of Kurdistan). The applicants were granted conditional release after a hearing on 3 February 1994. The National Security Court gave judgment on 14 November 1996. They were sentenced to 12 years, six months' imprisonment for membership of an armed gang. Their appeals to the Court of Cassation were dismissed in a judgment of 2 March 1998.

Comm found unanimously V 5(3).

Court unanimously rejected the Government's preliminary objection, found V 5(3).

Judges: Mr Thór Vilhjálmsson, President, Mr F Gölcüklü, Mr F Matscher, Mr J De Meyer (c), Mrs E Palm, Mr AN Loizou, Mr JM Morenilla, Mr AB Baka, Mr K Jungwiert.

The Government's preliminary objection relating to a remedy under the Constitution had not been raised before the Commission and the Government were therefore estopped from relying on it. The cases involving compensation relied on by the Government were not relevant and concerned A 5(5), whereas the applicants' complaint concerned A 5(3). Government's preliminary objection concerning non-exhaustion therefore rejected.

Mr Demir and Mr Süsin were held in police custody for at least 23 days, during which time none of them appeared before a judge or other judicial officer. Having regard to its previous case-law the Court concluded that the periods of detention concerned failed to satisfy the requirement of promptness under A 5(3). Terrorist offences presented the authorities with special problems but that did not mean that the authorities had carte blanche under A 5 to arrest suspects and detain them in police custody, free from effective control by the domestic courts and, in the final instance, by the Convention's supervisory institutions, whenever they considered that there has been a terrorist offence. Similarly, the requirements of the investigation could not absolve the authorities from the obligation to bring any person arrested in accordance with A 5(1)(c) promptly before a judge, as required by A 5(3). Where necessary, it was for the authorities to develop forms of judicial control which were adapted to the circumstances but compatible with the Convention. It fell to each Contracting State to determine whether the life of the nation was threatened by a 'public emergency' and, if so, how far it was necessary to go in attempting to overcome the emergency. In that respect States had a wide margin of appreciation but not an unlimited discretion. It was for the Court to rule whether, *inter alia*, the States had gone beyond the 'extent strictly required by the exigencies' of the crisis. The Court noted the particular extent and impact of PKK terrorist activity in south-east Turkey which had created in the region concerned, a 'public emergency threatening the life of the nation'. The mere fact that the detention concerned was in accordance with domestic law could not justify under A 15 measures derogating from A 5(3). The eventual conviction of a suspect at the most served to confirm that the suspicions which led to his arrest were well-founded, but was not indispensable. It had no bearing on the question whether there was a situation which necessitated the detention of suspects incommunicado for such lengthy periods, as their conviction did not give any indication of the circumstances surrounding both the deprivation of liberty and the investigation in issue, any more than it could remove after the event the risks of arbitrary treatment which A 5(3) was intended to prevent. Nor, consequently, could the conviction of a suspect justify, under A 15, the periods of detention in police custody imposed in the present case. The medical examinations, separated by periods of 23 days, were not in themselves safeguards sufficient to justify the excessive length of the applicants' detention. Nor could the fact that the applicants' lawyer was able to lodge a complaint be regarded as an effective guarantee against arbitrary treatment, especially as, being held incommunicado, the applicants were deprived of all contact with him. The applicants' incommunicado detention for 23 days, without any possibility of seeing a judge or other judicial officer, was not strictly required by the crisis relied on by the Government. There had accordingly been a breach of A 5(3).

Non-pecuniary damage (FF 20,000 to Mr Kaplan, FF 25,000 each to Mr Demir and Mr Süsin), no documentary evidence to support costs and expenses.

Cited: Aksoy v TR (18.12.1996), Brogan and Others v UK (29.11.1988), Brannigan and McBride v UK (26.5.1993), Chahal v UK (15.11.1996), Murray v UK (28.10.1994), Pressos Compania Naviera SA and Others v B (A 50) (3.7.1997), Sakik and Others v TR (26.11.1997), Yagci and Sargin v TR (8.6.1995).

Demirtepe v France 99/126

[Application lodged 22.1.1997, Commission report 1.12.1998, Court Judgment 21.12.1999]

Mr Bédirhan Demirtepe was convicted of offences and sentenced to a prison sentence. He complained that the prison authorities had opened letters from his lawyers, judicial authorities and prison chaplain. His appeals to the Court of Appeal and Court of Cassation were dismissed.

Comm found by majority (22–2) V 8.

Court unanimously rejected the Government's preliminary objection, found V 8.

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mrs H S Greve.

Preliminary objection of non-exhaustion rejected, the Government had not shown that the proceeding undertaken by the applicant was inappropriate or that the remedy in the administrative court was effective.

The opening of the applicant's correspondence amounted to an interference with his right to respect for his correspondence. That interference lacked a legal basis and was therefore unjustified.

Non-pecuniary damages (FF 5,000) costs and expenses (FF 12,060).

Cited: Campbell v UK (25.3.1992).

Deschamps v Italy 00/75

[Application lodged 13.7.1993; Commission report 27.10.1998; Court Judgment 15.2.2000]

Mr Luciano Deschamps complained about the length of civil proceedings.

Court found V 6(1).

Judges: Mr J-P Costa, President, Mr L Ferrari Bravo, Mr P Kûris, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The proceedings began on 21 July 1983 and were still pending, they had lasted more than sixteen and a half years. The period could not be considered reasonable.

Non-pecuniary damage (ITL 28,000,000) costs and expenses (ITL 10,000,000).

Cited: Bottazzi v I (28.7.1999).

Deumeland v Germany (1986) 8 EHRR 448 86/3

[Application lodged 15.4.1981; Commission report 9.5.1984; Court Judgment 29.5.1986]

Mr Klaus Dieter Deumeland continued the proceedings on behalf of his mother, who died on 8 December 1976. She had commenced proceedings before the social courts against the Land, represented by the Berlin Industrial Accident Insurance Office. She had applied for a widow's supplementary pension claiming that the death of her husband on 25 March 1970 had been the consequence of an industrial accident. Coming home on 12 January 1970 from an appointment with an ear, nose and throat specialist whom he had consulted on leaving his workplace, he had slipped on a snow-covered pavement, breaking his left thigh-bone. As an employee of the Berlin City Authorities, he was compulsorily insured against accidents. Proceedings were commenced in the Berlin Social Court on 16 June 1970. The Social Court rejected the claim. Mrs Deumeland appealed against the judgment on 23 November 1972 to the Berlin Social Court of Appeal. Following numerous proceedings, on 9 February 1981, the Federal Constitutional Court decided not to consider the complaint since, even assuming it to be admissible, its chances of succeeding were insufficient. The applicant applied for the proceedings to be reopened. On 23 November 1981, the Federal Social Court rejected the applicant's appeal. Mr Deumeland complained that the social courts had not given the case a fair hearing within a reasonable time, contrary to A 6(1).

Comm found by majority (8–6) 6(1) did not apply to present proceedings and no violation of it.

Court found by majority (9–8) V 6(1).

Judges: Mr G Wiarda, President, Mr R Ryssdal (jd), Mr J Cremona, Mr Thór Vilhjálmsson, Mr W Ganshof van der Meersch, Mrs D Bindschedler-Robert (jd), Mr G Lagergren (jd), Mr F Gölcüklü, Mr F Matscher (jd), Mr J Pinheiro Farinha (d), Mr L-E Pettiti (c), Mr B Walsh, Sir Vincent Evans (jd), Mr C Russo (c), Mr R Bernhardt (jd), Mr J Gersing (jd), Mr A Spielmann.

The Court considered its previous case-law regarding the applicability of A 6. There was a clear dispute in the present case which arose at the latest on the institution of proceedings before the Berlin Social Court on 16 June 1970. The dispute was genuine and serious, and concerned the actual existence of the right asserted by Mrs Deumeland to receive a widow's supplementary pension. The outcome of the relevant proceedings was capable of leading to confirmation of the decision being challenged, namely the refusal of the Land of Berlin to grant the pension; it was thus directly decisive for the right in issue. The notion of 'civil rights and obligations' could not be interpreted solely by reference to the domestic law of the respondent State. A 6 did not cover only private law disputes. Under German legislation, the right in issue was treated as a public law right.

That classification, however, provided only a starting point and could not be conclusive of the matter unless corroborated by other factors. However an analysis of the characteristics of the German system of industrial-accident social insurance disclosed that the claimed entitlement comprised features of both public law and private law. The factors suggesting that the dispute fell within the sphere of public law included the character of the legislation, the compulsory nature of the insurance and the assumption by the State of responsibility for social protection. But those 3 factors did not suffice to establish that A 6 was inapplicable. Considerations indicating the opposite conclusion included the personal and economic nature of the asserted right, connection with the contract of employment and affinities with insurance under the ordinary law. Having evaluated the relative cogency of the features of public law and private law present in the instant case, the Court found the latter to be predominant. None of the various features of private law was decisive on its own, but taken together and cumulatively they conferred on the asserted entitlement the character of a civil right within the meaning of A 6(1), which was therefore applicable.

The starting point of the period to be taken into account was 16 June 1970, the date on which the action was instituted before the Berlin Social Court. The period to be taken into account covered in principle the entirety of the litigation, including the appeal proceedings. In this case the Federal Constitutional Court was to be taken into account as, although it had no jurisdiction to rule on the merits, its decision was capable of affecting the outcome of the claim. However, the time spent by the Berlin Social Court of Appeal in examining the application for re-opening of the proceedings was not material because this application involved a fresh set of proceedings. The period ended on 9 February 1981, when the Federal Constitutional Court rejected Mr Deumeland's constitutional complaint. The period to be considered thus lasted 10 years, seven months, three weeks. The reasonableness of the length of proceedings had to be assessed in each instance according to the particular circumstances of the case and having regard to the criteria stated in the case-law of the Court. The case was not a difficult one. The applicant had contributed to prolonging the proceedings. A number of delays were attributable to the competent courts, primarily the Berlin Social Court and Social Court of Appeal. As a result of those delays, viewed together and cumulatively, the applicant's case was not heard within a reasonable time. The litigation had extended over almost 11 years. Whatever might have been the value of the benefit being claimed, an interval of such length was abnormal for the circumstances, especially having regard to the particular diligence required in social security cases. The applicant's case was not heard within a reasonable time, as required by A 6(1).

The applicant had not produced any evidence capable of supporting his allegations that he had not been given a fair hearing before an impartial tribunal.

Finding constituted adequate just satisfaction for A 50.

Cited: Benthem v NL (23.10.1985), Buchholz v D (6.5.1981), Engel and Others v NL (8.6.1976) Guincho v P (10.7.1984), König v D (28.6.1978), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Pretto and Others v I (8.12.1983), Ringeisen v A (16.7.1971), Sunday Times v UK (6.11.1980), Zimmermann and Steiner v CH (13.7.1983).

Deweer v Belgium (1979–80) 2 EHRR 439 80/1

[Application lodged 6.2.1975; Commission report 5.10.1978; Court Judgment 27.2.1980]

Mr Julius Deweer had been a retail butcher in Louvain since 1935. He died on 14 January 1978 and his widow and three daughters completed the proceedings he had instituted. On 18 September 1974 his shop was inspected by an official in the Economic Inspectorate General. This official found an infringement of the Ministerial Decree of 9 August 1974 'fixing the selling price to the consumer of beef and pigmeat'. The inspector did not supply a copy of the report to the applicant but submitted his formal statement to the procureur du Roi attached to the Louvain Court of First Instance. On 30 September, the Louvain procureur du Roi ordered the provisional closure of the applicant's shop within 48 hours from notification of the decision. The closure was to come to an end either on the day after the payment of a sum of BEF 10,000 by way of friendly settlement or, at

the latest, on the date on which judgment was passed on the offence. Mr Deweer had eight days in which to indicate whether he accepted the offer of settlement. By letter of 3 October the applicant replied stating that he would be paying the sum claimed by way of friendly settlement. Following payment, his shop was not closed. He did not bring any action before the civil courts for restitution of money paid over without cause and for damages; nor did he apply to the Conseil d'Etat for a declaration of annulment of the Decree of 9 August 1974. He complained to the Commission that the imposition of the fine by way of settlement under constraint of provisional closure of his establishment infringed his rights under A 6.

Comm unanimously found V 6(1), NV 6(2), NV P1A1, not necessary to consider 6(3).

Court unanimously rejected Government's preliminary objection and application to strike out, found V 6(1), not necessary to examine A 6(2) and 6(3), by majority (6–1) not necessary to examine P1A1.

Judges: Mr H Mosler, President, Mr M Zekia, Mr R Ryssdal, Mr W Ganshof van der Meersch, Mr P-H Teitgen, Mr F Gölcüklü, Mr J Pinheiro Farinha (pd).

The only remedies which A 26 required to be exercised were those that were both available and sufficient in respect of the violation alleged. An application for a declaration of annulment would have remedied certain of the consequences of the contested decision but not its cause. A 26 did not require the use of an indirect means of redress. An action for restitution of money paid over without cause and for damages would not have offered the applicant a genuine opportunity to argue his case. An application for a retrial of the criminal case was an extraordinary remedy under Belgian law. The objection of non-exhaustion of domestic remedies had not been substantiated therefore on any of the three counts submitted by the Government.

Regarding the request to strike the case off the list, the Court considered Rule 47 of the Rules of Court. In its judgment of 31 May 1978 the Conseil d'Etat had annulled the Decree of 9 August 1974. However, the leading issue raised by the case remained unresolved; that issue transcended the person and the interests of the applicant and his heirs. That being so, the Court had to proceed with the consideration of the issue.

The case had a criminal character. The 'charge' could, for the purposes of A 6(1), be defined as the official notification given to an individual by the competent authority of an allegation that he had committed a criminal offence. In those circumstances, the applicant was under a 'criminal charge' as from 30 September 1974. The 'right to a court', which was a constituent element of the right to a fair trial, was not absolute. By paying BEF 10,000 which the Louvain procureur du Roi required by way of settlement the applicant waived his right to have his case dealt with by a tribunal. Waiver did not in principle offend against the Convention. However, in this case the applicant's waiver of a fair trial attended by all the guarantees which are required in the matter by the Convention was tainted by constraint (closure of his shop). There had accordingly been a breach of A 6(1).

A 6(2) and 6(3) represented specific applications of the general principle stated in A 6(1). In finding a breach of A 6(1), it was not necessary to examine A 6(2) or 6(3). The collection of the sum from the applicant, having been effected in conditions incompatible with A 6(1), was unlawful and, accordingly, it was superfluous to determine whether the collection also offended P1A1.

Reimbursement (BEF 10,000), costs and expenses (FF 800).

Cited: Airey v IRL (9.10.1979), De Wilde, Ooms and Versyp v B (18.11.1970), Delcourt v B (17.1.1970), Engel and Others v NL (8.6.1976), Golder v UK (21.2.1975), Ireland v UK (18.1.1978), Kjeldsen, Busk, Madsen and Pedersen v DK (7.12.1976), König v D (28.6.1978) Luedicke, Belkacem and Koç v D (28.11.1978), Neumeister v A (27.6.1968), Nielsen v DK (28.11.1988) Ringeisen v A (16.7.1971), Stögmüller v A (10.11.1969), Wemhoff v D (27.6.1968).

Dewicka v Poland 00/112

[Application lodged 26.2.1997; Court Judgment 4.4.2000]

Mrs Janina Dewicka, born in 1911, sought a contract with the telecommunications company in 1991 for the installation of a telephone. She was told it was technically impossible at the time. In

June 1993 she sued the company. Her claim was dismissed in August 1997. Her appeal was upheld in January 1998. By March 1999 she had been unable to obtain an enforcement order from the first instance court. She complained about the length of the civil proceedings.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mr I Cabral Barreto, Mr V Butkevych, Mrs S Botoucharova.

The period under consideration began on 19 June 1993, when the applicant lodged her claim with the Wroclaw-Krzyki District Court. The proceedings on the merits came to an end on 21 January 1998, when the Wroclaw Regional Court allowed the applicant's appeal and granted her claim. However, as of 20 March 1999 at the latest, the applicant was unable to institute enforcement proceedings since the Wroclaw-Krzyki District Court had failed to provide her with an enforcement order. For the purposes of A 6(1), the termination of the proceedings on the merits of the claim did not always constitute an end of a 'determination of a civil right' within the meaning of that provision. What was decisive was the point at which the right asserted by a claimant actually became 'effective', that is to say, when his civil claim was finally satisfied. Where the party to civil proceedings had to institute enforcement proceedings in order to satisfy his or her judicially-determined claim, those proceedings had to be regarded as a second stage of proceedings on the merits and, consequently, their integral part. Accordingly, the length of the proceedings to be considered under A 6(1) was at least five years and nine months. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular, the complexity of the case, the conduct of the applicant and that of the relevant authorities, and the importance of what was at stake for the applicant in the litigation. The case concerned the determination of the applicant's right to enter into a simple civil contract. The only issue relevant for the final ruling was whether it was technically feasible for the defendant to install a telephone line in the applicant's apartment. The fact that the court had to obtain expert evidence concerning that matter could not in itself render the case a complicated one. The applicant, like her opponent, considered that the stay of the proceedings might expedite the determination of her claim, in particular because the relevant expert report was to be obtained in those other proceedings. There was no reason why the applicant's exercise of her procedural rights in that instance could be seen as unreasonable or dilatory conduct. What was at stake in the litigation was undoubtedly of crucial importance to the applicant. Her very great age, her disability and the fact that the outcome of the case was of vital significance for her basic human needs, in particular, the need to maintain essential contact with the outside world, required that the domestic courts show special diligence in handling her case. Having regard to the period of inactivity on the part of the authorities and to what was at stake for the applicant in the litigation and the overall length of the proceedings, the requirement of the reasonable time in A 6(1) was not complied with in the present case. There had therefore been a breach of that provision.

Non-pecuniary damage (PLN 15,000)

Cited: Humen v PL (15.10.1999), Styranowski v PL (30.10.1998), Zappia v I (26.9.1996).

Di Annunzio v Italy 00/118

[Application lodged 14.5.1997; Court Judgment 5.4.2000]

The applicant complained about the length of civil proceedings.

Court unanimously found V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mrs M Tsatsa-Nikolovska, Mr A B Baka.

The period to be taken into consideration began on 18 November 1991 and ended on 27 January 1997, it had lasted a little more than five years, two months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 10 million) costs and expenses (ITL 2,500,000).

Cited: Bottazzi v I (28.7.1999).

Di Antonio v Italy 00/139

[Application lodged 23.2.1998; Court Judgment 28.4.2000]

The applicant complained about the length of civil proceedings which had lasted over 5 years 8 months at two levels of jurisdiction.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr B Conforti, Mr G Rees, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mrs N Vajic.

The period to be taken into consideration began on 16 March 1992 and ended on 11 December 1997. It had lasted more than five years, eight months at two levels of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 13,000,000), costs and expenses (ITL 3,000,000).

Cited: Bottazzi v I (28.7.1999).

Di Luca and Saluzzi v Italy 97/62

[Application lodged 3.2.1994; Commission report 28.11.1995; Court Judgment 2.9.1997]

Mr Giustino Di Luca and Mr Osvaldo Saluzzi were surveyors. On 21 December 1989 they instituted proceedings against the Ministry of Finance in the Apulia Regional Administrative Court (RAC), seeking judicial review of a decision of the Ministry assigning them to a category of staff and salary scale lower than those to which they considered themselves to be entitled on the basis of the duties they had performed as temporary staff. The case was set down for hearing on 7 February 1996. They complained about the length of proceedings.

Comm found by majority (24–5) V 6.

Court found by majority (8–1) 6(1) not applicable.

Judges: Mr R Bernhardt, President, Mr C Russo, Mr N Valticos, Mr R Pekkanen (d), Mr AB Baka, Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr P Kûris, Mr E Levits.

The Court reviewed its previous case-law and noted that in the law of many Member States there was a basic distinction between civil servants and employees governed by private law. That had led it to hold that 'disputes relating to the recruitment, careers and termination of service of civil servants were as a general rule outside the scope of A 6(1). In the present case the dispute related to the applicants' recruitment and their career and did not concern a 'civil' right within the meaning of A 6(1). Accordingly, A 6(1) was not applicable in the case.

Cited: Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993), Scollo v I (28.9.1995), Hussain v UK (21.2.1996), Neigel v F (17.3.1997).

Di Mauro v Italy 99/46

[Application lodged 30.1.1996; Commission report 20.5.1998; Court Judgment 28.7.1999]

On 5 March 1984 Mrs V, the owner of a flat rented by the applicant, instituted proceedings against him in the Rome magistrates' court. She sought to have the lease terminated and the applicant evicted because of late payment of the rent. Her application for a possession order was dismissed on 18 July 1984. Her appeals to the District Court and the Court of Appeal were dismissed. She appealed to the Court of Cassation which in a judgment of 19 June 1991 quashed the Court of Appeal's judgment and remitted the case to a different division of the Court of Appeal. The landlady on 12 March 1993 resumed the proceedings in the Court of Appeal. In a judgment of 5 July 1995, the text of which was deposited with the registry on 7 September 1995, the Court of Appeal terminated the lease on the ground that the applicant was in breach of its terms. On 29

February 1996 the applicant appealed on points of law to the Court of Cassation, which quashed the Court of Appeal's judgment and remitted the case to a different division of the Court of Appeal. The court's judgment of 7 January 1997 was deposited with the registry on 13 May 1997. The proceedings automatically lapsed on 27 December 1997, as neither party had resumed them.

Comm found by majority (10–6) V 6(1).

Court found by majority (15–2) V 6(1).

Judges: Mrs E Palm, President, Mr A Pastor Ridruejo, Mr L Ferrari Bravo (d), Mr G Bonello, Mr R Türmen (pd), Mr J-P Costa (d), Mrs F Tulkens, Mrs V Stráznická, Mr P Lorenzen, Mr W Fuhrmann, Mr M Fischbach, Mr V Butkevych, Mr J Casadevall, Mrs HS Greve (pd), Mr A Baka, Mr R Maruste, Mrs S Botoucharova.

The period to be taken into consideration began on 5 March 1984, when proceedings were instituted against the applicant in the Rome magistrates' court. It ended on 27 December 1997, when the proceedings lapsed on account of the parties' failure to resume them. It therefore lasted almost 13 years and 10 months. A 6(1) imposed on Contracting States the duty to organise their judicial systems in such a way that their courts could meet the requirements of the provision. The Court reaffirmed the importance of administering justice without delays which might jeopardise its effectiveness and credibility. Since 25 June 1987, the date of the *Capuano v Italy* judgment, the Court had delivered 65 judgments in which it had found violations of A 6(1) in proceedings exceeding a 'reasonable time' in the civil courts of the various regions of Italy. Similarly, more than 1,400 reports of the Commission resulted in resolutions by the Committee of Ministers finding Italy in breach of A 6 of the Convention for the same reason. The frequency with which violations were found showed that there was an accumulation of identical breaches which were sufficiently numerous to amount not merely to isolated incidents. Such breaches reflected a continuing situation that had not yet been remedied and in respect of which litigants had no domestic remedy. The accumulation of breaches accordingly constituted a practice that was incompatible with the Convention. The length of the proceedings was excessive and failed to meet the 'reasonable time' requirement. Accordingly there had been a violation of A 6(1).

Non-pecuniary damage (ITL 5,000,000), costs and expenses (ITL 10,000,000).

Cited: Capuano v I (25.6.1987), Katte Klitsche de la Grange v I (27.10.1994), Salesi v I (26.2.1993).

Di Niro v Italy 00/195

[Application lodged 7.11.1997; Court Judgment 27.7.2000]

Mrs Carmela Di Niro complained about the length of civil proceedings.

Court found V 6(1).

Judges: Mr C Rozakis, President, Mr A B Baka, Mr B Conforti, Mr G Bonello, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska, Mr E Levits.

The period to be taken into consideration began on 18 August 1998 and was still pending. It had lasted a little more than 6 years 10 months at two levels of jurisdiction.

Non-pecuniary damage (ITL 16,000,000), costs and expenses (ITL 3,000,000).

Cited: Bottazzi v I (28.7.1999)

Di Pede v Italy 96/38

[Application lodged 3.7.1989; Commission report 6.7.1995; Court Judgment 26.9.1996]

On 14 July 1978 Mr Francesco Paolo Di Pede brought proceedings against Mr V and Mrs L in the Matera District Court seeking an order requiring them to demolish a building erected in breach of the statutory provisions on minimum distances from the boundaries of adjacent properties and to remove four trees for the same reason. The first hearing was held on 13 October 1978. On 11 March 1986 the Matera District Court found in the applicant's favour, but ruled that new proceedings should be brought to determine the amount of damages to be paid to him. On 24 May 1986 Mr V

and Mrs L appealed, but the proceedings were terminated because they had omitted to register their notice of appeal with the Potenza Court of Appeal. On 26 April 1988, the applicant applied for enforcement proceedings to the Matera magistrate. On 28 December 1988 the surveyor's report stated that the works had been partially completed. The applicant complained of the length of proceedings.

Comm found by majority (23–6) V 6, (25–4) not necessary to examine whether P1A1.

Court by majority (8–1) rejected the Government's preliminary objection, found V 6(1), unanimously not necessary to consider P1A1.

Judges: Mr R Bernhardt, President, Mr F Matscher, Mr C Russo, Mr AN Loizou, Mr JM Morenilla (d), Mr MA Lopes Rocha, Mr L Wildhaber, Mr U Lôhmus, Mr E Levits.

The enforcement had to be regarded as the second stage of the proceedings which began on 14 July 1978. To date, no final decision within the meaning of A 26 had been given. There was no evidence that the case had been discontinued. Accordingly the objection that the application was out of time was dismissed.

The period to be taken into consideration began on 14 July 1978 when proceedings were brought against Mr V and Mrs L in the Matera District Court. The relevant period had not yet ended. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the parties. The case was not complex. The applicant was responsible for some of the delay but the authorities bore most of the responsibility. A period of more than 18 years could not be regarded as reasonable.

In view of the conclusion on A 6 it was not necessary to determine whether there had been a breach of P1A1.

Damages (ITL 15,000,000).

Cited: Ausiello v I (21.5.1996), Silva Pontes v P (23.3.1994), Zanghì v I (19.2.1991).

Di Rosa v Italy 99/115

[Application lodged 7.2.1997; Court Judgment 14.12.1999]

Mr Alfredo Di Rosa complained about the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mrs M Tsatsa-Nikolovska, Mr A Baka.

The period to be taken into consideration began on 29 January 1986 and was still pending. It had lasted more than 13 years, 10 months at two levels of jurisdiction.

Non-pecuniary damage (ITL 12,000,000), costs and expenses (ITL 5,454,388).

Cited: Bottazzi v I (28.7.1999).

Diana v Italy 92/12

[Application lodged 3.10.1985; Commission report 15. 1.1991; Court Judgment 27.2.1992]

Mr Giovanni Diana brought an action by summons served on 12 and 14 April 1978 against Mr Z and Mrs V before the Savona District Court to establish that he had lawfully altered the conditions governing the use of a right of way to which his property was subject. On 5 June 1981 the action was joined with two other actions. After the hearing on 8 May 1987 the court found for the applicant. On 23 October 1987 Mr Z and Mrs V appealed. On 5 October 1989 the appeal was dismissed and the decision was lodged with the registry on 30 October 1989. The Court of Appeal's judgment became final on 29 January 1990. The applicant complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into account began on 12 April 1978 when the proceedings against Mr Z were instituted in the Savona District Court. It ended, at the latest, on 29 January 1990 when the Court of Appeal's judgment became final. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The case was of some complexity, which complexity was increased on 5 June 1981 following its joinder with two other cases. There were numerous hearings, some of them concerned with attempting to secure an out-of-court settlement; the parties had also been responsible for some adjournments. The transfer of the investigating judge had resulted in the proceedings remaining dormant until he was replaced approximately seventeen months later. Furthermore there was a long period of stagnation of nearly 21 months before the District Court. Thereafter the proceedings had been conducted at an acceptable pace. Although the Government pleaded the backlog of cases, A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. The overall lapse of time in the case could not be regarded as reasonable.

Non-pecuniary damage (ITL 2,000,000), costs and expenses (ITL 2,000,000).

Cited: Vocaturo v I (24.5.1991).

Calogero Diana v Italy 96/51

[Application lodged 30.5.1989; Commission report 28.2.1995; Court Judgment 15.11.1996]

Mr Calogero Diana was arrested and detained on suspicion of having taken part in the activities of the Red Brigades terrorist organisation. He was convicted of numerous criminal offences. He was sentenced to life imprisonment, permanently disqualified from holding public office, stripped of his civic rights for the duration of his prison sentence and removed from parental control. During detention his correspondence was subject to censorship, in particular that with his lawyer. He complained that there had been infringements of his right to respect for his correspondence, that there had been a breach of his right to defend himself and to have all necessary facilities for the preparation of his defence, that he had not obtained a decision by an impartial tribunal on his application to have the censorship of his correspondence ended and that there were no effective remedies in respect of the alleged breaches of the Convention.

Comm found unanimously V 8, no separate issue under 6(3), V 13.

Court unanimously dismissed Government's preliminary objection, found V 8, no separate issue under 6(3)(b), V 13.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr C Russo, Mr AN Loizou, Mr AB Baka, Mr B Repik, Mr P Kûris, Mr U Lôhmus.

There was interference by a public authority with the exercise of the applicant's right to respect for his correspondence with his lawyer. A law which conferred a discretion had to indicate the scope of that discretion although it was impossible to attain absolute certainty in the framing of the law, and the likely outcome of any search for certainty would be excessive rigidity. The domestic legislation in this case, Law No 354, left the authorities too much latitude. The Italian law did not indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities, so that the applicant did not enjoy the minimum degree of protection to which citizens were entitled under the rule of law in a democratic society. There had therefore been a breach of A 8. It was not therefore necessary to ascertain whether the other requirements of para 2 of A 8 were complied with.

The applicant's complaints under A 6(3)(b) could be regarded as being covered under A 8 and did not need to examined separately.

The possibility of applying to the judge responsible for the execution of sentences could not be regarded as an effective remedy for the purposes of A 13, as he was required to reconsider the merits of his own decision, taken without any adversarial proceedings. In addition the Court of Cassation had held that Italian law did not provide any remedies in respect of decisions whereby prisoners' correspondence had been ordered to be monitored and no regional administrative court had delivered a judgment on the subject. The Court therefore dismissed the Government's preliminary objection and held that there had been a breach of A 13.

Judgment constituted sufficient just satisfaction for non-pecuniary damage.

Cited: Campbell v UK (25.3.1992), Huvig v F (24.4.1990), Kruslin v F (24.4.1990), Silver and Others v UK (25.3.1983).

Díaz Ruano v Spain (1995) 19 EHRR 555 94/17

[Application lodged 12.7.90; Commission report 31.8.93; Court Judgment 26.4.94]

In the course of a police inquiry into several thefts, Mr Manuel Jesús Díaz Santana, the applicant's son, aged 21, was arrested at his home on 13 October 1982. He died from being shot whilst in police custody. In addition to the gunshot wound, there were a number of other marks to the body. A police officer was convicted of homicide with the extenuating circumstance of self-defence, but this conviction was quashed on appeal. An appeal by the applicant was declared inadmissible. The applicant alleged, *inter alia*, that his son had been subjected to torture and inhuman and degrading treatment while in police custody, in breach of A 3.

Commission found by a majority NV 2 and 3.

Court noted the friendly settlement and struck the case from the list.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr F Matscher, Mr SK Martens, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla, Mr B Repik, Mr P Jambrek.

The Court took formal note of the friendly settlement reached by the Government and the applicant. It discerned no reason of public policy why the case should not be struck out of the list.

FS (ESP 6,000,000 ex gratia payment to the applicant), therefore SO.

Diennet v France (1996) 21 EHRR 554 95/27

[Application lodged 18.4.1991; Commission report 5.4.1994; Court Judgment 26.9.1995]

Dr Marcel Diennet, a general practitioner, was subject to proceedings for professional misconduct in respect of his method of 'consultation by correspondence'. On 11 March 1984 the Regional Council of the Ile-de-France ordre des médecins struck him off the register. He appealed to the disciplinary section of the National Council of the ordre des médecins, which on 30 January 1985 ordered that he should be disqualified from practising medicine for three years instead of being struck off. As a result of appeal to the Conseil d'Etat the decision was quashed on the ground of an irregularity in the proceedings and the case was remitted to the disciplinary section. On 26 April 1989, after a hearing in private, the disciplinary section of the National Council again disqualified the applicant from practising medicine for three years. He appealed to the Conseil d'Etat, alleging that the composition of the disciplinary section did not satisfy the impartiality requirement of A 6(1) and that the hearing of 26 April 1989 had not been held in public. On 29 October 1990 the Conseil d'Etat dismissed the appeal.

Comm found unanimously V 6(1) regarding right to a hearing in public, by majority (14–9) NV 6(1) regarding right to an impartial tribunal.

Court found unanimously V 6(1) in that the applicant did not receive a public hearing, by majority (8–1) NV 6(1) regarding impartial tribunal.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr L-E Pettiti, Mr R Macdonald, Mr C Russo, Mrs E Palm, Mr JM Morenilla (pd), Mr L Wildhaber, Mr P Kûris.

The Court referred to its previous case-law and noted that disciplinary proceedings in which the right to continue to practise medicine as a private practitioner was at stake gave rise to disputes over civil rights within the meaning of A 6(1). A 6(1) therefore applied to the case. It was unnecessary to determine whether there was any 'criminal charge' against him within the meaning of A 6(1) as the breaches he alleged applied to both civil and criminal matters.

The holding of court hearings in public constituted a fundamental principle enshrined in A 6(1). This public character protected litigants against the administration of justice in secret with no public scrutiny and was also one of the means whereby confidence in the courts could be maintained. The principle was not an absolute one. The Court took into account that the Government did not dispute that the hearings before the disciplinary bodies of the ordre des médecins had not been held in public; that the Conseil d'Etat hearing appeals on points of law from decisions of the disciplinary section of the National Council of the ordre des médecins could not be regarded as a judicial body that had full jurisdiction so its public hearings were not sufficient to remedy the defect found to exist at the stage of the disciplinary proceedings; and that while the need to protect professional confidentiality and the private lives of patients might justify holding proceedings in camera, such an occurrence had to be strictly required by the circumstances and in this case the proceedings were to deal only with the 'method of consultation by correspondence' adopted by the applicant, there was no reason to suppose that any patient or confidences would be mentioned. In this case, there had been a breach of A 6(1) in that the applicant did not receive a public hearing before the Regional Council and the disciplinary section of the National Council of the ordre des médecins.

No ground for legitimate suspicion could be discerned in the fact that three of the seven members of the disciplinary section had taken part in the first decision. Even if the second decision had been differently worded, it would necessarily have had the same basis because there were no new factors. The applicant's fears could not be regarded as having been objectively justified. Accordingly there had been no breach of A 6(1).

Judgment constituted just satisfaction for damage. Costs and expenses (FF 20,000).

Cited: Albert and Le Compte v B (10.2.1983), König v D (28.6.1978), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Ringeisen v A (16.7.1971), Schuler-Zgraggen v CH (24.6.1993), Sutter v CH (22.2.1984).

Dikme v Turkey 00/175

[Application lodged 22.10.1992; Commission report 4.6.1999; Court Judgment 11.7.2000]

Mr Metin Dikme was found to be in possession of false identity papers and detained by the Anti-Terrorist Brigade of the Security Forces for 16 days. He claimed that during the period he was blindfolded while being questioned, subjected to 'Palestinian hanging', given electric shocks to parts of his body and subjected to mock execution. He had no contact with the outside world but was examined by a medical practitioner at the end of the 16 days and taken before a judge. His mother was refused permission to visit him. At his trial he retracted the admissions he had made whilst in custody and lodged a complaint of torture against the officers who had questioned him. He was convicted and sentenced to death. The Court of Cassation set aside the judgment and remitted the case back to the State Security Court where it was still pending.

Comm found unanimously V 3, 5(3), 6(1)+6(3)(c), NV 5(2), NV 8.

Court unanimously rejected the Government's preliminary objections, found unanimously NV 5(2), V 5(3), V 3, NV 6(1)+6(3)(c), NV 8.

Judges: Mrs E Palm, President, Mr L Ferrari Bravo, Mr C Bîrsan, Mrs W Thomassen, Mr B Zupancic, Mr R Maruste, Mr F Gölcüklü, ad hoc judge.

The Government failed to communicate their preliminary objections regarding failure to exhaust domestic remedies and the six-month time limit in time.

The applicant had been stopped and questioned whilst in possession of false papers and could not therefore claim that he did not know the reason for his arrest. He was able to realise the nature of the suspicions against him and accordingly no violation of A 5(2).

Although it was consistent with national provisions applying to terrorism, being held in custody for 16 days before being brought before a judge breached the prompt review requirement of A 5(3).

The evidence provided by the applicant, medical reports and lack of denials by the Government showed beyond reasonable doubt that the applicant had suffered forms of torture. His suffering was exacerbated by being kept isolated and blindfolded. The treatment was intended to humiliate him, degrade him and break his resistance and was inhuman and degrading. The number, duration and purpose of the assaults gave them a particularly grave and cruel nature likely to cause acute suffering which justified them being classified as torture in breach of A3.

The applicant's conviction was quashed on the grounds of insufficient evidence. As the case was still pending it was not possible to examine the question of the fairness of the trial under A 6(1)+6(3)(c).

The mother's desire to see the applicant fell within A 8, but she had not pursued her attempts. The State had not exceeded their margin of appreciation in controlling visits to persons in detention.

Non-pecuniary damages (FF 200,000), costs and expenses (FF 10,000).

Cited: Aksoy v TR (18.12.1996), Artico v I (13.5.1980), Assenov and Others v BG (28.10.1998), Boyle and Rice v UK (27.4.1988), Brogan and Others v UK (29.11.1988), Chahal v UK (15.11.1996), Ciulla v I (22.22.1989), De Wilde, Ooms and Versyp v B (18.6.1971), Demir and Others v TR (23.9.1998), Fox, Campbell et Hartley v UK (30.8.1990), Freedom and Democracy Party (ÖZDEP) v TR (8.12.1999), Golder v UK (7.5.1974), Ilhan v TR (27.6.2000), Imbriosca v CH (24.11.1993), Labita v I (6.4.2000), Murray v UK (28.10.1994), John Murray v UK (8.2.1996), Ribitsch v A (4.12.1995), Sakik and Others v TR (26.11.1997), Schönenberger and Durmaz v CH (20.6.1988), Selmouni v F (28.7.1999), Silver and Others v UK (25.3.1983).

Djaid v France 99/59

[Application lodged 23.7.1995; Court Judgment 29.9.1999]

Mr Karim Djaid, an Algerian national, was arrested in connection with international drug trafficking. He was convicted on 18 April 1994, the conviction was upheld by the Lyon Court of Appeal on 9 February 1995. On 14 February 1995 he lodged an appeal to the Court of Cassation. That appeal was rejected on 21 May 1997. He complained of the length of the proceedings.

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr L Loucaides, Mr P Kûris, Mrs F Tulkens, Mr K Jungwiert, Mrs H S Greve.

The period to be taken into consideration began on 6 November 1992 and ended on 21 May 1997. It had lasted 4 years 6 months 15 days at three levels of jurisdiction. The case was of some complexity as it concerned international drug trafficking, but the parties agreed that the investigation was carried out diligently as were the proceedings before the first instance and appeal courts. The proceedings before the Court of Cassation lasted two years, three months, 12 days and although the applicant was partly responsible for the length of the proceedings having requested extensions of time-limits, that could not justify the length of the procedure. Almost a year passed between the lodging of the judge-rapporteur's report and the judgment of the court for which the Government had not provided any convincing explanation. In addition, the obligation of expedition on the Government was particularly important for the applicant as he was regarded under domestic law as being in detention on remand.

No claim submitted but applicant had undoubtedly sustained non-pecuniary damage (FF 20,000).

Cited: Eckle v D (15.7.1982), IA v F (23.9.1998), Pélissier and Sassi v F (25.3.1999), Philis (No 2) v GR (27.6.1997), Portington v GR (23.9.1998).

Djeroud v France (1992) 14 EHRR 68 91/1

[Application lodged 25.9.1987; Commission report 15.3.1990; Court Judgment 23.1.1991]

Mr Mohamed Djeroud, an Algerian national born in Algeria in 1958, arrived in France the following year with his family. His mother and his six brothers and sisters, four of whom have French nationality, live in France. He was convicted of criminal offences on several occasions in 1977 and 1978. In February 1979 the Minister of the Interior ordered his deportation on the ground that he represented a danger to public order. He went to Algeria of his own accord in 1980 but returned to France in 1982, where he lived until 1985. He continued to commit further offences. He was deported in February 1985 and again in April 1987 but returned to France each time. In December 1987 he refused to board an aeroplane for Algeria, as a result of which he served a prison sentence in France. Since 1988 he had been the subject of a compulsory residence order confining him to a municipality near Paris, until he complied with the deportation order. Various attempts to secure the revocation of that order failed, as did an application for political asylum in 1987.

Comm found by a majority (13–1) V 8, unanimously NV 3.

Court noted the friendly settlement and struck the case from the list.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Sir Vincent Evans, Mr C Russo, Mr J De Meyer, Mr N Valticos, Mr SK Martens, Mr JM Morenilla.

The Court took formal note of the friendly settlement reached by the Government and the applicant. It discerned no reason of public order militating against striking the case out of the list.

FS (revocation of deportation order, issue of 10 year residence permit and FF 150,000 compensation), therefore SO.

Dobbertin v France (1993) 16 EHRR 558 93/6

[Application lodged 19.6.1987; Commission report 10.9.1991; Court Judgment 25.2.1993]

Mr Rolf Dobbertin, a national of the German Democratic Republic, was a plasma physicist and was working in Paris as a research assistant under contract to the French National Scientific Research Centre. On 19 January 1979 he was arrested by the police and held in police custody until 25 January 1979, when he appeared before the investigating judge at the National Security Court who charged him with being in communication with agents of a foreign power, namely the German Democratic Republic. Proceedings commenced before the National Security Court until its abolition when the proceedings were transferred to the Paris Court of Appeal. In a judgment of 23 March 1983 the Indictment Division ordered the applicant's release under judicial supervision and on bail. The proceedings continued and on 15 June 1990 he was convicted and sentenced to 12 years' imprisonment. Following further appeals the case was remitted to a differently constituted bench of the Paris special Assize Court, which on 29 November 1991 acquitted the applicant. The prosecution did not appeal within the five day period laid down in the Code of Criminal Procedure. The applicant complained about the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr F Gölcüklü, President, Mr L-E Pettiti, Mr B Walsh, Mr A Spielmann, Mr N Valticos, Mrs E Palm, Mr R Pekkanen, Sir John Freeland, Mr AB Baka.

The period to be considered began on 19 January 1979 when Mr Dobbertin was arrested and ended at the latest on 4 December 1991 when the period during which the prosecution could have appealed on points of law against the Paris Assize Court's acquittal of the applicant expired. It therefore lasted a just over twelve years and ten months. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. Although the applicant's case presented real

difficulties arising from the highly sensitive nature of the offences charged, which related to national security, those difficulties could not on their own justify the total length of the proceedings. Regarding the applicant's conduct, A 6 did not require a person charged with a criminal offence to co-operate actively with the judicial authorities. A 6(1) imposed on Contracting States the duty to organise their judicial systems in such a way that their courts could meet each of its requirements. Although the National Security Court and the Paris Military Court appeared to have shown the necessary diligence, once they had been abolished the authorities took no steps to ensure that the cases still pending, including the applicant's, were dealt with swiftly. The ordinary courts were slow to resolve the issues, nine months to determine the validity of the indictment and more than two years before the order commissioning experts was quashed, making it necessary for a fresh investigation to be carried out, with the result that the applicant was not committed for trial until more than ten years after his arrest by the police and more than six years after regaining his freedom. The total length of the proceedings exceeded a reasonable time, there had therefore been a breach of A 6(1).

Non-pecuniary damage (FF 200,000), costs and expenses (FF 142,508).

Cited: Corigliano v I (10.12.1982), Francesco Lombardo v I (26.11.1992).

Dombo Beheer BV v Netherlands (1994) 18 EHRR 213 93/46

[Application lodged 15.8.1988; Commission report 9.9.1992; Court Judgment 27.10.1993]

The applicant was a limited liability company under Netherlands law. A dispute arose between the applicant company and its bank concerning the development of their financial relationship between December 1980 and February 1981. Civil proceedings ensued. At trial the court refused to allow the former managing director of the applicant company to give evidence as he was a witness, whereas the branch manager of the Bank, who had been the only other person present when the oral agreement was entered into, had been able to testify. The Supreme Court dismissed the applicant's appeal on 19 February 1988. The applicant company complained that the refusal of the courts to hear its director (or former director) as a witness, while the manager of the branch office of its opponent was heard, placed it at a disadvantage vis-à-vis its opponent and constituted a breach of the principle of 'equality of arms' enshrined in A 6(1).

Comm found by majority (14–5) V 6(1).

Court found by majority (5–4) V 6(1).

Judges: Mr R Ryssdal, President, Mr R Bernhardt (jd), Mr L-E Pettiti (d), Mr B Walsh, Mr S K Martens (d), Mr I Foighel, Mr R Pekkanen (jd), Mr MA Lopes Rocha, Mr G Mifsud Bonnici.

The competence of witnesses was primarily governed by national law. The Court's task was not to substitute its own assessment of the facts for those of the national courts but to ascertain whether the proceedings in their entirety, including the way in which evidence was permitted, were 'fair' within the meaning of A 6(1). The requirements inherent in the concept of 'fair hearing' were not necessarily the same in cases concerning the determination of civil rights and obligations as they were in cases concerning the determination of a criminal charge. Although the detailed provisions of A 6(2) and 6(3) had a certain relevance outside the strict confines of criminal law, Contracting States had greater latitude when dealing with civil cases concerning civil rights and obligations than they had when dealing with criminal cases. However, the requirement of 'equality of arms', in the sense of a 'fair balance' between the parties, applied in principle to civil cases as well as to criminal cases. In litigation involving opposing private interests, 'equality of arms' implied that each party had to be afforded a reasonable opportunity to present his case, including his evidence, under conditions that did not place him at a substantial disadvantage vis-à-vis his opponent. In the present case, it was for the applicant company to prove that there was an oral agreement between it and the Bank to extend certain credit facilities. Only two persons had been present at the meeting at which this agreement had allegedly been reached, one representing the applicant company and the other representing the Bank. Yet only one of those two key persons was permitted to be heard,

the Bank's representative. The applicant company was denied the possibility of calling the person who had represented it, because the Court of Appeal identified him with the applicant company itself. During the relevant negotiations the two representatives had acted on an equal footing, both being empowered to negotiate on behalf of their respective parties. Therefore, both should have been allowed to give evidence. The applicant company was placed at a substantial disadvantage vis-à-vis the Bank and there had therefore been a violation of A 6(1).

Costs and expenses (NLG 40,000 less FF 16,185).

Cited: Albert and Le Compte v B (10.2.1983), Feldbrugge v NL (26.5.1986), Lüdi v CH (15.6.1992), Schuler-Zgraggen v CH (24.6.1993).

Domenichini v Italy 96/52

[Application lodged 6.11.1989; Commission report 6.9.1995; Court Judgment 15.11.1996]

Mr Massimo Domenichini had been in custody since 5 December 1980 in connection with various criminal proceedings brought against him on suspicion of his having taken part in the activities of the Prima Linea terrorist organisation. He complained, *inter alia*, that there had been infringements of his right to respect for his correspondence which was subject to censorship, that there had been a breach of his right to defend himself and to have all necessary facilities for the preparation of his defence and that there were no effective remedies in respect of the alleged breaches of the Convention.

Comm found unanimously V 8, no separate issue under 6(3), V 13.

Court unanimously dismissed Government's preliminary objection, found V 8, V 6(3)(b), V 13.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr C Russo, Mr AN Loizou, Mr AB Baka, Mr B Repik, Mr P Kûris, Mr U Lôhmus.

There was interference by a public authority with the exercise of the applicant's right to respect for his correspondence with his lawyer. A law which conferred a discretion had to indicate the scope of that discretion although it was impossible to attain absolute certainty in the framing of the law, and the likely outcome of any search for certainty would be excessive rigidity. The domestic legislation in this case, Law No 354, left the authorities too much latitude. The Italian law did not indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities, so that the applicant did not enjoy the minimum degree of protection to which citizens were entitled under the rule of law in a democratic society. There had therefore been a breach of A 8. It was not therefore necessary to ascertain whether the other requirements of paragraph 2 of A 8 were complied with.

The letter of instruction to appeal from the appellant to his lawyer had been intercepted at the prison, read and then forwarded to the lawyer after the statutory ten days for filing appeal had elapsed. The monitoring of the letter infringed the applicant's defence rights. His lawyer filed the grounds in support after the statutory ten-day period had expired. There had consequently been a breach of A 6(3)(b).

The possibility of applying to the judge responsible for the execution of sentences could not be regarded as an effective remedy for the purposes of A 13, as he was required to reconsider the merits of his own decision, taken without any adversarial proceedings. In addition the Court of Cassation had held that Italian law did not provide any remedies in respect of decisions whereby prisoners' correspondence had been ordered to be monitored and no regional administrative court had delivered a judgment on the subject. The Court therefore dismissed the Government's preliminary objection and held that there had been a breach of A 13.

Judgment constituted just satisfaction for non-pecuniary damage.

Cited: Campbell v UK (25.3.1992), Huvig v F (24.4.1990), Kruslin v F (24.4.1990), Silver and Others v UK (25.3.1983).

Donsimoni v France 99/60

[Application lodged 25.6.1997; Court Judgment 5.10.1999]

The applicant complained about the length of criminal proceedings.

Court found unanimously V 6(1).

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr L Loucaides, Mr P Kûris, Mrs F Tulkens, Mr K Jungwiert, Mrs HS Greve.

The proceedings had lasted five years, six months and were still pending. The period could not be considered reasonable.

Non-pecuniary damage (35,000 FF), costs and expenses (15,000 FF).

Cited: Demir and Others v TR (23.9.1998), Eckle v D (15.7.1982), IA v F (23.9.1998), Nikolova v BG (25.3.1999), Pélissier and Sassi v F (25.3.1999), Philis (no 2) v GR (27.6.1997), Portington v GR (23.9.1998), Zana v TR (25.11.1997).

Doorson v Netherlands (1996) 22 EHRR 330 96/14

[Application lodged 27.6.1992; Commission report 11.10.1994; Court Judgment 26.3.1996]

On 12 April 1988 the applicant was arrested and detained on suspicion of having committed drug offences. He was convicted mainly on the evidence of anonymous witnesses. He complained that he had been convicted on the evidence of witnesses who had not been heard in his presence and whom he had not had the opportunity to question, the Court of Appeal having accepted the evidence of the anonymous witnesses on the basis of the statement of an investigating judge who at a previous stage of the proceedings had participated in a decision to prolong his detention on remand, and the Court of Appeal having refused to hear an expert brought forward by the defence although the prosecution expert had been heard.

Comm found by majority (15–12) NV 6(1), 6(3)(d).

Court found by majority (7–2) NV 6(1)+6(3)(d).

Judges: Mr R Ryssdal (jd), President, Mr Thór Vilhjálmsson, Mr J De Meyer (jd), Mr N Valticos, Mr SK Martens, Mr F Bigi, Mr AB Baka, Mr L Wildhaber, Mr D Gotchev.

As the requirements of A 6(3) were to be seen as particular aspects of the right to a fair trial guaranteed by A 6(1), the Court examined the complaints under A 6(1) and (3)(d) taken together.

The admissibility of evidence was primarily a matter for regulation by national law and as a general rule it was for the national courts to assess the evidence before them. The Court's task under the Convention was not to give a ruling as to whether statements of witnesses were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair. The Convention did not preclude reliance, at the investigation stage, on sources such as anonymous informants. The subsequent use of their statements by the trial court to found a conviction was, however, capable of raising issues under the Convention. A 6 did not explicitly require the interests of witnesses in general, and those of victims called upon to testify in particular, to be taken into consideration. The principles of fair trial also required that in appropriate cases the interests of the defence were balanced against those of witnesses or victims called upon to testify. The decision not to disclose the identity of witnesses Y15 and Y16 to the defence was inspired by the need to obtain evidence from them while at the same time protecting them against the possibility of reprisals by the applicant. There was sufficient reason for maintaining the anonymity of Y15 and Y16. Although the anonymity of the witnesses presented the defence with difficulties, nevertheless, no violation of A 6(1) and 6(3)(d) could be found if it was established that the handicaps on the defence were sufficiently counterbalanced by the procedures followed by the judicial authorities. In the present case the anonymous witnesses were questioned at the appeals stage in the presence of counsel by an investigating judge who was aware of their identity, even if the defence was not. Counsel was present and able to put questions

he considered to be in the interests of the defence and these questions were all answered. The Amsterdam Court of Appeal was entitled to consider that the interests of the applicant were outweighed by the need to ensure the safety of the witnesses. The 'counterbalancing' procedure followed by the judicial authorities in obtaining the evidence of witnesses Y15 and Y16 was sufficient to have enabled the defence to challenge the evidence of the anonymous witnesses and attempt to cast doubt on the reliability of their statements. However, even when 'counterbalancing' procedures were found to compensate sufficiently the handicaps under which the defence laboured, a conviction should not be based either solely or to a decisive extent on anonymous statements. In addition, evidence obtained from witnesses under conditions in which the rights of the defence could not be secured to the extent normally required by the Convention should be treated with extreme care.

The Court could not hold in the abstract that evidence given by a witness in open court and on oath should always be relied on in preference to other statements made by the same witness in the course of criminal proceedings, not even when the two were in conflict. Witness N made a statement to the police inculpating the applicant but retracted it when questioned on oath in open court in the presence of the applicant. The decision taken by the Court of Appeal to attach some credence to N's statement to the police did not render the applicant's trial unfair.

It had been impossible to secure R's attendance at the hearing. In the circumstances it was open to the Court of Appeal to have regard to the statement obtained by the police, especially since it could consider that statement to be corroborated by other evidence before it. Accordingly, no unfairness could be found in that respect.

The Court of Appeal refused to hear the defence expert K for the reason that, as an expert rather than a witness, he would not be able to contribute to the elucidation of the facts of the case. The evidence of the police officer I, on the other hand, concerned the way in which the police went about obtaining statements from drug addicts and ensuring that these were as reliable as possible. Decisions whether to allow evidence and what reliance to place on admitted evidence were primarily the responsibility of the domestic courts. The Court of Appeal could come to the conclusions it came to; the fairness of the criminal proceedings against the applicant was not adversely affected by the Court of Appeal's decision to hear I but not K.

None of the alleged shortcomings considered on their own or together led to the conclusion that the applicant did not receive a fair trial. Accordingly, there had been no violation of A 6(1) taken together with A 6(3)(d).

Cited: Artner v A (28.8.1992), Delta v F (19.12.1990), Erkner and Hofauer v A (23.4.1987), Kamasinski v Austria (19.12.1989), Kostovski v NL (20.11.1989), Windisch v A (27.9.1990).

Douiyeb v Netherlands 99/49

[Application lodged 1.3.1996; Commission report 17.9.1998; Court Judgment 4.8.1999]

Mr Abdelaziz Douiyeb was a Moroccan national. On 26 February 1996, in the course of an investigation into offences against public decency following complaints filed with the police, the assistant public prosecutor in accordance with the Netherlands Code of Criminal Procedure issued a warrant for the applicant's arrest on suspicion of contravening Article 250 ter of the Criminal Code which provision prohibited trafficking in persons. On the basis of this warrant, the applicant was arrested. On 27 February 1996 the applicant was brought before the investigating judge. The applicant's lawyer submitted that the applicant had been placed in police custody on suspicion of contravening Article 250 CC, for which offence police custody could not be ordered. He demanded the applicant's immediate release. The investigating judge ordered the applicant's detention on remand. Further detention on remand was authorised by the Regional Court of Amsterdam. On 30 August 1996, the Regional Court of Amsterdam acquitted the applicant of the charges brought against him under Article 250 ter CC. However, in separate proceedings he was convicted of unlawful possession of a firearm and sentenced to six weeks' imprisonment. In November 1996, the applicant filed a request for compensation in respect of damage sustained on account of the

time spent in pre-trial detention on suspicion of committing the offences of which he had been acquitted. In its decision of 25 April 1997, the Regional Court ordered that 10 days be deducted from the six weeks' imprisonment imposed for the other offence. As to the remaining 32 days, the applicant had successfully sought a royal pardon and the 32 days had been commuted to 69 hours' community work.

Comm found by a majority (18–14) V 5(1)(c), no separate issue arose under 5(4).

Court held unanimously NV 5(1) and NV 5(4).

Judges: Mrs E Palm, President, Mr L Ferrari Bravo, Mr L Caflisch, Mr J-P Costa, Mrs V Stráznická, Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach, Mr B Zupancic, Mrs N Vajic, Mr J Hedigan, Mrs W Thomassen, Mrs M Tsatsa-Nikolovska, Mr T Pantiru, Mr E Levits, Mr K Traja, Mrs S Botoucharova.

The expressions 'lawful' and 'in accordance with a procedure prescribed by law' in A 5(1) essentially referred back to national law and stated the obligation to conform to the substantive and procedural rules. It was in the first place for the national authorities to interpret and apply domestic law. However, since under A 5(1) failure to comply with domestic law entailed a breach of the Convention, it followed that the Court could and should exercise a certain power to review whether this law has been complied with. A period of detention would in principle be lawful if it was carried out pursuant to a court order. A subsequent finding that the court erred under domestic law in making the order would not necessarily retrospectively affect the validity of the intervening period of detention. Both Article 250 and Article 250 ter CC of the Netherlands law offered in principle sufficient scope for an order for detention in police custody. The criminal investigation against the applicant concerned the offence of trafficking in persons under Article 250 ter CC and the order for his arrest correctly specified the statutory provision which the applicant was suspected of contravening. On first questioning the applicant was informed of the subject matter about which he was going to be questioned and he stated that he understood what he was suspected of. There was therefore no support for the applicant's contention that he only became aware of the nature of the suspicions against him when he was brought before the investigating judge on 27 February 1996. Although the order for the applicant's detention in police custody mentioned Article 250 CC as the legal basis for this order, that was the result of a clerical error, all other documents concerning the applicant's case mention Article 250 ter CC as the basis of the criminal investigation against him. In the circumstances, the applicant must have or ought to have been aware that the mention of Article 250 CC instead of Article 250 ter CC in the order for his detention in police custody was the result of a clerical error. The error was brought to the attention of the investigating judge. The investigating judge had examined the lawfulness of the applicant's detention in police custody under Article 250 ter CC. On the facts of the present case, the applicant's complaint was unfounded and there had therefore been no breach of A 5(1).

The mere fact that the Court found no breach of the requirements of A 5(1) did not mean that it was dispensed from carrying out a review of compliance with A 5(4). The applicant had been brought before the investigating judge on 27 February 1996, in order to be heard and in connection with the public prosecutor's request for an order for the applicant's detention on remand. During that hearing the investigating judge examined the lawfulness of the applicant's detention in police custody, the applicant's request for immediate release on grounds of the alleged unlawfulness of his detention in police custody and the prosecutor's request for an extension of the applicant's detention. It followed that the applicant did have access to proceedings by which the lawfulness of his detention in police custody was decided speedily by a court. Accordingly, the Court could not find a violation of A 5(4).

Cited: Assenov and Others v BG (28.10.1998), Benham v UK (10.6.1996), Gea Catalán v E (10.2.1995), De Salvador Torres v E (24.10.1996), Kolompar v B (24.9.1992).

Doustaly v France 98/28

[Application lodged 29.12.1994; Commission report 27.11.1996; Court Judgment 23.4.1998]

Mr Michel Doustaly was formerly in practice as an architect. On 9 January 1984 Nîmes City Council awarded him a contract for work on the design and construction of a general-purpose senior high school to be built as part of the State school system. When the work was completed the Council decided to reduce by half the amount of the agreed fees, alleging, among other matters, breaches by the applicant of his contractual obligations. On 26 July 1985 Mr Doustaly lodged an application with the Montpellier Administrative Court seeking payment and interest as final settlement of the fees agreed in the contract. He complained about the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr Bernhardt, President, Mr L-E Pettiti, Mr A Spielmann, Mr N Valticos, Mr B Repik, Mr P Jambrek, Mr E Levits, Mr J Casadevall, Mr V Butkevych.

The period to be taken into consideration began on 26 July 1985, when the applicant lodged his application with the Montpellier Administrative Court. It ended on 4 July 1994, with the judgment delivered by the Bordeaux Administrative Court of Appeal. The proceedings had lasted almost nine years not including the time taken for enforcement. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the parties. The importance of what was at stake for the applicant in the litigation also had to be taken into account. The case was not particularly complex, it concerned the determination of the balance of a lump sum payable for a public works contract. The applicant was not responsible for delays. The proceedings in the Montpellier Administrative Court were affected by lengthy periods of inactivity attributable to the State and the Government did not supply any convincing explanation for those delays. The applicant was to a certain extent professionally dependent as an architect on Nîmes City Council. It was therefore necessary to bring to a close as quickly as possible a dispute between him and an authority which could directly influence the way he carried on his profession. Consequently, special diligence was required of the courts dealing with the case, regard being had to the fact that the amount the applicant claimed was of vital significance to him and was connected with his professional activity. A period of nearly nine years could not be considered to be reasonable.

Pecuniary damage (FF 500,000), non-pecuniary damage (FF 100,000), costs and expenses (FF 40,000).

Cited: Duclos v F (17.12.1996), Phocas v F (23.4.1996), Ruotolo v I (27.2.1992).

Drozd and Janousek v France and Spain (1992) 14 EHRR 745 92/52

[Application lodged 26.11.1986; Commission report 11.12.1990; Court Judgment 26.6.1992]

The applicants were Mr Jordi Drozd, a Spanish citizen, and Mr Pavel Janousek, a citizen of Czechoslovakia who were convicted by a court in Andorra (composed of French and Spanish assessors) of armed robbery and were sentenced to 14 years and ordered to be expelled. They chose to serve their sentences in France rather than Spain. They complained that they had not had a fair trial and that their imprisonment in France after being convicted by an Andorran court was unlawful as there was no French provision relating to enforcement of such judgments.

Comm found by majority (10–6) NV 6 by France, (12–4) NV 6 by Spain, (8–8 with President's casting vote) NV 5(1) by France.

Court found unanimously no jurisdiction to examine the merits under 6, unanimously dismissed preliminary objection of failure to exhaust domestic remedies raised by the French Government with respect to 5(1), by majority (12–11) NV 5(1).

Judges: Mr R Ryssdal, President, Mr J Cremona (pd), Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr F Matscher (c), Mr L-E Pettiti (jd), Mr B Walsh (jd), Mr R Macdonald (jd), Mr C Russo (d), Mr R Bernhardt (jd), Mr A Spielmann (jd), Mr J De Meyer, Mr N Valticos (jd), Mr SK Martens, Mrs E Palm, Mr R Pekkanen (jd), Mr AN Loizou, Mr F Bigi, Sir John Freeland, Mr AB Baka, Mr MA Lopes Rocha (jd), Mr L Wildhaber (jd), Mr JA Carrillo Salcedo, ad hoc judge.

Regarding the Court's jurisdiction to examine the matter as regards A 6, the Court noted that the Principality of Andorra occupied a complex and unusual status but it was independent of France or Spain. It was not a member of the Council of Europe. The Court therefore lacked jurisdiction *ratione loci*. The term 'jurisdiction' was not limited to the national territory of the Contracting States, their responsibility could be involved because of acts of authorities producing effects outside their own territory. Although judges from France and Spain sat as members of the Andorran courts they exercised their functions in an autonomous manner and their judgments were not subject to supervision by the French or Spanish authorities. The Court therefore had no jurisdiction *ratione personae*. The preliminary objection of non-exhaustion of remedies with regard to A 5(1) was dismissed. The detention originated from an Andorran Court and the French courts did not regard themselves as having jurisdiction to assess the lawfulness of criminal convictions pronounced in the Principality. For those reasons the Court did not consider that it had jurisdiction to review the lawfulness of Andorran legal proceedings. The Convention did not require States to impose its standards on third States and France was not obliged to verify that the Andorran proceedings were compatible with the Convention. To require that would be to thwart the trend towards strengthening international co-operation in the administration of justice. The States, however, were obliged to refuse their co-operation if it emerged that the conviction was the result of a flagrant denial of justice. The French government said that it would refuse its customary co-operation if it had to enforce an Andorran judgment which was manifestly contrary to the provisions of A 6. That was not the case here. No violation of A 5(1) had been established.

Cited: B v France (25.3.1992), Bozano v F (18.12.1986), Soering v UK (7.7.1989).

Duclos v France 96/62

[Applications lodged 17.8.1992, 29.9.1992 and 13.10.1992; Commission report 17.5.1995; Court Judgment 17.12.1996]

Mr Alain Duclos, a company secretary, was injured in a road accident on 23 April 1980 that obliged him to take sick leave and, since it counted as an 'industrial accident', was covered by social security. He commenced proceedings against the Dieppe Health Insurance Office (CPAM), the Union des assurances de Paris (UAP) and the Dieppe Family Allowances Office (CAF). He complained about the length of the proceedings.

Comm found by majority (7–6) V 6(1).

Court held unanimously V 6(1).

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr C Russo, Mr A Spielmann, Mr AN Loizou, Mr MA Lopes Rocha, Mr J Makarczyk, Mr P Jambrek, Mr P Kûris.

The proceedings against the Dieppe CPAM began on 21 July 1982, when the applicant lodged his claim with the review board and ended on 20 February 1992, when the Court of Cassation gave judgment; they therefore lasted nine years and seven months. The proceedings against the UAP began on 26 August 1983, when the applicant instituted proceedings in the Paris tribunal de grande instance and ended on 16 April 1992, when the Court of Cassation gave judgment; they therefore lasted eight years and nearly eight months. The proceedings against the Dieppe CAF began on 18 July 1983, when the applicant submitted his complaint to the Benefit Payments Board and ended on 2 April 1992, when the Court of Cassation gave judgment; they therefore lasted eight years, eight months, two weeks. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the parties and the importance of what was at stake for the applicant in the litigation. Although the New Code of Civil Procedure left it to the parties to take the initiative, that did not absolve the courts from ensuring that the proceedings were conducted within a reasonable time. A 6(1) imposed on Contracting States the duty to organise their legal systems in such a way that their courts could meet each of the requirements of A 6(1).

The proceedings against the Dieppe CPAM involving the assessment of benefits in kind received by the applicant when in employment and the weight given to them in the calculation of the daily allowances to be paid to him, were not particularly complex, especially as it was examined at first instance by a specialised tribunal experienced in dealing with such matters. The reasonableness of the length of proceedings before social-security appeal tribunals, which were governed by the New Code of Civil Procedure, had to be assessed in the same way as before the ordinary civil courts. While the applicant's conduct was not beyond reproach, the administrative and judicial authorities were responsible for most of the delays. A total period of nine years and seven months could not be regarded as reasonable.

The proceedings against the UAP concerned performance of the 'disablement insurance' policy that the applicant's former employer had taken out with the UAP and the question of which insurance policy was applicable. The case was not by its nature a particularly complex one. The conduct of the applicant was not beyond reproach but there were delays on the part of the authorities. The applicant was unemployed and disabled. There was much at stake for him in the proceedings against the UAP, the main purpose of which was to secure payment of a life annuity. His situation and what was at stake for him in the proceedings called for special expedition. A period of eight years and nearly eight months could not be regarded as reasonable.

The proceedings against the Dieppe CAF concerned the assessment of the applicant's situation after his accident for the purpose of calculating his family allowance. The case was not a particularly complex one, especially since it was examined at first instance by a specialised tribunal experienced in dealing with such matters. While the applicant's conduct was not beyond reproach, most of the delays were due to the conduct of the administrative and judicial authorities. A total period of eight years, eight months, two weeks could not be regarded as reasonable.

Non-pecuniary damage (FF 100,000), costs and expenses (FF 20,000).

Cited: Francesco Lombardo v I (26.11.1992), Monnet v F (27.10.1993), Phocas v F (23.4.1996).

Dudgeon v United Kingdom (1982) 4 EHRR 149; (1983) 5 EHRR 573 81/4

[Application lodged 22.5.1976; Commission report 13.3.1980; Court Judgment 22.10.1981 (merits) and 24.2.1983 (A 50)]

Mr Jeffrey Dudgeon lived in Northern Ireland and was a homosexual. He complained about Northern Ireland laws (the Offences against the Person Act 1861, the Criminal Law Amendment Act 1885 and the common law) which made certain homosexual acts between consenting adult males criminal offences. In England, Wales and Scotland the law was different. In January 1976, the police searched the applicant's house for drugs, in the execution of a warrant. During the search personal papers, including correspondence and diaries belonging to the applicant, in which were described homosexual activities, were found and seized. He was questioned, on the basis of these papers, about his sexual life. The police file was sent to the Director of Public Prosecutions with a view to instituting proceedings for the offence of gross indecency between males, although the Director decided that it would not be in the public interest for proceedings to be brought. The applicant was so informed in February 1977 and his papers, with annotations marked over them, were returned to him. The applicant claimed that the existence of various offences capable of relating to male homosexual conduct and the police investigation in January 1976 constituted an unjustified interference with his right to respect for his private life, in breach of A 8, and that he had suffered discrimination, within the meaning of A 14, on grounds of sex, sexuality and residence.

Comm found by majority (8–2) NV 8, (8–1 with one abstention) NV 14+8, regarding the legal prohibition of private consensual homosexual acts involving male persons under 21 years of age, (9–1) V 8 regarding the legal prohibition of such acts between male persons over 21 years of age, (9–1) not necessary to examine the question whether the last-mentioned prohibition also violated 14+8.

Court found by a majority (15–4) V 8, (14–5) not necessary to examine 14+8.

Judges (merits): Mr R Ryssdal, Mr M Zekia (d), Mr J Cremona, Mr Thór Vilhjálmsson, Mr W Ganshof Van Der Meersch, Mrs B Bindschedler-Robert, Mr D Evrigenis (d), Mr G Lagergren, Mr L Liesch, Mr F Gölcüklü, Mr F Matscher (jd), Mr J Pinheiro Farinha (d), Mr E Garcia De Enterria (d), Mr L-E Pettiti, Mr B Walsh (pd), Sir Vincent Evans, Mr R MacDonald, Mr C Russo, Mr R Bernhardt.

Judges (A 50): Mr R Ryssdal, President, Mr J Cremona, Mr D Evrigenis, Mr F Matscher, Mr J Pinheiro Farinha, Mr B Walsh, Sir Vincent Evans.

The legislation constituted a continuing interference with the applicant's right to respect for his private life (which included his sexual life) within the meaning of A 8(1). The police investigation in January 1976 was a specific measure of implementation which directly affected the applicant in the enjoyment of his right to respect for his private life. An interference with an A 8 right would not be compatible with paragraph 2 unless it was 'in accordance with the law', had an aim or aims that was or were legitimate under that paragraph and was 'necessary in a democratic society' for the aforesaid aim or aims. The interference was plainly in accordance with the law since it resulted from the existence of certain provisions in the 1861 and 1885 Acts and the common law. The general aim pursued by the legislation was the protection of morals in the sense of moral standards obtaining in Northern Ireland. The Court held that some degree of regulation of homosexual conduct by means of the criminal law could be justified as 'necessary in a democratic society'. This necessity may even extend to consensual acts committed in private, notably where there was call to provide sufficient safeguards against exploitation and corruption of others, particularly those who were specially vulnerable. What distinguished the law in NI from that existing in the great majority of the Member States was that it prohibited generally gross indecency between males and buggery whatever the circumstances. The question was whether the law of NI remained within the bounds of what, in a democratic society, may be regarded as necessary in order to accomplish those aims. 'Necessary' does not have the flexibility of such expressions as 'useful', 'reasonable', or 'desirable', but implies the existence of a pressing social need for the interference in question. It is for the national authorities to make the initial assessment of the pressing social need in each case: a margin of appreciation was left to them, although their decision remained subject to review by the Court. The scope of that margin was not identical in respect of each of the aims justifying restrictions on a right. Not only the nature of the aim of the restriction but also the nature of the activities involved would affect its scope. The present case concerned a most intimate aspect of private life. Accordingly, there must exist particularly serious reasons before interferences on the part of the public authorities could be legitimate for the purposes of A 8(2). A restriction on a Convention right could not be regarded as 'necessary in a democratic society' unless it was proportionate to the legitimate aim pursued. The fact that similar measures were not considered necessary in other parts of the UK or in other Member States did not mean that they could not be necessary in NI. The moral climate in Northern Ireland in sexual matters was one of the matters which the national authorities may legitimately take into account in exercising their discretion. There is now a better understanding and an increased tolerance of homosexual behaviour compared to the time when the legislation was enacted. The great majority of the Member States no longer considered it necessary or appropriate to treat homosexual practices as in themselves a criminal matter. In NI itself, the authorities had refrained in recent years from enforcing the law in respect of private homosexual acts between consenting males over the age of 21 years capable of valid consent. It could not be maintained in those circumstances that there was a 'pressing social need' to make such acts criminal offences, there being no sufficient justification provided by the risk of harm to vulnerable sections of society requiring protection or by the effects on the public. Such justifications as there were for retaining the law in force unamended were outweighed by the detrimental effects which the very existence of the legislative provisions in question could have on the life of a person of homosexual orientation. Although members of the public who regard homosexuality as immoral may be shocked, offended or disturbed by the commission by others of private homosexual acts, this cannot on its own warrant the application of penal sanctions when it is consenting adults alone who are involved. The reasons given by the Government were not sufficient to justify the maintenance in force of the

legislation in so far as it had the general effect of criminalising private homosexual relations between adult males capable of valid consent. The moral attitudes towards homosexuality in NI and the concern that any relaxation in the law would tend to erode existing moral standards could not, without more, warrant interfering with the applicant's private life to such an extent. 'Decriminalisation' did not imply approval, and a fear that some sectors of the population might draw misguided conclusions in this respect from reform did not afford a good ground for maintaining it in force with all its unjustifiable features. The restriction imposed under NI law, by reason of its breadth and absolute character, was, quite apart from the severity of the possible penalties provided for, disproportionate to the aims sought to be achieved. The applicant suffered and continued to suffer an unjustified interference with his right to respect for his private life. There was accordingly a breach of A 8.

Where a substantive Article of the Convention had been invoked both on its own and together with A 14 and a separate breach had been found of the substantive Article, it was not generally necessary for the Court also to examine the case under A 14. The essential aspect of complaint under A 14 amounted in effect to the same as the one that had already been considered in relation to A 8; there was no call to rule on the merits of a particular issue which was part of and absorbed by a wider issue.

Costs and expenses (GBP 3,315).

Cited (merits): Airey v IRL (6.2.1981), Deweer v B (27.2.1980), Handyside v UK (7.12.1976), Ireland v UK (18.1.1978), Marckx v B (13.6.1979), Sunday Times v UK (6.11.1980), Tyrer (25.4.1978), Young, James and Webster v UK (13.8.1981).

Cited (A 50): Airey v IRL (6.2.1981), Le Compte, Van Leuven and De Meyere v B (18.10.1982), Luedicke, Belkacem and Koç v D (10.3.1980), Neumeister v A (7.5.1974), Sunday Times v UK (6.11.1980).

Duinhof and Duijf v Netherlands (1991) 13 EHRR 478 84/7

[Applications lodged 8.12.1981, 16.2.1982; Commission report 13.7.1983; Court Judgment 22.5.1984]

Mr Bernard Joost Duinhof was arrested on 18 November 1981 for having failed to register in due time as a conscript serviceman. He was transferred to military barracks where he refused to submit to a medical examination. He was accused of persistent insubordination and his detention confirmed by the commanding officer. On 20 November, he was brought before the auditeur-militair and referred by the designated senior for trial before the Military Court. On 28 January 1982 he was sentenced to 18 months' imprisonment. His appeal to the Supreme Military Court was allowed in part. Mr Robert Duijf, having failed to register in due time as a conscript serviceman, was taken to a military house of detention where he refused to take receipt of a military uniform and weapon. He was accused of persistent insubordination. The commanding officer confirmed the detention. In accordance with the verbal advice of the auditeur-militair, the designated senior officer referred the applicant for trial before the Military Court. He was convicted of insubordination and sentenced by the Military Court to 18 months' imprisonment. His appeal to the Supreme Military Court was rejected.

Comm found unanimously V 5(3).

Court found unanimously V 5(3).

Judges: Mr R Ryssdal, President, Mr G Wiarda, Mr J Cremona, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr L-E Pettiti, Mr B Walsh.

The Court recalled its previous case-law under A 5(3). The 'officer' who could be either a judge or an official in the public prosecutor's department had to offer guarantees befitting the 'judicial' power conferred on him by law. The 'officer' was not identical with the judge but had to have some of the latter's attributes, that is to say he had to satisfy certain conditions each of which constituted a guarantee for the person arrested. The officer had to be independent of the executive and of the parties. There was a procedural requirement placing the 'officer' under the obligation of hearing the individual brought before him and a substantive requirement imposing on him the obligation of reviewing the circumstances militating for or against detention, of deciding, by

reference to legal criteria, whether there were reasons to justify detention and of ordering release if there were no such reasons. In determining Convention rights consideration had to be given to looking beyond the appearances and the language used and concentrating on the realities of the situation. However, formal, visible requirements stated in the 'law' were especially important for the identification of the judicial authority empowered to decide on the liberty of the individual in view of the confidence which that authority must inspire in the public in a democratic society. In this case there was no official directive or policy instruction to auditeurs-militair and referring officers regarding interpretation of the Military Code, only a purely internal practice of no binding force. That was not sufficient to constitute authority given by 'law' to exercise the requisite 'judicial power' contemplated by A 5(3). The procedure followed in Mr Duinhof's case before the auditeur-militair prior to referral for trial did not provide the guarantees required by A 5(3). The applicants were referred for trial before the Military Court 5 days and 3 days respectively after their arrest. A 5(3) was aimed at ensuring prompt and automatic judicial control of police or administrative detention ordered in accordance with the provisions of A 5(1)(c). The language of A 5(3) ('shall be brought promptly before'), read in the light of its object and purpose, made evident its inherent 'procedural requirement', the 'judge' or judicial 'officer' had to actually hear the detained person and take the appropriate decision. Accordingly, the referral of the applicants for trial did not assure them the guarantees provided for under A 5(3). Mr Duijf was heard by the auditeur-militair 4 days after his arrest and one day after his referral for trial. Without formally issuing a decision not to release, the auditeur-militair, three days after Mr Duijf's appearance before him, asked the Military Court to extend the detention beyond the fourteen-day limit provided for under the Military Code. Although the auditeur-militair was competent to direct release he did not enjoy the necessary independence as he was also prosecuting authority before the Military Court. Consequently, the procedure followed before the auditeur-militair in Mr Duijf's case did not satisfy the requirements of A 5(3). Although both applicants were heard by the officier-commissaris, the latter was not authorised by law to exercise the requisite 'judicial power' referred to in A 5(3), notably the power to decide on the justification for the detention and to order release if there was none. The procedure before the officier-commissaris therefore lacked one of the fundamental guarantees implicit in A 5(3). The Military Court did not hold a hearing and give a decision on detention until 8 days after Mr Duinhof's arrest and 12 days after Mr Duijf's arrest. Whilst the question of promptness had to be assessed in each case according to its special features the intervals in this case were in excess of the limits laid down by A 5(3), even taking due account of the exigencies of military life and military justice. Each applicant was therefore the victim of a violation of A 5(3).

NLG 300 awarded to each applicant under A 50.

Cited: De Jong, Baljet and van den Brink v NL (22.5.1984), Deweer v B (27.2.1980), Engel and Others v NL (8.6.1976), Foti and Others v I (10.12.1982), Ireland v UK (18.1.1978), Piersack v B (1.10.1982), Van Droogenbroeck v B (24.6.1982, 25.4.1983), Wemhoff v D (27.6.1968).

Dulaurans v France 00/99

[Application lodged 17.12.1996; Commission report 20.5.1998; Court Judgment 21.3.2000]

Mrs Michelle Christine Dulaurans instructed a property dealer to sell two properties belonging to her. She revoked powers of attorney she had given to him and agreed to pay him compensation. He brought proceedings against her for failing to pay the compensation. She claimed that the powers of attorney she had granted were void for failure to comply with formalities under domestic legislation. The tribunal de grande instance ordered her to pay the compensation. She did so and appealed to the Court of Appeal, which dismissed her appeal stating that the domestic legislation did not apply to the dealer. Her further appeal to the Court of Cassation was dismissed on the ground that the applicant had not raised the arguments concerning the dealer's activities before the Court of Cassation.

Comm found by majority (12–1) V 6(1).

Court found unanimously V 6(1).

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr L Loucaides, Mr P Kûris, Mrs F Tulkens, Mr W Fuhrmann, Mr K Traja.

Both at first instance and in the Court of Cassation the applicant had argued that the habitual nature of the work she had instructed the dealer to carry out was apparent from the powers of attorney. Although at the appeal stage she had not expressly referred to the two powers of attorney in issue it could not be said on that account that she had put forward two different lines of reasoning. The Court of Cassation confined itself to declaring that in her submissions the applicant had only maintained that the dealer had effected or participated in transactions covered by the legislation. The Court of Appeal however, in its judgment, had decided precisely that issue and there was no reason for the Court of Appeal to have reached that conclusion unless to answer a complaint raised by the applicant. The absence of any other reasoning by the Court of Cassation suggested that the dismissal of the ground of appeal in question was the result of an error.

Pecuniary and non-pecuniary damage (FF 100,000), costs and expenses (FF 50,000).

Cited: Artico v I (13.5.1980), Pelissier and Sassi v F (25.3.1999), Van de Hurk v NL (19.4.1994).

E

E v Norway 90/16

[Application lodged 13.5.1985; Commission report 16.3.1989; Court Judgment 29.8.1990]

The applicant was involved in a traffic accident in 1965 in which he suffered serious brain damage, and he subsequently showed a distinct tendency to become aggressive. In 1967 he was convicted of criminal offences, declared mentally ill and spent the period from May 1967 to July 1978 in mental hospitals. In 1978 he was sentenced to further imprisonment and in addition the court authorised the use of security measures under the Penal Code. On 3 July 1978 the prosecuting authority detained the applicant in a security ward at Ila National Penal and Preventive Detention Institution. Over the years he was released but re-detained following the commission of further offences. In custody he assaulted prison staff and nurses. The applicant alleged that the review available under Norwegian law of the lawfulness of his repeated periods of detention in the Ila security ward and in prison under the Penal Code did not meet the requirements of the Convention in three respects: that the scope of review was too limited, the courts lacked the power to order release and that the Oslo City Court did not deliver its decision in 1988 speedily.

Comm found unanimously V 5(4).

Court found unanimously NV 5(4) regarding the scope of the Norwegian courts' power to review the lawfulness of the applicant's detention and regarding powers to order his release, V 5(4) regarding the failure to take a decision 'speedily'.

Judges: Mr J Cremona, President, Mr R Ryssdal, Mr Thór Vilhjálmsson, Mr F Matscher, Sir Vincent Evans, Mr C Russo, Mr A Spielmann.

The notion of 'lawfulness' under A 5(4) had the same meaning as in A 5(1), so that the arrested or detained person was entitled to a review of the 'lawfulness' of his detention in the light not only of the requirements of domestic law but also of the text of the Convention. A 5(4) did not guarantee a right to judicial review of such a scope as to empower the court to substitute its own discretion for that of the decision-making authority. The review should, however, be wide enough to bear on those conditions which were essential for the 'lawful' detention of a person according to A 5(1).

The applicant had the possibility of challenging in the ordinary courts each of the Ministry's decisions that he should remain in detention or return to custody under the Penal Code. The ordinary courts had competence to review all the facts on which the Ministry's decision was based. Moreover, the courts had competence to determine whether the conditions for imposing security measures were still satisfied. Having examined the Norwegian system, the Court was satisfied that the available judicial review was wide enough to bear on those conditions which, under the Convention, were essential for the lawful detention of the applicant pursuant to the Penal Code. There had therefore been no violation of the Convention on that point.

Where an administrative decision to detain a person was considered to be invalid, the Norwegian court had the power to order his release. In the proceedings instituted in the Oslo City Court on 3 August 1988 the applicant contended that the Ministry's decision of 21 July 1988 was invalid, and he claimed that the court should order his release. There was no reason to believe that the court would have declined to do so if it had accepted his contention. Accordingly, no violation of A 5(4) had been established in this respect.

The notion of promptness indicated greater urgency than that of speedily. Even so, a period of approximately eight weeks from the filing of summons to judgment was difficult to reconcile with the notion of speedily. There were further delays in the proceedings, some due to administrative problems. However, the Convention required that Contracting States organised their legal systems so as to enable the courts to comply with the various requirements under the Convention. It was incumbent on the judicial authorities to make the necessary administrative arrangements, even during a vacation period, to ensure that urgent matters were dealt with speedily and that was particularly necessary when the individual's personal liberty was at stake. No appropriate provisions had been made in the case. Regarding the period of three weeks required to write the judgment, the applicant was entitled to a speedy decision, whether affirmative or negative, on the

lawfulness of his custody. In all the circumstances the review proceedings were not conducted 'speedily', and there was therefore a violation of A 5(4) in this respect.

Cited: Ashingdane v UK (28.5.1985), Bezicheri v I (25.10.1989), Brogan and Others v UK (29.11.1988), Sanchez-Reisse v CH (21.10.1986), Van Droogenbroeck v B (24.6.1982), Weeks v UK (2.3.1987), X v UK (5.11.1981).

EL, RL and JO-L v Switzerland 97/48

[Application lodged 29.10.1992; Commission report 10.4.1996; Court Judgment 29.8.1997]

The applicants were the widow, the son and the daughter of the late Mr L. Mr L was the owner of a mail-order company. In 1984 he declared certain moneys to the tax authorities. He died on 7 October 1985. The three-month period within which the applicants could have rejected the inheritance under the Swiss Civil Code expired on 7 January 1986. On 18 August 1989 the Tax Office concluded that Mr L had unlawfully failed to declare income in Switzerland and initiated proceedings against the applicants for recovery of unpaid cantonal and federal taxes and at the same time imposed fines for tax evasion. The applicants appealed to the Obwalden Cantonal Tax Appeals Board against the federal taxes. The Board upheld the applicants' claim and the Direct Federal Tax Administration lodged an administrative law appeal to the Federal Court. On 22 May 1992 the Federal Court upheld the appeal. The applicants complained that, irrespective of any personal guilt, they had been convicted of an offence allegedly committed by Mr L.

Comm found by majority (17–13) NV 6(2).

Court found by majority (7–2) V 6(2).

Judges: Mr R Bernhardt (d), President, Mr L-E Pettiti, Mr C Russo, Mr J De Meyer (c), Mr I Foighel, Mr AB Baka (d), Mr L Wildhaber, Mr J Makarczyk, Mr D Gotchev.

The concept of 'criminal charge' within A 6 was an autonomous one. There were three criteria to be taken into account when it was being decided whether a person was 'charged with a criminal offence' for the purposes of A 6. These were the classification of the offence under national law, the nature of the offence and the nature and degree of severity of the penalty that the person concerned risked incurring. The fine was not inconsiderable. In setting the figure, the authorities took the applicants' co-operative attitude into account. The tax legislation laid down certain requirements, to which were attached penalties for non-compliance. The penalties, which took the form of fines, were not intended as pecuniary compensation for damage but were punitive and deterrent in nature. The Federal Court had held that the fine in question constituted a 'real penalty' and depended on the 'guilt' of the offending taxpayer. A 6 was therefore applicable under its criminal head.

It was normal that tax debts, like other debts incurred by the deceased, should be paid out of the estate. Imposing criminal sanctions on the living for acts apparently committed by a deceased person was, however, a different matter. Whether or not the late Mr L was actually guilty, the applicants were subjected to a penal sanction for tax evasion allegedly committed by him. It was a fundamental rule of criminal law that criminal liability did not survive the person who had committed the criminal act. Such a rule was also required by the presumption of innocence enshrined in A 6(2) of the Convention. Inheritance of the guilt of the dead was not compatible with the standards of criminal justice in a society governed by the rule of law. There had accordingly been a violation of A 6(2).

Costs and expenses (CHF 6,922.50).

Cited: Bendenoun v F (24.2.1994), Öztürk v D (21.2.1984).

EP v Italy 99/86

[Application lodged 24.12.1995; Commission report 21.10.1998; Court Judgment 16.11.1999]

On 3 October 1988 the applicant and her daughter M-A (born in 1981), who had lived in Greece since the latter's birth, arrived in Rome. As soon as they landed, the applicant consulted the airport

medical service because her daughter had not been feeling well. The duty doctor found vomiting and high temperature and had M-A admitted to hospital. On 15 October 1988, the hospital psychiatric department applied to the Rome Youth Court to have M.-A. removed from her mother's care and for an injunction on the mother visiting her until the complex medical and psychiatric state of the child, who did not speak Italian, had been clearly diagnosed. According to the doctor in charge of M-A's case, the applicant, *inter alia*, had a clinical obsession with her daughter's health. In an order of 16 March 1989, the court suspended the applicant's parental responsibility and ordered that there should for the time being be no contact between the child and her mother or the other members of her family. In view of the urgency of the matter, the court did not hear submissions from State Counsel or the applicant. On 9 May 1989 the applicant appealed to the Milan Youth Court. On 30 June 1989 the Milan Youth Court declared M-A available for adoption after hearing submissions. In a judgment of 16 July 1993 the Milan Youth Court dismissed the applicant's appeal. The applicant's appeal to the Milan Court of Appeal was dismissed in a judgment of 2 June 1994. The applicant appealed to the Court of Cassation on a point of law. In a judgment of 7 June 1995, deposited with the court registry on 24 October of that year, the applicant's appeal was dismissed. In 1996 the applicant's daughter was finally adopted by her foster parents. The applicant complained of the length of proceedings and a violation of her right to respect for her family life.

Comm found unanimously V 6(1) and 8.

Court found unanimously V 6(1), by majority (6–1) V 8.

Judges: Mr M Fischbach, President, Mr B Conforti, Mr G Bonello (d), Mrs V Stráznická, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska, Mr AB Baka.

The period to be taken into consideration commenced on 26 October 1988, the date on which the Rome Youth Court intervened for the first time by ordering M-A to be temporarily placed with the applicant's brother's family, and ended on 24 October 1995 when the Court of Cassation's judgment of 7 June 1995 was deposited with the court registry. It had therefore lasted 7 years. Recalling its judgments in cases earlier in the year, the Court noted that there was in Italy an accumulation of breaches of the 'reasonable time' requirement constituting a practice contrary to the Convention. As the proceedings in this case concerned the custody of a child, particular celerity was required. Having examined the facts of the case in the light of the arguments put forward by the parties and having regard to its case-law in this field, the Court considered that the length of the proceedings failed to meet the reasonable time requirement and constituted a further example of practice contrary to the Convention. Accordingly, there had been a violation of A 6(1).

There had been an interference with the applicant's right to respect for her family life. The impugned measures had been in accordance with the law within the meaning of A 8(2). The measures had pursued a legitimate aim in that they were intended to further the well-being of the applicant's child and thus 'the protection of the rights and freedoms of others'. With regard to whether the interference was necessary in a democratic society, a fair balance had to be struck between the interests of the child and those of the parent and in doing so particular importance had to be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parent. In particular the parent could not be entitled under A 8 to have such measures taken as would harm the child's health and development. In addition the State enjoyed a certain margin of appreciation. Taking a child into care should normally be regarded as a temporary measure, to be discontinued as soon as circumstances permitted, and any measure of implementation should be consistent with the ultimate aim of reuniting the natural parent with his or her child. Although there appeared to have been relevant and sufficient grounds for intervening, the total ban on contact between the applicant and her daughter was so severe a measure against a mother who had just arrived in Italy with her little daughter who spoke only Greek, and about whose past the authorities dealing with the case knew very little, that serious questions were raised. Having regard to all the circumstances, the authorities dealing with the case, albeit enjoying a margin of appreciation, failed to take all the necessary steps which could be

reasonably expected of them in the circumstances, to ensure that the chances of the applicant and her daughter re-establishing their relationship should not be definitively compromised. Hence, the authorities did not strike a fair balance between the best interests of the child and the applicant's rights under A 8 and there had accordingly been a violation of A 8.

Non-pecuniary damage (ITL 100 million), costs and expenses (ITL 3 million).

Cited: Bottazzi v I (28.7.1999), Hokkanen v SF (23.9.1994), Johansen v N (7.8.1996), Olsson v S (No 2) (27.11.1992).

Eckle v Germany (1983) 5 EHRR 1, (1991) 13 EHRR 556 82/4

[Application lodged 27.12.1977; Commission report 11.12.1980; Court Judgment 15.7.1982 (merits), 21.6.1983 (A 50)]

Mr Hans Eckle and his wife Marianne worked at a building firm that he had set up. The firm's business consisted in supplying materials and, later, building sites on credit for people who wanted to build but had few financial resources. The applicants faced prosecutions for fraud in Trier and Cologne. They complained about the length of the proceedings.

Comm found unanimously V 6(1).

Court unanimously found V 6(1).

Judges (merits): Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr W Ganshof van der Meersch, Mr D Evrigenis, Mr J Pinheiro Farinha, Mr L-E Pettiti, Mr R Bernhardt.

Judges (A 50): Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr W Ganshof van der Meersch, Mr L Liesch, Mr J Pinheiro Farinha, Mr L-E Pettiti, Mr R Bernhardt.

The word 'victim', in the context of A 25, denoted the person directly affected by the act or omission in issue, the existence of a violation was conceivable even in the absence of prejudice; prejudice was relevant only in the context of A 50. Mitigation of sentence and discontinuance of prosecution granted on account of the excessive length of proceedings did not in principle deprive the individual concerned of his status as a victim; they were to be taken into consideration solely for the purpose of assessing the extent of the damage he had allegedly suffered. There was exception where national authorities acknowledged either expressly or in substance, and then gave redress for, the breach of the Convention. It would be unnecessary then to duplicate the domestic process with proceedings before the Commission and the Court. The question of whether the German courts held that A 6(1) had been breached and, if so, whether they granted redress, could be considered with the merits.

In criminal matters, the 'reasonable time' referred to in A 6(1) began to run as soon as a person was 'charged'; that might occur on a date prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted, or the date when preliminary investigations were opened. 'Charge', for the purposes of A 6(1), could be defined as 'the official notification given to an individual by the competent authority of an allegation that he had committed a criminal offence'. Having been unable to ascertain as from what moment the applicants officially learnt of the investigation or began to be affected by it, the Court took as the starting point for the 'time' the date of 1 January 1961. The appropriate date for the commencement of the Cologne proceedings was the date of service of the warrant, 11 May 1967. In criminal matters, the period governed by A 6(1) covered the whole of the proceedings in issue, including appeal proceedings. In the event of conviction, there was no 'determination ... of any criminal charge', within the meaning of A 6(1) as long as the sentence was not definitively fixed. Consequently, the period to be taken into account ended on 23 January 1978 when the Koblenz Court of Appeal delivered its judgments upholding the cumulative sentences pronounced by the Regional Court on 24 November 1977. The Cologne proceedings came to a close on 21 September 1977 when the Regional Court ordered discontinuance of prosecution. The length of time to be examined under A 6(1) amounted to seventeen years and three weeks as regards the Trier proceedings and ten years, four months and ten days as regards the Cologne proceedings. The reasonableness of the length of the proceedings had to be assessed in each

instance according to the particular circumstances. Regard was had to the complexity of the case, the conduct of the applicants and the conduct of the judicial authorities. There was some complexity in the Trier proceedings. The applicants had added to the delay by resorting to actions such as the systematic recourse to challenge of judges. A 6 did not require applicants actively to co-operate with the judicial authorities. Nor could they be reproached for having made full use of the remedies available under the domestic law. The competent authorities did not act with the necessary diligence and expedition. The difficulties of the investigation and the behaviour of the applicants did not on their own account for the length of the proceedings: one of the principal causes was to be found in the manner in which the judicial authorities conducted the case. Having regard to the length of the delays attributable to the State, the reduction of sentence that the Regional Court stated it was granting to the applicants was not capable of divesting the latter of their entitlement to claim to be victims. Accordingly, the Government's preliminary plea was rejected. The Trier proceedings exceeded a reasonable time in breach of A 6(1). The case investigated and tried at Cologne was particularly difficult and complex. The applicants slowed down the progress of the proceedings by making numerous applications and appeals, often accompanied by requests for an extension of the time limit for the filing of written pleadings. The competent authorities did not act with the necessary diligence and expedition. The difficulties of investigation and the behaviour of the applicants did not on their own account for the length of the proceedings. The discontinuance of the prosecutions, ordered by the Regional Court on 21 September 1977 with the consent of the applicants, was in principle capable of affecting their entitlement to claim to be 'victims', but the length of the delays attributable to the authorities was such that the applicants did not lose their status as 'victims'. Accordingly, the Government's preliminary plea was rejected. The Cologne proceedings had exceeded a reasonable time in breach of A 6(1).

Costs and expenses (DM 9,641.10 for each applicant).

Cited (merits): Adolf v A (26.3.1982) Airey v IRL (9.10.1979), Artico v I (13.5.1980), 'Belgian Linguistic' case (23.7.1968), Buchholz v D (6.5.1981), Deweer v B (27.2.1980), Handyside v UK (7.12.1976), König v D (28.6.1978), Neumeister v A (27.6.1968), Ringeisen v A (16.7.1971), Van Droogenbroeck v B (24.6.1982), Wemhoff v D (27.6.1968).

(A 50): Corigliano v I (10.12.1982), König v D (10.3.1980), Le Compte, Van Leuven and De Meyere v B (18.10.1982), Minelli v CH (25.3.1983), Sunday Times v UK (6.11.1980).

Edificaciones March Gallego SA v Spain 98/10

[Application lodged 19.5.1995; Commission report 26.11.1996; Court Judgment 19.2.1998]

Edificaciones March Gallego SA was a public limited company whose sole director was Mr Federico March Olmos. On 11 December 1989 proceedings for payment were brought against the applicant company and, as guarantor, Mr March in the Valencia Court of First Instance by another company, Manuel Codesido Marí SL, which claimed the sum of ESP 4,367,842 on a bill of exchange. The Valencia Court of First Instance and the Valencia Audiencia provincial refused the applicant company's subsequent application to have the proceedings set aside: Mr March's name had appeared in the application, as a result of error, rather than that of the applicant company. The Constitutional Court dismissed the applicant company's appeal holding that there had not been merely a rectifiable error in the identification of the persons who had applied to set aside, but a want of diligence that could not be remedied. The applicant company complained that the courts' refusal to rectify the clerical error in the application to set aside was a breach of fair trial.

Comm found by majority (23–4) NV 6(1).

Court found unanimously NV 6(1).

Judges: Mr R Bernhardt, President, Mr F Gölcüklü, Mr C Russo, Mr A Spielmann, Mr I Foighel, Mr JM Morenilla, Mr AB Baka, Mr MA Lopes Rocha, Mr Makarczyk.

The Court's task was not to take the place of the domestic courts. It was primarily for the national authorities to resolve problems of interpretation of domestic legislation. The Court's role was

confined to ascertaining whether the effects of such an interpretation were compatible with the Convention. From the Court's case-law, the 'right to a court', of which the right of access was one aspect, was not absolute. It called for regulation by the State, which enjoyed a certain margin of appreciation in this regard. However, any limitations should not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right was impaired. In addition, limitations would not be compatible with A 6(1) if they did not pursue a legitimate aim or if there was not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. In the present case the inadmissibility of the application to set aside was the result of an inaccurate reference to the party bringing the application, a mistake which could not subsequently be remedied. The applicant company, the only party to appear, was therefore deprived of the possibility of itself applying to set aside, as the time limits were mandatory and no extensions of time could be granted. The inadmissibility of the application complained of by the applicant company was thus the result of an avoidable mistake at the time it was submitted. Regard had to be had to the special character of the proceedings in question, which by their formal nature were designed solely to secure summary payment of a debt acknowledged by the debtors and recorded in the form of a bill of exchange duly signed. As such proceedings were not designed to determine the merits of the claim, the strict time limits attending them served exclusively to speed up payment of the sums in issue. The applicant company had not suffered any interference with its right of access to a court and there had therefore been no violation of A 6(1).

Cited: Brualla Gómez de la Torre v E (19.12.1997), Bulut v A (22.2.1996).

Ediltes SNC v Italy 99/104

[Application lodged 14.6.1996; Court Judgment 14.12.1999]

The applicant complained about the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mrs Tsatsa-Nikolovska, Mr A Baka.

The period to be taken into consideration began on 29 March 1990 and ended on 19 March 1998. It had lasted more than seven years, 11 months at one level of jurisdiction. The period could not be considered reasonable.

Pecuniary and non-pecuniary damage (ITL 16,000,000), costs and expenses (ITL 5,000,000).
Cited: Bottazzi v I (28.7.1999).

Editions Périscope v France (1992) 14 EHRR 597 92/43

[Application lodged 20.9.1985; Commission report 11.10.1990; Court Judgment 26.3.1992]

The applicant company was formed to produce an industrial products publication. It applied to the Joint Committee on Press Publications and Press Agencies on 21 October 1960 for registration to secure tax concessions and preferential postage charges accorded to the press. The application was refused as were two further applications in 1961 and 1964. No reply was received to a fourth application lodged in 1970. The applicant ceased trading in 1974. In November 1976, after an application for compensation to the Minister had been ignored, the applicant commenced proceedings. The Administrative Court dismissed the application on 27 April 1981. An appeal to the Conseil d'Etat was dismissed on 22 March 1985. The applicant complained of the length of proceedings.

Commission found by a majority V 6(1).

Court held unanimously V 6(1).

The Court held that A 6(1) extended to disputes over civil rights which could be said, arguably, to be recognised under domestic law. In this case the parties agreed that a dispute existed, but

disagreed as to the subject matter. The government argued that it concerned rules relating to the granting of tax concessions. The Court accepted the applicant's argument that the dispute concerned the liability of authorities for injury caused to the applicant. The subject matter of the applicant's action was pecuniary in nature and the action was founded on an infringement of pecuniary rights. The right was a civil right notwithstanding the origin of the dispute and the fact that the administrative courts had jurisdiction. Accordingly, A 6(1) applied. The period in question had lasted from 12 November 1976 to 22 March 1985. The reasonableness of the length of the proceedings had to be assessed in the light of the circumstances of the case. The case was not particularly complex and the applicant company had not delayed it; on the contrary, it had made repeated attempts to compel the ministries to submit their arguments more rapidly. The lapse of over 8 years was not reasonable.

Pecuniary claim not allowed, as no causal connection between violation and dismissal of applicant's action by national courts. Costs and expenses (FF 50,000).

Cited: Baraona v P (8.7.1987), König v D (10.3.1980), Neves e Silva v P (27.4.1989), Ringeisen v A (22.6.1972).

Edwards v United Kingdom (1993) 15 EHRR 417 92/80

[Application lodged 29.9.1986; Commission report 10.7.1991; Court Judgment 16.12.1992]

On 9 November 1984 Derek Edwards was convicted of robbery and burglary and sentenced to imprisonment. The evidence against the applicant consisted of detailed oral admissions that he had allegedly made to the police concerning his involvement in the offences. His defence at trial was that the statements had been concocted by the police. The applicant submitted to the Court of Appeal that the verdict should be set aside as unsafe and unsatisfactory because of certain shortcomings in the prosecution case, in particular, that certain information had been withheld by the police. He claimed that the police had shown two volumes of photographs of possible burglars (including a photograph of the applicant) to the elderly victim of the robbery. Her statement, read to the jury, said that she thought she would be able to recognise her assailant yet she did not pick out the applicant from the photographs. That fact had not been indicated to the applicant before or during his trial. The Court of Appeal dismissed the appeal. The applicant complained that he had not received a fair trial, in particular, that he was denied the right to cross-examine police witnesses on the basis of the new evidence. He further complained that he was denied an effective remedy in respect of his complaints in breach of A 13.

Comm found by majority (8–6) NV 6(1)+6(3)(d), (12–2) no separate issue under 13.

Court found by majority (7–2) NV 6, unanimously not necessary to examine 13.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti (d), Mr C Russo, Mr J de Meyer (d), Mr I Foighel, Mr F Bigi, Sir John Freeland.

The guarantees in A 6(3) were specific aspects of the right to a fair trial in A 6(1). It was unnecessary in the present case to examine the relevance of A 6(3)(d) as the applicant's allegations amounted to a complaint that the proceedings have been unfair. It was not within the province of the European Court to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it was for those courts to assess the evidence before them. The Court's task was to ascertain whether the proceedings in their entirety, including the way in which evidence was taken, were fair. The applicant's conviction was based mainly on police evidence, which he contested, that he had confessed to the offences. It subsequently came to light that certain facts had not been disclosed by the police to the defence which would have enabled it to attack the credibility and veracity of police testimony. It was a requirement of fairness under A 6(1) that the prosecution authorities disclosed to the defence all material evidence for or against the accused and the failure to do so in the present case gave rise to a defect in the trial proceedings. However, when that was discovered, the Secretary of State, following an independent police investigation, referred the case to the Court of Appeal which examined the transcript of the trial including the applicant's alleged confession and considered in detail the impact of the new information on the conviction. Before the Court of Appeal the applicant was represented by senior and junior counsel.

The police officers who had given evidence at the trial were not heard by the Court of Appeal. Counsel for the applicant had not made an application for the police officers to be called as witnesses. However, the defects of the original trial were remedied by the subsequent procedure before the Court of Appeal. There was no indication that the proceedings before the Court of Appeal were in any respect unfair. Accordingly there had been no breach of A 6.

Before the Court the applicant accepted that there had been no breach of A 13 and abandoned that complaint. Not necessary therefore for the Court to examine it.

Cited: Adolf v A (26.3.1982), De Cubber v B (26.10.1984), Helmers v S (29.10.1991), T v I (12.10.1992), Vidal v B (22.4.1992).

Efstratiou v Greece 99/66

[Application lodged 25.4.1994; Commission report 11.4.1996; Court Judgment 18.12.1996]

Petros and Anastassia Efstratiou and their daughter Sophia were Jehovah's Witnesses. Pacifism was a fundamental tenet of their religion and they were forbidden from conduct or practice associated with war or violence, even indirectly. As a result of an application by her parents, Sophia was exempted from attendance at religious education lessons and Orthodox Mass. In October 1993 she was asked to take part in the National Day celebrations which commemorated the outbreak of war between Greece and Fascist Italy on 28 October 1940. She refused to parade on account of her religious beliefs. She was punished by the school for her failure to attend with two days' suspension. The following year she was again punished with suspension, for one day, on the ground that she had not taken part in the school parade held on 28 October 1994. The applicants complained of the penalties of suspension from school.

Comm found by majority (20–8) NV P1A2 in respect of the first two applicants, (19–9) NV 9 in respect of the third applicant, unanimously NV 3 in respect of the third applicant, by majority (23–5) V 13+P1A2 in respect of the first two applicants, (24–4) V 13+9 in respect of the third applicant, unanimously NV 13+3 in respect of the third applicant.

Court found by majority (7–2) NV P1A2, NV 9, unanimously NV 3, V 13+P1A2, 13+9, NV 13+3.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson (d), Mr N Valticos, Sir John Freeland, Mr MA Lopes Rocha, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr D Gotchev, Mr P Jambrek (d).

The two sentences of P1A2 had to read not only in the light of each other but also, in particular, of A 8, 9 and 10 of the Convention. When applying P1A2, in its ordinary meaning 'convictions', taken on its own, was not synonymous with the words 'opinions' and 'ideas'. It denoted 'views that attained a certain level of cogency, seriousness, cohesion and importance'. Jehovah's Witnesses enjoyed both the status of a 'known religion' and the advantages flowing from that as regards observance. The applicants were therefore entitled to rely on the right to respect for their religious convictions within the meaning of P1A2. P1A2 enjoined the State to respect parents' convictions, religious or philosophical, throughout the entire State education programme. That duty was broad in its extent as it applied not only to the content of education and the manner of its provision but also to the performance of all the 'functions' assumed by the State. 'Respect' meant more than 'acknowledge' or 'take into account'. In addition to a primarily negative undertaking, it implied some positive obligation on the part of the State. Although individual interests on occasion had to be subordinated to those of a group, democracy did not simply mean that the views of a majority must always prevail: a balance had to be achieved which ensured the fair and proper treatment of minorities and avoided any abuse of a dominant position. Given the discretion of a State, the second sentence of P1A2 forbade the State pursuing an aim of indoctrination that might be regarded as not respecting parents' religious and philosophical convictions. That was a limit that should not be exceeded. The imposition of disciplinary penalties was an integral part of the process whereby a school could achieve the object for which it was established, including the development and moulding of the character and mental powers of its pupils. There was nothing, either in the purpose of the parade or in the arrangements for it, which could offend the

applicants' pacifist convictions to an extent prohibited by the second sentence of P1A2. Such commemorations of national events served, in their way, both pacifist objectives and the public interest. The presence of military representatives at some of the parades which took place did not in itself alter the nature of the parades. Furthermore, the obligation on the pupil did not deprive her parents of their right 'to enlighten and advise their children, to exercise with regard to their children natural parental functions as educators, or to guide their children on a path in line with the parents' own religious or philosophical convictions'. The Court could not rule on the expediency of other educational methods which, in the applicants' view, would be better suited to the aim of perpetuating historical memory among the younger generation. However, the penalty of suspension, which could not be regarded as an exclusively educational measure and might have some psychological impact on the pupil on whom it is imposed, was nevertheless of limited duration and did not require the exclusion of the pupil from the school premises. There had not therefore been a breach of P1A2.

The obligation to take part in the school parade was not such as to offend her parents' religious convictions. The impugned measure did not therefore amount to an interference with her right to freedom of religion.

Ill-treatment had to attain a minimum level of severity to fall within the scope of A 3. There had been no infringement of that provision.

The conclusions on the substantive articles did not mean that the allegations of failure to comply with P1A2 and A 9 were not arguable. They were arguable and the applicants were therefore entitled to have a remedy in order to raise their allegations. As regards the complaint under A 3, on which Miss Efstratiou did not expand, it contained no arguable allegation of a breach. It was not possible to apply to the Greek administrative courts for judicial review. The applicants could not therefore obtain a judicial decision that the disciplinary measure of suspension from school was unlawful. Such a decision, however, was a prerequisite for submitting a claim for compensation. The effectiveness of other remedies relied on by the Government had not been established. Having regard to all the circumstances of the case the applicants did not have an effective remedy before a national authority in order to raise the complaints they later submitted at Strasbourg. There had consequently been a breach of A 13 taken together with P1A2 and A 9, but not taken together with A 3.

Judgment constituted just satisfaction for non-pecuniary damage. Costs and expenses (GRD 600,000).

Cited: Campbell and Cosans v UK (25.2.1982), Ireland v UK (18.1.1978), Johnston and Others v IRL (18.12.1986), Kjeldsen, Busk Madsen and Pedersen v DK (7.12.1976), Klass and Others v D (6.9.1978), Kokkinakis v GR (25.5.1993), Plattform 'Ärzte für das Leben' v A (21.6.1988), Powell and Rayner v UK (21.2.1990), Vilvarajah and Others v UK (30.10.1991), Young, James and Webster v UK (13.8.1981).

Ekbatani v Sweden (1991) 13 EHRR 504 88/6

[Application lodged 20.6.1983; Commission report 7.10.1986; Court Judgment 26.5.1988]

Mr John Ekbatani, the applicant, was a US citizen living and working in Sweden. Following an incident between him and the traffic assistant who had been in charge of his driving test, he was charged with threatening a civil servant. During the trial before the City Court of Gothenburg in February 1982, both the applicant and the traffic assistant were heard. The applicant was found guilty and fined. The applicant appealed to the Court of Appeal. In October 1982, the Court of Appeal informed the parties that, as the case might be determined without a hearing, they were invited to file their final submissions in writing. The parties made submissions; the public prosecutor had no objection to the case being determined without a hearing but the applicant sought a hearing for a re-examination of the case. The Court of Appeal did not hold a hearing and in its judgment of November 1982 simply stated that it confirmed the City Court's judgment. The applicant's appeal to the Supreme Court was refused. The applicant complained that, in breach of A 6(1), the Court of Appeal had decided his case without a hearing.

Comm found by a majority (11–1) V 6(1).

Court held by a majority (10–6) V 6(1).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson (d), Mrs D Bindschedler-Robert (d), Mr G Lagergren (declaration), Mr F Gölcüklü (d), Mr F Matscher (d), Mr J Pinheiro Farinha (d), Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr C Russo, Mr R Bernhardt (d), Mr A Spielmann, Mr J De Meyer, Mr N Valticos.

It was not disputed that A 6(1) was applicable to the proceedings brought against the applicant including those before the Court of Appeal. The protection afforded by A 6 did not cease with the decision at first instance. The Court held that with regard to proceedings at first instance a person charged with a criminal offence should, as a general principle, be entitled to be present at the trial hearing, a requirement satisfied in this case by the City Court. However, he did not receive such a hearing before the Court of Appeal. The manner of application of A 6 to proceedings before courts of appeal depended on the special features of the proceedings involved; account had to be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein. In this case the question was whether a departure from the principle that there should be a public hearing at which the accused has the right to be present and argue his case, could, in regard to the proceedings before the Court of Appeal, be justified in the circumstances of the present case by the special features of the domestic proceedings viewed as a whole. It was true that the Court of Appeal observed the principle of 'equality of arms': neither the applicant nor the prosecutor was allowed to appear in person and both were given equal opportunities to present their cases in writing. However, observance of this principle was not decisive, as it was only one feature of the wider concept of a fair trial in criminal proceedings. The Court restated that, provided that there has been a public hearing at first instance, the absence of public hearings at second or third instance may be justified by the special features of the proceedings at issue, eg, leave to appeal proceedings and those involving only questions of law, as opposed to questions of fact, may comply with the requirements of A 6, even though the appellant was not given an opportunity of being heard in person by the appeal court. However, in this case the Court of Appeal was called upon to examine the case as to the facts and the law. In particular, it had to make a full assessment of the question of the applicant's guilt or innocence. The only limitation on its jurisdiction was that it did not have the power to increase the sentence imposed. In the circumstances of the case that matter in question could not, as a matter of fair trial, have been properly determined without a direct assessment of the evidence given in person by the applicant and by the complainant. Accordingly, the Court of Appeal's re-examination of the applicant's conviction at first instance ought to have comprised a full rehearing of the applicant and the complainant. The limitations on the Court of Appeal's powers as a result of the prohibition of '*reformatio in pejus*' related only to sentencing. They could not be considered to be relevant to the principal issue before the Court of Appeal, namely the question of guilt or innocence. Neither could the fact that the case-file was available to the public. Having regard to the entirety of the proceedings before the Swedish courts, to the role of the Court of Appeal, and to the nature of the issue submitted to it, there were no special features to justify a denial of a public hearing and of the applicant's right to be heard in person. Accordingly, there was a violation of A 6(1).

Costs and expenses (SEK 112,500 less FF 24,216.57).

Cited: Axen v D (8.12.1983), Bouamar v B (29.2.1988), Colozza v I (12.2.1985), Monnell and Morris v UK (2.3.1987), Sutter v CH (22.2.1984).

Ekinci v Turkey 00/183

[Application lodged 3.10.1994; Court Judgment 18.12.2000]

Mr Seho Ekinci's brother, Nuri Ekinci, was an official in a pro-Kurdish political party. On 16 February 1994 he was killed in the centre of his village. The police attended and an investigation was conducted, but they were unable to find a perpetrator. The applicant complained that his brother, Nuri, was killed by or with the connivance of the law-enforcement agencies because of his political activities and that no effective investigation was carried out with a view to solving the murder.

Court unanimously dismissed the Government's preliminary objection, found NV 2.

Judges: Mr J-P Costa, President, Mr W Fuhrmann, Mr P Kûris, Mrs F Tulkens, Mrs HS Greve, Mr K Traja, Mr F Gölcüklü, ad hoc judge.

Regarding the Government's preliminary objection of non-exhaustion, a civil action for damages in respect of unlawful acts by agents of the State presupposed that the person responsible for the harm had been identified, which was not so in the present case, and it had not been shown that an administrative remedy would be effective in a comparable situation to the appellant's.

On the evidence adduced, it was impossible to establish beyond reasonable doubt that the authorities had any responsibility for the murder of the applicant's brother. The investigations aimed at finding the killer were carried out both at the preliminary investigation stage and afterwards. The possibility that the village guards might be involved was investigated. The authorities could not be accused of having remained passive or having carried out an ineffective investigation.

Cited: Ahmet Sadik v GR (15.11.1996), Akdivar and Others v TR (16.9.1996), Aksoy v TR (18.12.1996), Aytekin v TR (23.9.1998), Çakici v TR (8.7.1999), Cardot v F (19.3.1991), Ergi v TR (28.7.1998), Ireland v UK (18.1.1978), Kaya v TR (19.2.1998), McCann and Others v UK (27.9.1995), Yagci and Sargin v TR (8.6.1995), Yasa v TR (2.9.1998).

El Boujaïdi v France 97/73

[Application lodged 7.11.1994; Commission report 26.6.1996; Court Judgment 26.9.1997]

Mr Abderrahim El Boujaïdi was a Moroccan national. In 1974 he went with his mother, his three sisters and his brother to join his father in France. He went to school in France, where he also worked for several years. On 24 March 1988 the Saint-Etienne Criminal Court sentenced the applicant to three years' imprisonment for drug trafficking, to run concurrently with another sentence of thirty months' imprisonment imposed by the Annecy Criminal Court on 25 September 1987 for dealing in heroin, and ordered him to pay customs fines. The Criminal Court further imposed a permanent exclusion order on the applicant. On appeal by the prosecution, the Lyons Court of Appeal, in a judgment of 12 January 1989, increased the applicant's sentence to six years' imprisonment, and confirmed the permanent exclusion order. Following his release from custody he committed a further offence and was convicted and sentenced for robbery. His three applications to have the order permanently excluding him from French territory rescinded were dismissed. In his third application, on 22 July 1993, he pleaded changes in his personal circumstances, namely the fact that he was living with a Frenchwoman, Mrs M, and was the father of their child. On 26 August 1993 the exclusion order was enforced. On 20 October 1993, at the French Consulate in Fez, the applicant recognised paternity of Mrs M's child. In a judgment of 16 December 1993 the Lyons Court of Appeal refused the application to have the exclusion order rescinded. His appeal to the Court of Cassation was dismissed. The applicant claimed that his permanent exclusion from French territory was in breach of A 8 of the Convention.

Comm found by majority (11–2) NV 8.

Court found by majority (8–1) NV 8.

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr R MacDonald, Mr C Russo, Mr I Foighel (d), Sir John Freeland, Mr MA Lopes Rocha, Mr L Wildhaber, Mr E Levits.

The question whether the applicant had a private and family life within the meaning of A 8 had to be determined in the light of the position when the exclusion order became final. That meant in this case, at the beginning of 1989, the applicant could not therefore plead his relationship with Mrs M and the fact that he was the father of her child, since those circumstances came into being long after that date. However, he arrived in France at the age of 7 and lived there until 26 August 1993. He received most of his schooling there and worked there for several years. In addition, his parents, his three sisters and his brother lived there. Consequently, the enforcement of the exclusion order amounted to interference with the applicant's right to respect for his private and family life. The permanent exclusion order was in accordance with the law being based on the

Public Health Code. The interference sought to achieve aims compatible with the Convention, namely the prevention of disorder or crime. It was for the Contracting States to maintain public order, in particular by exercising their right to control the entry and residence of aliens and to order the expulsion of aliens convicted of criminal offences. However, their decisions had to be necessary in a democratic society, that was to say, justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued. The applicant arrived in France at the age of 7, lived there lawfully, received most of his education there, worked there and his parents and siblings lived there. He did not claim not to know Arabic or that he had never returned to Morocco before the exclusion order. He had never shown any desire to acquire French nationality. Accordingly, even though most of his family and social ties were in France, it had not been established that he had lost all links with his country of origin other than his nationality. In addition, he had a previous conviction for heroin dealing in 1987 and continued to commit criminal offences on his release when he was unlawfully present in France. The seriousness of the offence and his subsequent conduct counted heavily against him. In the circumstances, the enforcement of the order for the applicant's permanent exclusion from French territory was not disproportionate to the legitimate aims pursued. There had accordingly been no breach of A 8.

Cited: Bouchelkia v F (29.1.1997).

Elsholz v Germany 00/180

[Application lodged 31.10.1994; Commission report 1.3.1999; Court Judgment 13.7.2000]

Mr Egbert Elsholz was the father of child C, born out of wedlock on 13 December 1986. On 9 January 1987 he acknowledged paternity and undertook to pay maintenance for C. After the mother of C moved out of the home, he continued to see his son frequently until July 1991. When questioned by an official of the Erkrath Youth Office at his home in December 1991, C stated that he did not wish to have further contacts with the applicant. The applicant's application to the Mettmann District Court for access was dismissed on 4 December 1992. His further application in 1993 for access was also dismissed. On 21 January 1994, the Wuppertal Regional Court, without a hearing, dismissed the applicant's appeal. On 19 April 1994, a panel of three judges of the Federal Constitutional Court refused to entertain the applicant's constitutional complaint. The applicant alleged that the refusal to grant him access to his son amounted to a breach of A 8, that, as the father of a child born out of wedlock, he had been the victim of discrimination contrary to A 14 taken together with A 8 and that, under A 6(1), the proceedings before the German courts were unfair.

Comm found by majority (15–12) V 14+8, no separate issue regarding A 8 taken alone, (17–10) V 6 (1).

Court found by majority (13–4) V 8, unanimously NV 14+8, (13–4) V 6(1).

Judges: Mr L Wildhaber, President, Mrs E Palm (jpd), Mr J-P Costa, Mr L Ferrari Bravo, Mr L Caflisch, Mr W Fuhrmann, Mr K Jungwiert, Mr J Casadevall, Mr B Zupancic, Mr J Hedigan (jpd), Mrs W Thomassen, Mrs M Tsatsa-Nikolovska, Mr T Pantîru, Mr AB Baka (jpd), Mr E Levits (jpd), Mr K Traja, Mr R Maruste.

The notion of family under A 8 was not confined to marriage-based relationships and could encompass other de facto 'family' ties where the parties were living together out of wedlock. A child born out of such a relationship was *ipso jure* part of that 'family' unit from the moment and by the very fact of his birth. Thus, there existed between the child and his parents a bond amounting to family life. The mutual enjoyment by parent and child of each other's company constituted a fundamental element of family life, even if the relationship between the parents had broken down, and domestic measures hindering such enjoyment amounted to an interference with the right protected by A 8. The decisions refusing the applicant access to his son interfered with the exercise of his right to respect for his family life as guaranteed by A 8(1). The relevant decisions had a basis in national law, namely, Article 1711(2) of the Civil Code as in force at the relevant time. The court decisions were clearly aimed at protecting the health or morals and the rights and freedoms of the child. Accordingly, they pursued legitimate aims within the meaning of A 8(2). In

determining whether the impugned measure was necessary in a democratic society, the Court considered whether, in the light of the case as a whole, the reasons adduced to justify the measure were relevant and sufficient for the purposes of A 8(2). The competent national courts, when refusing the applicant's request for a visiting arrangement, relied on the statements made by the child, questioned by the District Court at the age of about five and six years, took into account the strained relations between the parents, considering that it did not matter who was responsible for the tensions, and found that any further contact would negatively affect the child. Those reasons were relevant. However, it had to be determined whether, having regard to the particular circumstances of the case and notably the importance of the decisions to be taken, the applicant had been involved in the decision-making process, seen as a whole, to a degree sufficient to provide him with the requisite protection of his interests. The reasons given by the District Court were insufficient to explain why, in the particular circumstances of the case, expert advice was not considered necessary, as recommended by the Erkrath Youth Office. Moreover, taking into account the importance of the subject-matter, namely, the relations between a father and his child, the Regional Court should not have been satisfied, in the circumstances, by relying on the file and the written appeal submissions without having at its disposal psychological expert evidence in order to evaluate the child's statements. The combination of the refusal to order an independent psychological report and the absence of a hearing before the Regional Court revealed an insufficient involvement of the applicant in the decision-making process. Therefore the national authorities overstepped their margin of appreciation, thereby violating the applicant's rights under A 8.

The Court did not find it necessary to consider whether the former German legislation as such, namely, A 1711(2) of the Civil Code, made an unjustifiable distinction between fathers of children born out of wedlock and divorced fathers, such as to be discriminatory within the meaning of A 14, since the application of that provision in the present case did not appear to have led to a different approach than would have ensued in the case of a divorced couple. The courts' decisions were clearly based on the danger to the child's development if he had to take up contact with the applicant contrary to the will of the mother. The risk to the child's welfare was thus the paramount consideration. Consequently, it could not be said on the facts of the present case that a divorced father would have been treated more favourably. There had accordingly been no violation of A 14 in conjunction with A 8.

The admissibility of evidence was primarily a matter for regulation by national law and, as a general rule, it was for the national courts to assess the evidence before them. The Court's task under the Convention was rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair. Having regard to the findings with respect to A 8, the Court considered that, in the present case, because of the lack of psychological expert evidence and the circumstance that the Regional Court did not conduct a further hearing, although the applicant's appeal raised questions of fact and law which could not adequately be resolved on the basis of the written material at the disposal of the Regional Court, the proceedings, taken as a whole, did not satisfy the requirements of a fair and public hearing within the meaning of A 6(1). There has thus been a breach of that provision.

Non-pecuniary damage (DM 35,000), costs and expenses (DM 12,584.26).

Cited: Bronda v I (9.6.1998), H v F (24.10.1989), Hertel v CH (25.8.1998), Hokkanen v SF (23.9.1994), Immobiliare Saffi v I (28.7.1999), Johansen v N (7.8.1996), K and T v SF (27.4.2000), Keegan v IRL (26.5.1994), Olsson (No 2) v S (27.11.1992), Schenk v CH (12.7.1988), W v UK (8.7.1987).

Engel and Others v Netherlands (1979–80) 1 EHRR 647, 706 76/3

[Applications lodged 6.7.1971, 31.5.1971, 19.12.1971, 29.12.1971; Commission report 19.7.1974; Court Judgment 8.6.1976 (merits), 23.11.1976 (A 50)]

Cornelis JM Engel, Peter van der Wiel, Gerrit Jan de Wit, Johannes C Dona and Willem AC Schul were conscript soldiers serving in different non-commissioned ranks in the Netherlands armed

forces. On separate occasions, various penalties had been passed on them by their respective commanding officers for offences against military discipline. The applicants had appealed to the complaints officer and finally to the Supreme Military Court which in substance confirmed the decisions challenged but, in two cases, reduced the punishment imposed. They complained that the penalties imposed on them constituted deprivation of liberty contrary to A 5, that the proceedings before the military authorities and the Supreme Military Court were not in accordance with the requirements of A 6 and that the manner in which they were treated was discriminatory. Mr Engel also alleged a separate breach of A 5 in connection with his provisional arrest. Mr Dona and Mr Schul contended that their interim custody had been in disregard of A 5 and that the punishment imposed on them for having published and distributed articles deemed to undermine military discipline had contravened A 10, 11, 14, 17 and 18.

Comm found by majority (11 with one abstention) NV 5 regarding the light arrest of Mr Engel and Mr van der Wiel, by various majorities V 5(1) regarding the other disciplinary punishments complained of by Mr Engel, Mr de Wit, Mr Dona and Mr Schul, (11 with one abstention) V 5(4) in that the appeals had not been decided speedily, (11 with one member absent) V 5(1) regarding Mr Engel's provisional arrest under Article 44 of the 1903 Act, (10–1 with one member absent) 6 not applicable to any of the disciplinary proceedings concerned, by various majorities NV 10, 11, 17 or 18 in the cases of Mr Dona and Mr Schul and NV 5 in respect of their interim custody, by various majorities NV 14+5, 14+6, 14+10.

Court found unanimously 5 not applicable to the light arrest of Mr Engel (second punishment) and of Mr van der Wiel, by majority (12–1) 5 not applicable to the aggravated arrest of Mr de Wit, or to the interim aggravated arrest of Mr Dona and Mr Schul, (11–2) NV 5(1) regarding the committal of Mr Dona and Mr Schul to a disciplinary unit, (9–4) V 5(1) regarding the whole period of Mr Engel's provisional strict arrest, (10–3) V 5(1) regarding Mr Engel's strict arrest exceeding 24 hours, unanimously NV 14+5(1) regarding the committal of Mr Dona and Mr Schul to a disciplinary unit and Mr Engel's provisional arrest, (12–1) NV 5(4) regarding the committal of Mr Dona and Mr Schul to a disciplinary unit, (11–2) 6 not applicable to Mr Engel and Mr van der Wiel on the ground of the words criminal charge or civil rights and obligations, (11–2) V 6(1) in the case of Mr de Wit, Mr Dona and Mr Schul insofar as hearings before the Supreme Military Court took place in camera, unanimously NV 6(2) in the case of Mr Dona and Mr Schul, unanimously NV 6(3)(b) in the case of Mr de Wit, Mr Dona and Mr Schul, (9–4) NV 6(3)(c) in the case of those three applicants, (9–4) NV 6(3)(d) in the case of Mr de Wit, (12–1) NV 6(3)(d) in the case of Mr Dona and Mr Schul, unanimously NV 14+6 in the case of Mr de Wit, Mr Dona and Mr Schul, unanimously no need to rule on 18+6 in the complaint of Mr Dona and Mr Schul, unanimously NV 10, 14+10, 17+10 or 18+10 in the case of Mr Dona and Mr Schul, unanimously NV 11 in the case of Mr Dona and Mr Schul.

Judges (merits): Mr H Mosler, President, Mr A Verdross (so), Mr M Zekia (so), Mr J Cremona (so), Mr G Wiarda, Mr P O'Donoghue (so), Mrs H Pedersen (so), Mr T Vilhjálmsson (so), Mr S Petren, Mr A Bozer, Mr W Ganshof Van Der Meersch, Mrs D Bindschedler-Robert (so), Mr MD Evrigenis (so).

Judges (A 50): Composition as above, separate opinions from Mr Ganshof van der Meersch, Mr Evrigenis and Mrs Bindschedler-Robert.

Military discipline did not fall outside the scope of A 5(1). That provision had to be read in the light of A 1 and 14, and the list of deprivations of liberty set out in the Article was exhaustive. A disciplinary penalty or measure could in consequence constitute a breach of A 5(1). The right to liberty was contemplating individual liberty, the physical liberty of the person. Its aim was to ensure that no one should be dispossessed of this liberty in an arbitrary fashion and it did not concern mere restrictions upon liberty of movement. Military service did not on its own, in any way constitute a deprivation of liberty under the Convention, since it was expressly sanctioned in A 4(3)(b). Wide limitations upon the freedom of movement of the members of the armed forces were entailed by reason of the specific demands of military service so that the normal restrictions accompanying it did not come within the ambit of A 5 either. Each State was competent to organise its own system of military discipline and enjoyed in the matter a certain margin of appreciation. The bounds that A 5 required the State not to exceed were not identical for servicemen and civilians. A disciplinary penalty or measure which on analysis would unquestionably be deemed a deprivation of liberty were it to be applied to a civilian may not possess this characteristic when

imposed upon a serviceman. Nevertheless, such penalty or measure did not escape the terms of A 5 when it took the form of restrictions that clearly deviated from the normal conditions of life within the armed forces of the Contracting States. In order to establish whether this was so, account had to be taken of a whole range of factors such as the nature, duration, effects and manner of execution of the penalty or measure in question. No deprivation of liberty resulted from the three to four days' light arrest awarded respectively against Mr Engel and Mr van der Wiel. Aggravated arrest differed from light arrest on one point alone: in off-duty hours, soldiers served the arrest in a specially designated place which they could not leave, but they were not kept under lock and key. Consequently, the Court did not consider as a deprivation of liberty the 12 days' aggravated arrest complained of by Mr de Wit. Strict arrest differed in that the person was locked in a cell day and night and was excluded from the performance of their normal duties. It thus involved deprivation of liberty. Therefore, the provisional arrest inflicted on Mr Engel in the form of strict arrest had the same character despite its short duration. Committal to a disciplinary unit, applied in 1971 to Mr Dona and Mr Schul, represented the most severe penalty under military disciplinary law in The Netherlands. The committal lasted for a period of three to six months and Mr Dona and Mr Schul spent the night locked in a cell. In those circumstances, deprivation of liberty occurred.

A 14 and 5: A distinction based on rank could run counter to A 14. A distinction that concerned the manner of execution of a penalty or measure occasioning deprivation of liberty did not on that account fall outside the ambit of A 14. The hierarchical structure inherent in armies entailed differentiation according to rank. Corresponding to the various ranks were differing responsibilities which in their turn justified certain inequalities of treatment in the disciplinary sphere. Based on an element objective in itself, that is, rank, those distinctions could have been dictated by a legitimate aim, namely the preservation of discipline by methods suited to each category of servicemen. On the whole, the legislator did not seem in the circumstances to have abused the latitude left to him by the Convention and the principle of proportionality had not been offended in the present case. Inequalities of treatment between servicemen and civilians did not result in any discrimination incompatible with the Convention, the conditions and demands of military life being by nature different from those of civil. There was therefore no breach of A 5(1) and 14 taken together.

A 5(4): the committal of Mr Dona and Mr Schul to a disciplinary unit ensued from their conviction by a competent court. While A 5(4) obliged the Contracting States to make available a right of recourse to a court when the decision depriving a person of his liberty was one taken by an administrative body, there was nothing to indicate that the same applied when the decision was made by a court at the close of judicial proceedings. Therefore, there was no breach of A 5(4) in the case of Mr Dona and Mr Schul.

A 6: regarding the applicability of A 6, the word 'charge' had to be understood within the meaning of the Convention. The definition of the offence according to the legal system of the respondent State provided no more than a starting point. The very nature of the offence was a factor of greater importance. In addition, regard had to be had to the degree of severity of the penalty that the person concerned risked incurring. In a society subscribing to the rule of law, there belonged to the 'criminal' sphere deprivations of liberty liable to be imposed as a punishment, except those which by their nature, duration or manner of execution could not be appreciably detrimental. The seriousness of what was at stake, the traditions of the Contracting States and the importance attached by the Convention to respect for the physical liberty of the person all required that that should be so. As Mr Dona and Mr Schul were the subject of 'criminal charges', A 6 applied to them in its entirety. Mr Engel was not 'charged with a criminal offence', therefore the proceedings brought against him were occasioned solely by offences against military discipline. The Supreme Military Court constituted an independent and impartial tribunal established by law and there was nothing to indicate that it failed to give the applicants a fair hearing. The time that elapsed between the charge and the final decision appeared reasonable. The sentence was pronounced publicly. However, the hearings in the presence of the parties had taken place in camera in accordance with the established practice of the Supreme Military Court in disciplinary

proceedings. A 6(1) required in a very general fashion that judicial proceedings be conducted in public. None of the exceptions listed in A 6(1) were raised. Hence, on that point, there had been violation of A 6(1).

A 6(2) dealt only with the proof of guilt and not with the kind or level of punishment. It was for the sole purpose of determining their punishment in the light of their character and previous record that the court also took into consideration certain similar, established facts the truth of which they did not challenge. The court did not punish them for those facts in themselves.

The allegations of Mr de Wit, Mr Dona and Mr Schul regarding A 6(3) were too vague to lead the Court to conclude that there had been a breach of A 6(3)(b), there was no interference with the right protected by A 6(3)(c) and no evidence of a breach of A 6(3)(d).

A 14 and 6: Whilst military disciplinary procedure was not attended by the same guarantees as criminal proceedings brought against civilians, it offered on the other hand substantial advantages to those subject to it. The distinctions between military disciplinary procedure and criminal proceedings in the legislation of the Contracting States were explicable by the differences between the conditions of military and of civil life. They could not be taken as entailing a discrimination against members of the armed forces, within the meaning of A 6 and 14 taken together.

A 6 and 18: The Court's conclusions on the applicability and observance of A 6 in the case of Mr Dona and Mr Schul made it unnecessary for it to rule on the complaint under A 6 and 18 taken together.

A 10: Regarding the disciplinary punishment undergone by the applicants for having collaborated in the publication and distribution of 'Alarm', the disputed penalty represented an interference with the exercise of the freedom of expression of Mr Dona and Mr Schul. The penalty was prescribed by law. The treatment was aimed at the prevention of disorder. The applicants contributed to the publication and distribution of a writing at a time when the atmosphere in the barracks was somewhat strained. In those circumstances the Supreme Military Court may have had well-founded reasons for considering that they had attempted to undermine military discipline and that it was necessary for the prevention of disorder to impose the penalty inflicted. There was thus no question of depriving them of their freedom of expression but only of punishing the abusive exercise of that freedom on their part. Consequently, it did not appear that its decision infringed A 10(2).

A 14 and 10: The distinction at issue was explicable by the differences between the conditions of military and of civil life and, more specifically, by the duties and responsibilities peculiar to members of the armed forces in the field of freedom of expression. In principle it was not the Court's function to compare different decisions of national courts, even if given in apparently similar proceedings; it had to respect the independence of those courts. Such a decision would actually become discriminatory in character if it were to depart from others to the point of constituting a denial of justice or a manifest abuse, but the information supplied to the Court did not permit a finding of that sort.

A 17 and 10, 18 and 10: This complaint under A 17 and 18 did not support examination since the Court had already concluded that the said limitation was justified under A 10(2).

A 11: Mr Dona and Mr Schul were not punished by reason either of their membership of the of the particular conscript group or of their participation in its activities, including preparation and publication of the journal 'Alarm'. While the Supreme Military Court punished them, it was only because it considered that they had made use of their freedom of expression with a view to undermining military discipline. In view of the absence of any interference with their right under A 11(1), the Court did not have to consider A 11(2) or A 14, 17 and 18.

Damages (NLG 100 to Mr Engel).

Cited: 'Belgian Linguistic' case (23.7.1968), De Becker v B (27.3.1962), De Wilde, Ooms and Versyp v B (18.6.1971), Golder v UK (21.2.1975), Neumeister v A (7.5.1974), Ringeisen v A (16.7.1971 and 22.6.1972), Stögmüller v A (10.11.1969), Wemhoff v D (27.6.1968).

Englert v Germany (1991) 13 EHRR 392 87/19

[Application lodged 13.10.1982; Commission report 9.10.1985; Court Judgment 25.8.1987]

Mr Joachim Englert, the applicant, was tried for a number of offences. During his trial the Regional Court stayed the proceedings in respect of some charges, and convicted him of others, for which he was sentenced to imprisonment. He was acquitted of one charge. He appealed on points of law against conviction. The Federal Court of Justice set the judgment aside and remitted the case for retrial by a different criminal chamber of the Regional Court. The prosecution applied for the proceedings to be stayed, as the sentence the applicant could expect was almost negligible in comparison with one passed earlier. Defence counsel informed the Regional Court that he could agree on the defendant's behalf to the applicant bearing his own necessary costs and expenses but that his client had no intention of forgoing compensation for his detention on remand. The Regional Court stayed the proceedings and ordered that the costs of the proceedings – but not the applicant's necessary costs and expenses – should be borne by the Treasury. It refused to award the applicant any compensation in respect of his arrest and detention on remand, on the grounds that the circumstances of the case were so overwhelming that a conviction was more likely than an acquittal and that it was his own actions that gave rise to the strong suspicion that he had committed the offence. The applicant complained that the reasons given by the Regional Court offended the principle of the presumption of innocence enshrined in A 6(2).

Comm found unanimously V 6(2).

Court unanimously rejected Government's preliminary objection and held by a majority NV 6(2).

Judges: Mr R Ryssdal, President, Mr J Cremona (d), Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr G Lagergren, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr L-E Pettiti, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr J Gersing, Mr A Spielmann, Mr J De Meyer, Mr N Valticos.

The Government's preliminary objection of non-exhaustion was rejected. In dismissing the original appeal, the Court of Appeal had stated that the finality of the decision ending the proceedings extended also to the ancillary decisions, including not only the one as to costs and expenses but also the one as to compensation. In addition, the Regional Court itself had stated that its decision as to costs and compensation was final because the order staying the proceedings was unappealable. On the facts, A 26 did not require the applicant to have raised the matter in the Court of Appeal. A 26 required that applicants should, at least in substance, have raised before the domestic courts the complaint they subsequently submit to the Convention institutions. In order for the applicant to be able to complain of a breach of A 6(2) it was first necessary that a remedy should be available, and in the present case this was lacking, given the finality of the Regional Court's decision. The only remedies that A 26 required to be exhausted were those that related to the breaches alleged and that were available and sufficient. While it was possible for the applicant to bring his complaint before the Constitutional Court, such a remedy would not have been effective in the circumstances of the case.

The Court held that no provision of the Convention gave a person charged with a criminal offence a right to reimbursement of his costs or compensation for lawful detention on remand where proceedings taken against him were discontinued. However, a decision refusing such compensation, costs and expenses following the termination of proceedings could raise an issue under A 6(2) if the supporting reasoning amounted in substance to a determination of the accused's guilt without his having previously been proved guilty and, in particular, without his having had an opportunity to exercise the rights of the defence. In the applicant's case, the relevant national provisions required the Regional Court to take into account the state of the proceedings when brought to a close, the conduct of the defendant and the weight of the suspicion still falling on him. The Regional Court refused to award the applicant compensation, costs and expenses, indicating that there were still strong suspicions concerning him, and that he had caused the criminal proceedings to be taken against him by his own behaviour. This decision described a state of suspicion and did not contain any finding of guilt. In addition, the refusal to order compensation, costs and expenses did not amount to a penalty or a measure that could be equated

with a penalty. The Regional Court did not impose any sanction but merely refused to order that costs, expenses or compensation should be paid out of public funds. The Regional Court's decision did not offend the presumption of innocence guaranteed to the applicant under A 6(2).

Cited: Bozano v F (18.12.1986), De Jong, Baljet and van den Brink v NL (22.5.1984), Glasenapp v D (28.8.1986), Guzzardi v I (6.11.1980), Minelli v CH (25.3.1983).

Ercolino and Ambrosino v Italy 99/119

[Application lodged 16.7.1997; Court Judgment 14.12.1999]

Mr Carlo and Mrs Immacolata Ercolino and Mrs Maria Ambrosino complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mrs M Tsatsa-Nikolovska, Mr A Baka.

The period to be taken into consideration began on 6 May 1991 and was still pending on 8 October 1999. It had lasted eight years, five months at two levels of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 14,000,000), costs and expenses (ITL 1,443,800).

Cited: Bottazzi v I (28.7.1999).

Erdagöz v Turkey 97/82

[Application lodged 1.5.1993; Commission report 23.5.1996; Court Judgment 22.10.1997]

Mr Mehmet Erdagöz, the applicant, was the owner of a shop in Adana. As a result of various incidents, he lodged a complaint with the police against a person he stated had attacked his property. The applicant was suspected of fabricating evidence and the Chief Inspector ordered him to be taken to the security police headquarters and referred to public prosecutor's office. He was released the same day. He lodged a criminal complaint against the chief inspector and deputy inspector, the former he said had drawn up a biased report and the latter had inflicted ill-treatment on him at the police station. At the request of the police a medical examination was undertaken which showed some superficial grazing, bruises and swelling at the knees. The Adana public prosecutor, after conducting an investigation, discontinued the proceedings. The applicant's appeal against the discontinuation order to the Tarsus Assize Court was dismissed and his petition to the Minister of Justice to lodge an appeal was refused. The applicant lodged further complaints which were also discontinued and his applications dismissed on appeal. He complained of ill-treatment inflicted by police officers and of the unlawfulness of his detention in police custody.

Comm found unanimously NV 3, V 5.

Court unanimously rejected Government's preliminary objections, found unanimously NV 3, by majority (7–2) NV 5(1).

Judges: Mr R Bernhardt, President, Mr F Gölcüklü (jc), Mr F Matscher (jc), Mr L-E Pettiti (jc), Mr J De Meyer, Mr AN Loizou (jpc/pd), Sir John Freeland (jpc/pd), Mr B Repik, Mr J Casadevall.

The compass of the case was delimited not by the Commission report but by the admissibility decision. The Court had full jurisdiction within the limits of the case referred to it and therefore dismissed the Government's plea that the scope of the case should be limited to issues under A 5(1).

A 3: The establishment and verification of facts was primarily a matter for the Commission although the Court was bound by the Commission's findings of fact and remained free to make its own appreciation in the light of all the material before it. Nor was it in principle for the Court to substitute its own view of the facts for those of the domestic courts, whose task it was to assess the evidence adduced before them. There were doubts in this case as to whether the applicant had suffered treatment prohibited by A 3 when he first went to the police station to lodge a complaint

about the damage to his shop. Although traces of blows and injuries on the applicant's body were mentioned in the medical report, there was no proof that those lesions were the result of ill-treatment allegedly inflicted by the deputy inspector. Accordingly, the Court found no breach of A 3.

Regarding A 5(1), the Government's preliminary objection of non-exhaustion of domestic remedies had not been submitted to the Commission and it was therefore dismissed on the grounds of estoppel.

The fact that an applicant had not been charged or brought before a court did not necessarily mean that the purpose of his detention was not in accordance with A 5(1)(c). The existence of a purpose had to be considered independently of its achievement and A 5(1)(c) did not presuppose that the police should have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicant was in custody. The object of questioning during detention under A 5(1)(c) was to further the criminal investigation by way of confirming or dispelling the concrete suspicion grounding the arrest. Thus, facts which raised a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which would come at the next stage of the process of criminal investigation. However, for there to be reasonable suspicion there had to be facts or information which would satisfy an objective observer that the person concerned may have committed an offence. In the present case the suspicion reached the required level as it was based on specific facts which showed that the purpose of the deprivation of liberty was to confirm or dispel the suspicion that the applicant had falsely reported a criminal offence and fabricated evidence. Having regard to the applicant's conduct and the nature of the offences in question, there was no reason to disagree with the public prosecutor's finding that the applicant had been detained for twenty-four hours so that the inquiry concerning him could be completed. The deprivation of his liberty was therefore justified under A 5(1)(c) and there had been no breach of that provision.

Cited: Brogan and Others v UK (29.11.1988), Fox, Campbell and Hartley v UK (30.8.1990), Guzzardi v I (6.11.1980), Klaas v D (22.9.1993), Loizidou v TR (*preliminary objections*) (23.3.1995), Murray v UK (28.10.1994), Nsona v NL (28.11.1996), Ribitsch v A (4.12.1995).

Erdogdu v Turkey 00/163

[Application lodged 4.11.1994; Commission report 1.3.1999; Court Judgment 15.6.2000]

Mr Ümit Erdogdu was the editor of the fortnightly review 'The Workers' Voice'. In an edition of 2 October 1992, the review published an article written by a reader entitled 'The Kurdish problem is a Turkish problem'. The applicant and the publisher were charged with spreading propaganda against the integrity of the State and the indivisibility of the Turkish nation under the Prevention of Terrorism Act. On 20 December 1993 the National Security Court convicted the applicant and sentenced him to six months' imprisonment and a fine. He appealed to the Court of Cassation which, following enactment of a new law No 4304, reversed the impugned judgment and remitted the case to the National Security Court. On 10 December 1997 the National Security Court deferred sentencing the applicant, ordering that he would be sentenced if, within 3 years from the date of deferral, he was convicted in his capacity as editor of an offence with intent. He complained that his conviction and sentence violated his freedom of expression.

Comm found by majority (25–1) V 10, unanimously NV 7.

Court unanimously dismissed the Government's preliminary objection, found V 10.

Judges: Mr A Pastor Ridruejo, President, Mr V Butkevych, Mrs N Vajic, Mr J Hedigan, Mr M Pellonpää, Mrs S Botoucharova, Mr F Gölcüklü (so), ad hoc judge.

The Government's preliminary objection of failure to exhaust domestic remedies was rejected.

The applicant's conviction amounted to an interference. The author of the article had sought to provide an explanation for developments in south east Turkey and had expressed his point of view on both the internal and external repercussions. The article had taken the form of a political speech

and it was clear that the author had intended to criticise the dominant political ideology of the State and the way in which the authorities were dealing with the Kurdish problem. The phrases criticised by the Government expressed personal and subjective views which could be regarded as reflecting the author's fierce opposition to the official policy applied in the south-east. While there were aspects of the article which lent a degree of virulence to the political criticism contained in it, there was nothing that would have caused readers to gain the impression that recourse to violence was a necessary and justified measure of self-defence against Turkey. The national authorities had not taken sufficient account of the freedom of the press or the right of the public to obtain a different perspective on the Kurdish problem. The deferral of sentence, which only produced its effect if the applicant committed no further offences with intent as an editor for 3 years, was similar to a ban effectively censoring the applicant in the exercise of his profession. The extent of the ban was also unreasonable. There had accordingly been a violation of A 10.

Pecuniary damage (FF 6,000), non-pecuniary damage (FF 20,000), costs and expenses (FF 20,000).

Cited: Ahmet Sadik v GR (15.11.1996), Baskaya and Okçuoglu v TR (8.7.1999), Fressoz and Roire v F (21.1.1999), Hashman and Harrup v UK (25.11.1999), Hertel v CH (25.8.1998), News Verlags GmbH & Co KG v A (11.1.2000), Nilsen and Johnsen v N (25.11.1999), Öztürk v TR (16.3.2000), Sürek v TR (Nos 1 and 3) (8.7.1999), Sürek and Özdemir v TR (8.7.1999).

Erdogdu and Ince v Turkey 99/34

[Application lodged 20.8.1994; Commission report 11.12.1997; Court Judgment 8.7.1999]

Mr Ümit Erdogdu was the editor of the monthly review 'Democratic Opposition'. In the January 1992 issue of the review he published an interview which the second applicant, Mr Selami Ince, had conducted with a Turkish sociologist, Dr I B. The applicants were charged under the Prevention of Terrorism Act 1991 with having disseminated propaganda against the indivisibility of the State by publishing the interview. They were found guilty by the Istanbul National Security Court. The first applicant was sentenced to five months' imprisonment and a fine of TRL 41,666,666, the second applicant was sentenced to one year and eight months' imprisonment and a fine of the same amount. Their appeals to the Court of Cassation were dismissed. The applicants complained that their convictions resulting from the publication of the incriminated interview unjustifiably interfered with their freedom of thought and freedom of expression and that they had been convicted for an act which had not constituted a criminal offence under national or international law at the time it had been committed given that the relevant provision of the Prevention of Terrorism Act 1991 was so vague that it had not enabled them to distinguish between permissible and prohibited behaviour.

Comm found by majority (31–1) V 10, unanimously NV 7.

Court dismissed Government's preliminary objection, found unanimously V 10, NV 7.

Judges: Mr L Wildhaber, President, Mrs E Palm (jc), Mr A Pastor Ridruejo, Mr G Bonello, Mr J Makarczyk, Mr P Kûris, Mr J-P Costa, Mrs F Tulkens (jc), Mrs V Stráznická, Mr M Fischbach (jc), Mr V Butkevych, Mr J Casadevall (jc), Mrs HS Greve (jc), Mr AB Baka, Mr R Maruste, Mr K Traja, Mr F Gölcüklü, ad hoc judge.

After considering the dates of the various decisions' communications the Court considered that the fact that the applicants' first letter was received by the Commission only four days after the date indicated in the letter did not suggest that the applicants had back-dated that letter. The Court therefore dismissed the Government's preliminary objection of failure to respect the six months' rule.

The complaint under A 6(1) had not been raised before the Commission and could not therefore be considered by the Court.

There had been an interference with the applicants' right to freedom of expression on account of their conviction and sentence under the Prevention of Terrorism Act 1991. The interference was prescribed by law. Having regard to the sensitivity of the security situation in south-east Turkey and to the need for the authorities to be alert to acts capable of fuelling additional violence, the

measures taken against the applicants could be said to have been in furtherance of certain of the aims of the protection of national security and territorial integrity and the prevention of disorder and crime. The impugned interferences had to be seen in the context of the essential role of the press in ensuring the proper functioning of a political democracy. While the press should not overstep the bounds set, *inter alia*, for the protection of vital interests of the State such as national security or territorial integrity against the threat of violence or the prevention of disorder or crime, it was nevertheless incumbent on the press to impart information and ideas on political issues, including divisive ones. Not only had the press the task of imparting such information and ideas; the public has a right to receive them. Freedom of the press afforded the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. In assessing the necessity of the interference there was little scope under A 10(2) for restrictions on political speech or on debate on questions of public interest. Furthermore, the limits of permissible criticism were wider with regard to the government than in relation to a private citizen or even a politician. In a democratic system the actions or omissions of the government had to be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion. In addition, the dominant position which the government occupied made it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means were available for replying to the unjustified attacks and criticisms of its adversaries. Nevertheless, it remained open to the competent State authorities to adopt, in their capacity as guarantors of public order, measures, even of a criminal-law nature, intended to react appropriately and without excess to such remarks. Where such remarks constituted incitement to violence against an individual or a public official or a sector of the population, the State authorities enjoyed a wider margin of appreciation when examining the need for an interference with freedom of expression. The content of the interview was of an analytical nature and the text did not contain any passages which could be described as an incitement to violence. The domestic authorities failed to have sufficient regard to the public's right to be informed of a different perspective on the situation in south-east Turkey, irrespective of how unpalatable that perspective might be for them. The reasons given by the Istanbul National Security Court for convicting and sentencing the applicants, although relevant, could not be considered sufficient to justify the interference with their right to freedom of expression. The nature and severity of the penalties imposed were factors to be taken into account when assessing the proportionality of the interference. The duties and responsibilities which accompany the exercise of the right to freedom of expression by media professionals assumed special significance in situations of conflict and tension. Particular caution was called for when consideration was being given to the publication of the views of representatives of organisations which resorted to violence against the State lest the media became a vehicle for the dissemination of hate speech and the promotion of violence. At the same time, where such views could not be categorised as such, Contracting States could not with reference to the protection of territorial integrity or national security or the prevention of crime or disorder restrict the right of the public to be informed of them by bringing the weight of the criminal law to bear on the media. In all the circumstances, the conviction and sentencing of the applicants was disproportionate to the aims pursued and therefore not necessary in a democratic society. There had accordingly been a violation of A 10.

When speaking of 'law' A 7 alluded to the same concept as that to which the Convention referred elsewhere when using that term. In view of its conclusion in respect of the 'prescribed by law' requirement under A 10(2), the Court found that there had been no violation of A 7.

Non-pecuniary damage (FF 30,000 to each applicant), costs and expenses (FF 10,000 to Mr Erdogdu, FF 10,000 less FF 7,996 to Mr Ince).

Cited: Fressoz and Roire v F (21.1.1999), Incal v TR (9.6.1998), Janowski v PL (21.1.1999), Lingens v A (8.7.1986), SW v UK (22.11.1995), Wingrove v UK (25.11.1996), Zana v TR (25.11.1997).

Ergi v Turkey 98/53

[Application lodged 25.3.1994; Commission report 20.5.1997; Court Judgment 28.7.1998]

Mr Muharrem Ergi brought the application on his own behalf, on behalf of his deceased sister, Havva Ergi, and her young daughter. It concerned complaints relating to an incident on 29 September 1993 in which Havva Ergi was killed. The applicant complained that she had been killed by the security forces and that there had not been an effective investigation. The facts in this case were disputed by the Government.

Comm found unanimously V 2 on account of the planning and conduct of the security forces' operation and the failure to carry out an effective investigation into the death of the applicant's sister, no separate issue under 8, (22–9) no separate issue under 13, unanimously NV 14 or 18, (30–1) Turkey had failed to comply with its obligations under 25.

Court unanimously dismissed the Government's preliminary objections, found unanimously NV 2 regarding death of applicant's sister by security forces, V 2 regarding planning and conduct of the security forces' operation and lack of effective investigation, unanimously not necessary to examine 8, by majority (8–1) V 13 in respect of the applicant and his niece, unanimously NV 14 and 18, (8–1) V 25(1).

Judges: Mr R Bernhardt, President, Mr F Gölcüklü (pd), Mr An Loizou, Mr Ma Lopes Rocha, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr B Repik, Mr E Levits, Mr V Toumanov.

The Government was not estopped from raising before the Court their objection as to the validity of the application. However, the application disclosed a genuine and valid exercise of the applicant's right of individual petition under A 25. Therefore, the Government's preliminary objection regarding validity of application was dismissed. The Government failed to submit any observations at the admissibility stage and were therefore estopped from raising their second preliminary objection regarding non-exhaustion of remedies.

A 2 regarding killing of applicant's sister: there were divergent versions as to the circumstances which led to the killing of the applicant's sister. Having regard to the Commission's fact-finding and to its own careful examination of the evidence, the Court considered that there were legitimate doubts as to the origin of the bullet which killed Havva Ergi and the context of the firing. Accordingly, there was an insufficient factual and evidentiary basis on which to conclude that the applicant's sister was, beyond reasonable doubt, intentionally killed by the security forces in the circumstances alleged by the applicant.

Under A 2 of the Convention, read in conjunction with A 1, the State might be required to take certain measures in order to secure an effective enjoyment of the right to life. The responsibility of the State was not confined to circumstances where there was significant evidence that misdirected fire from agents of the State had killed a civilian. It could also be engaged where they failed to take all feasible precautions in the choice of means and methods of a security operation mounted against an opposing group with a view to avoiding and, in any event, to minimising, incidental loss of civilian life. The Court, having regard to the Commission's findings and to its own assessment, and in the light of the failure of the authorities of the respondent State to adduce direct evidence on the planning and conduct of the ambush operation, it could reasonably be inferred that insufficient precautions had been taken to protect the lives of the civilian population.

The obligation to carry out an effective investigation was not confined to cases where it had been established that the killing was caused by an agent of the State. Nor was it decisive whether members of the deceased's family or others had lodged a formal complaint about the killing with the relevant investigatory authority. In the present case, the mere knowledge of the killing on the part of the authorities gave rise *ipso facto* to an obligation under A 2 to carry out an effective investigation into the circumstances surrounding the death. The Court was struck by the heavy reliance placed by the public prosecutor on the conclusion of the gendarmerie incident report that it was the PKK which had shot the applicant's sister. The public prosecutor had not investigated the circumstances surrounding the killing. Nor was any detailed consideration given by either the district gendarmerie commander or the public prosecutor to verifying whether the security forces had conducted the operation in a proper manner. Therefore, the authorities failed to carry out an

effective investigation into the circumstances surrounding the death. Neither the prevalence of violent armed clashes nor the high incidence of fatalities in the region could displace the obligation under A 2 to ensure that an effective, independent investigation was conducted into the deaths arising out of clashes involving the security forces, more so in cases such as the present where the circumstances were in many respects unclear. Therefore, the Turkish authorities failed to protect Havva Ergi's right to life on account of the defects in the planning and conduct of the security forces' operation and the lack of an adequate and effective investigation. Accordingly, there had been a violation of A 2.

Before the Commission the applicant alleged on behalf of Havva Ergi's daughter that the killing of her mother had entailed a violation of A 8. He did not pursue that complaint before the Court, which did not therefore deem it necessary to examine the matter of its own motion.

A 13 guaranteed the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The scope of the obligation under A 13 varied depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by A 13 had to be effective in practice as well as in law. A 13 applied only in respect of grievances under the Convention which were arguable. There was no doubt that the applicant had an arguable claim for the purposes of A 13. The notion of an effective remedy for the purposes of A 13 entailed, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the relatives to the investigatory procedure. The failure of the authorities to carry out an effective investigation into the circumstances surrounding the death of Havva Ergi undermined the exercise of any remedies the applicant and his niece had at their disposal under Turkish law. Accordingly, there had been a violation of A 13.

The Court, on the basis of the facts as established by the Commission, found no violation of A 14 and 18.

The questioning of the applicant by the authorities was not confined to matters regarding his declaration of means. He was asked about the subject matter of his application to the Commission and to provide an explanation concerning any application he might have made. There was no plausible reason as to why the applicant was heard twice by the authorities and why the questioning had been conducted by the anti-terrorism department of the police and the public prosecutor. The applicant must have felt intimidated as a result of his contact with the authorities on those occasions in a manner which unduly interfered with his petition to the Commission. It was of the utmost importance for the effective operation of the system of individual petition instituted by A 25 that an applicant be able to communicate freely with the Commission, without any form of pressure from the authorities to withdraw or modify his or her complaints. The facts of the present case disclosed that the respondent State failed to comply with its obligations under that provision and there had thus been a violation of A 25(1).

Non-pecuniary damage (GBP 1,000 to applicant, GBP 5,000 to the applicant's niece or her guardian to be held on her behalf), costs and expenses (GBP 12,000 less FF 9,995).

Cited: Akdivar and Others v TR (16.9.1996), Aksoy v TR (18.12.1996), Aydin v TR (25.9.1997), Boyle and Rice v UK (27.4.1988), Ireland v UK (18.1.1978), Kaya v TR (19.2.1998), McCann and Others v UK (27.9.1995), Mentes and Others v TR (28.11.1997), Stran Greek Refineries and Stratis Andreadis v GR (9.12.1994).

Eriksen v Norway (2000) 29 EHRR 328 97/25

[Application lodged 17.9.1990; Commission report 18.10.1995; Court Judgment 27.5.1997]

Mr Steinar Eriksen was involved in a traffic accident in 1965 in which he suffered serious brain damage. He subsequently showed a distinct tendency to become aggressive as a result of which he spent considerable amounts of time in detention. A psychiatric opinion declared him mentally ill

and he was detained in mental hospitals. The State prosecutor sought extension of the applicant's detention from 25 February 1990 under security measures as the prior court authorisation would expire on that date. The District Court agreed to the further detention noting that there was a risk of further offences being committed. The applicant's appeals to the higher courts were all rejected. The applicant continued to be held in solitary confinement. On 14 May 1990 the prosecutor-general withdrew the request for a prolongation of the authorisation to use security measures against the applicant and he was released on 15 May 1990. He committed further offences in July, August and September 1990 and was arrested, convicted and sentenced to further imprisonment. He continued to offend following his release and spent further periods imprisoned. He complained of his detention.

Comm found by majority (12–1) V 5(1), unanimously NV 5(3).

Court found unanimously NV 5(1), NV 5(3).

Judges: Mr R Bernhardt, President, Mr R Ryssdal, Mr F Matscher (c), Mr L-E Pettiti, Mr I Foighel, Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr B Repik (c), Mr E Levits.

A 5(1) contained a list of permissible grounds of deprivation of liberty which was exhaustive. However, the applicability of one ground did not necessarily preclude that of another; a detention could, depending on the circumstances, be justified under more than one sub-paragraph. The lawfulness of the applicant's detention under the Code of Criminal Procedure was considered by the District Court, the High Court and the Supreme Court in seven decisions. In finding the detention justified, the Court was satisfied from a consideration of the Norwegian law that the detention in issue was directly linked to the applicant's initial conviction in 1984 and could therefore be regarded as 'lawful detention after conviction by a competent court' for the purposes of A 5(1)(a). In the exceptional circumstances of the present case, the applicant's detention on remand could also be justified on the basis of paragraph A 5(1)(c) as detention of a person 'when it is reasonably considered necessary to prevent his committing an offence'. In view of the nature and extent of the applicant's previous convictions for threatening behaviour and physical assault and his mental state at the relevant time there were substantial grounds for believing that he would commit further similar offences. As a rule A 5(1)(c) would not provide a justification for the re-detention or continued detention of a person who had served a sentence after conviction of a specific criminal offence where there was a suspicion that he might commit a further similar offence. However, the position was different when a person was detained with a view to determining whether he should be subjected, after expiry of the maximum period prescribed by a court, to a further period of security detention imposed following conviction for a criminal offence. In a situation such as that in the present case, the authorities were entitled, having regard to the applicant's impaired mental state and history as well as to his established and foreseeable propensity for violence, to detain the applicant pending the determination by a court of the Prosecutor's request for a prolongation of the relevant authorisation. Such a 'bridging' detention was of a short duration, was imposed in order to bring the applicant before a judicial authority and was made necessary by the need to obtain updated medical reports on the applicant's mental health as well as by the serious difficulties facing the authorities in arranging preventive supervision outside prison due to the applicant's aggressive conduct and his objection to close supervision. Against that background, the period of detention in question could be seen as closely linked to the original criminal proceedings in 1984 and the resulting conviction and security measures. Accordingly the deprivation of the applicant's liberty from 25 February to 15 May 1990 was justified under both A 5(1)(a) and 5(1)(c). It was not therefore necessary to examine whether A 5(1)(e) also applied.

The expediency of obtaining evidence was primarily a matter for the national authorities and it was not for the Court to substitute its view for theirs in that respect. There was nothing to suggest that the two experts and the medical authority concerned failed to act with a sufficient degree of

diligence; nor was there any other indication that the detention exceeded a reasonable time. Accordingly, there had been no violation of A 5(3).

Cited: Ciulla v I (22.2.1989), Guzzardi v I (6.11.1980), Kemmache v F (No 3) (24.11.1994), Van Droogenbroeck v B (24.6.1982), X v UK (5.11.1981), Z v SF (25.2.1997).

Eriksson v Sweden (1990) 12 EHRR 183 89/10

[Application lodged 7.12.1984; Commission report 14.7.1988; Court Judgment 22.6.1989]

Mrs Cecilia Eriksson was granted custody of her children Lisa and Jonas after her divorce from their father. In March 1978 Lisa was taken into care and placed in a foster home. At the time Cecilia Eriksson had personal difficulties having been convicted for dealing in stolen goods and for possession of drugs and sentenced to 14 months' imprisonment. While in prison she went through a religious conversion and she became a member of the Philadelphia Congregation (Pentecostal movement). She complained about the decision of the local authority to prohibit her, for an indefinite period, from removing her daughter from the foster home, restrictions on her access to the child and the failure to reunite them. She also complained about the fairness of proceedings relating to the prohibition on removal and the lack of judicial remedy against the decisions restricting her access to her daughter. She further complained that the prohibitions and restrictions prevented her giving her daughter an education according to the beliefs she held of the Pentecostal movement. She brought the same complaints on behalf of her daughter invoking A 6(1), 8 and 13 and P1A2.

Comm found by majority (8–2) V 6(1) in respect of the claim for access to Lisa, (9–1) V 8 in respect of both applicants, NV regarding other complaints.

Court found unanimously V 8 regarding both applicants, unanimously V 6(1) as regards Cecilia Eriksson and by majority (15–5) V 6(1) as regards Lisa in that no court remedy was available to challenge the restrictions on access, unanimously as regards both applicants not necessary to examine 13, NV 6(1) in respect of other complaints, unanimously NV P1A2 or P1A2+13 regarding Cecilia Eriksson, unanimously Lisa Eriksson not a victim of P1A2 or P1A2+13.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson (pd), Mrs D Bindschedler-Robert (c/pd), Mr F Gölcüklü, Mr F Matscher (pd), Mr J Pinheiro Farinha (c), Mr L-E Pettiti (c), Mr B Walsh, Sir Vincent Evans (c), Mr R Macdonald (c), Mr C Russo, Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer, Mr JA Carrillo Salcedo (c), Mr N Valticos (c), Mr SK Martens, Mrs E Palm (pd), Mr I Foighel (pd).

In an application under A 25 of the Convention, the Court's task was not to review the legal provisions and practice *in abstracto* but to determine whether the manner in which they were applied to or affected the applicants gave rise to a violation of the Convention. The mutual enjoyment by parent and child of each other's company constituted a fundamental element of family life which was not terminated by reason of the fact that the child was taken into public care. The prohibition on removal and its maintenance in force for an unlimited period and the restrictions on access amounted to an interference with the mother's right to respect for family life. The existence of such interference was not affected by the daughter's relationship with her foster parents. The phrase 'in accordance with the law' required, *inter alia*, that if the law conferred a discretion, its scope and manner of exercise must be indicated with sufficient clarity to afford a measure of protection against arbitrary interference. The national legislation was worded in general terms and conferred a wide measure of discretion. However, it was scarcely feasible to set out in advance all the circumstances in which the removal of a child from a foster home may cause serious risk of harming his physical or mental health. Taking into account the safeguards against arbitrary interference, the scope of discretion conferred on the authorities by the national legislation appeared to be reasonable and acceptable. Nothing in the judgments of the national administrative courts suggested that the prohibition was contrary to law. However the restrictions on access did not have any legal basis and so that interference was not 'in accordance with the law' for the purposes of A 8. The prohibition on removal and the restrictions on access were designed to protect the rights and health of children and thus served a legitimate aim despite the fact that the

Court found that the restrictions on access had no basis in domestic law. A mother's right to respect for family life under A 8 included the right to take measures with a view to being reunited with her child. The mother had no enforceable visiting rights while the prohibition on removal was in force. In addition, due to the restrictions on access, she was denied the opportunity to meet with her daughter to an extent and in circumstances likely to promote the aim of reuniting them or developing their relationship. The measures had lasted over 6 years causing great anguish to mother and daughter. Notwithstanding the State's margin of appreciation, the severe and lasting restrictions on access combined with the long duration of the prohibition on removal were not proportionate to the legitimate aims pursued. Those possibilities for the applicants to meet and develop their relationship also constituted an interference with the daughter's right to respect for family life, the reasons as regards the mother applied *mutatis mutandis* to the daughter. The conduct of the proceedings relating to the prohibition on removal was compatible with A 6(1). The length of the proceedings, 20 months, was not excessive for the purposes of A 6(1). The question of access was distinct from the question of whether or not to uphold the prohibition on removal. Only if sufficient access was permitted would there be real possibilities of having the prohibition on removal lifted. The recourse in the administrative courts in the form of a challenge to the prohibition on removal was not sufficient for the mother's claim for access rights. Accordingly there had been a violation of A 6 on this point. The complaint under Protocol 1 was not substantiated. Having regard to its conclusions regarding A 6(1), the complaint under A 13 was not examined.

Non-pecuniary damage (SEK 200,000 to Cecilia Eriksson, SEK 100,000 to Lisa), costs and expenses (SEK 100,000 to Cecilia Eriksson).

Cited: Chappell v UK (30.3.1989), Olsson v S (24.31988), W v UK (9.6.1988).

Erkalo v Netherlands 98/72

[Application lodged 12.10.1993; Commission report 2.7.1997; Court Judgment 2.9.1998]

Mr Dawit Shugute Erkalo, an Ethiopian national, was convicted on two counts of manslaughter on 21 June 1990. He was sentenced to placement at the disposal of the government with committal to a psychiatric institution. Due to the applicant's disturbed mental state, his treatment began before he was eligible for early release. The public prosecutor made a request for a one-year extension of the applicant's placement. The applicant was informed of that fact by letter. However, the public prosecutor's request was mistakenly placed in the archives of the court. About three and a half months after receiving the letter of the public prosecutor, the applicant alerted the staff in the psychiatric institution to the fact that he had not received any further information regarding the extension of his placement. The request of the public prosecutor was found and submitted to the court's registry. The Regional Court rejected the applicant's submissions and extended his placement at the government's disposal for another year. The applicant complained that at the end of the statutory period of his placement at the disposal of the government his detention became unlawful; that the decision to extend his placement was not made in accordance with a procedure prescribed by law; that he did not receive a speedy review of the lawfulness of his detention; and that he was unable to appeal against the decision to extend his detention. He relied on A 5(1) and 5(4).

Comm found unanimously V 5(1), NV 5(4), NV 5(4)+13.

Court unanimously dismissed the Government's preliminary objection, found by majority (8–1) V 5(1), unanimously not necessary to consider A 5(4) regarding speedy review of his detention, unanimously no examination A 5(4) and A 13 in respect of absence of right of appeal.

Judges: Mr R Bernhardt, President, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou, Mr MA Lopes Rocha, Mr B Repik, Mr P Jambrek, Mr E Levits (d), Mr P Van Dijk.

The applicant was under the assumption that the public prosecutor had submitted a request for an extension of his placement, which was being processed. In those circumstances, he could not be faulted for failing to institute summary civil proceedings. If the applicant had instituted summary

civil proceedings his application would probably have been refused as the decision of the Regional Court was imminent. Accordingly, the Government's preliminary objection was dismissed.

A 5(1) contained a list of permissible grounds of deprivation of liberty that was exhaustive. However, the applicability of one ground did not necessarily preclude that of another; a detention could be justified under more than one sub-paragraph. The applicant was suffering from a mental derangement and had been convicted of manslaughter. His detention during the period under consideration fell within A 5(1)(a) as it resulted from a 'conviction' by a 'competent court' and his placement in a psychiatric institution fell within A 5(1)(e). Although the public prosecutor prepared the request for the extension of the applicant's placement in time, and informed the applicant accordingly, the request did not reach the Regional Court until two months after the expiry of the statutory period. The time limit specified in the criminal code had not therefore been respected. However, domestic case-law recognised that a placement order remained lawful even though the public prosecutor failed to comply with the time limit prescribed by the criminal code. The lawfulness of the extension of the applicant's placement under domestic law was not in itself decisive. It also had to be established that his detention during the period under consideration was in conformity with the purpose of A 5(1), namely to prevent arbitrary deprivation of liberty. As a result of the delay in receipt of the extension of the placement order by the Regional Court, for 82 days the placement of the applicant was not based on any judicial decision. There was a lack of adequate safeguards to ensure that the applicant's release from detention would not be unreasonably delayed. The interests of a person who has been placed by a court at the government's disposal had to be weighed against those of the general public. However, although the relevant authorities were all aware that the applicant's placement was due to expire, none of them took any steps to verify whether the request of the public prosecutor had been received at the registry of the Regional Court and whether a date had been fixed for a hearing on the request. In those circumstances, and in the absence of any adequate safeguards, the public interest involved could not be relied upon as a justification for keeping the applicant in a state of uncertainty for over two and a half months. The onus for ensuring that a request for the extension of a placement order was made and examined in time had to be placed on the competent authorities and not on the person concerned. The detention of the applicant between the date of the expiry of the initial placement order, 3 July 1993, and the date on which the Regional Court rendered its decision, 23 September 1993, was not compatible with the purpose of A 5 and was for that reason unlawful. There had therefore been a breach of A 5(1).

The applicant's arguments under A 5(4) were akin to those under A 5(1) and, in view of its finding of a violation of that provision on account, *inter alia*, of the lack of a timely decision, it was not necessary to examine the complaint under A 5(4).

The complaint under A 5(4) and 13 raised before the Commission was not maintained before the Court.

Finding of violation constituted sufficient just satisfaction. Costs and expenses (NLG 6,475).

Cited: Andronicou and Constantinou v CY (9.10.1997), Bouamar v B (29.2.1988), Eriksen v N (27.5.1997), Incal v TR (9.6.1998), Johnson v UK (24.10.1997), Keus v NL (25.10.1990), Winterwerp v NL (24.10.1979).

Erkner and Hofauer v Austria (1987) 9 EHRR 464 87/6

[Application lodged 3.4.1979; Commission report 24.1.1986; Court Judgment 23.4.1987 (merits), 29.9.1987 (A 50)]

The applicants, Johann Erkner (deceased on 22 June 1983), his wife, Theresia Erkner, their son-in-law, Josef Hofauer, and their daughter, Theresia Hofauer, were Austrian farmers. They complained of consolidation proceedings taken in respect of their land.

Comm found unanimously V 6(1), by majority (11–1) V P1A1.

Court found unanimously V 6(1) regarding the reasonable time requirement, no jurisdiction to consider other complaints under this provision, V P1A1.

Judges: Mr R Ryssdal, President, Mr G Lagergren, Mr F Gölcüklü, Mr F Matscher, Mr B Walsh, Sir Vincent Evans, Mr C Russo.

A 6(1) was applicable in the present case. The complaints regarding an independent and impartial tribunal and public hearing had not been raised as such before the Commission and the Court had no jurisdiction to entertain them.

In civil proceedings, the 'reasonable time' referred to in A 6(1) normally began to run from the moment the action was instituted before the tribunal; it was conceivable, however, that in certain circumstances the time might begin to run earlier. In the present case, the beginning of the period to be taken into consideration was around 10 August 1970. The period under consideration took in the entirety of the proceedings in issue, including any appeals, extending to the decision which disposed of the dispute. In the present case the proceedings were still pending. Consequently, the length of time to be considered exceeded sixteen and a half years (10 August 1970 – 24 March 1987). The reasonableness of the length of proceedings had to be assessed according to the particular circumstances and having regard to the criteria stated in the case-law of the Court, especially the degree of complexity of the case, the applicants' behaviour and the conduct of the relevant authorities. Land consolidation was by its nature a complex process, in this case it involved 38 landowners and covered 266 hectares and raised issues of fact of considerable complexity. Applicants could not be blamed for making full use of the remedies available to them under domestic law. In the instant case, the remedies resorted to were mostly successful. The applicants were nonetheless responsible for some of the delay. The authorities having initiated the consolidation process of their own motion, having responsibility for its conduct and having decided on a provisional transfer of land were under a special duty to act expeditiously. There were a number of delays attributable to the authorities. As a result of those delays, viewed together and cumulatively, the applicants' case was not heard within a reasonable time as required by A 6(1).

There had been an interference with the applicants' right of property as guaranteed in P1A1. The first sentence of the first paragraph of P1A1 was of a general nature and enunciated the principle of peaceful enjoyment of property; the second sentence of the same paragraph covered deprivation of possessions and made it subject to certain conditions; the second paragraph recognised that States were entitled, amongst other things, to control the use of property in accordance with the public interest. The Court had to consider the applicability of the last two rules before determining whether the first one has been complied with. However, the three rules were not 'distinct' in the sense of being unconnected: the second and third rules were concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first sentence. The Austrian authorities did not effect either a formal or a de facto expropriation. The transfer carried out in August 1970 was a provisional one and accordingly the applicants could not be said to have been definitively 'deprived of their possessions' within the meaning of the second sentence of the first paragraph of P1A1. Nor was the provisional transfer essentially designed to restrict or control the 'use' of the land (second paragraph P1A1) but to achieve an early restructuring of the consolidation area with a view to improved, rational farming by the 'provisional' owners. The transfer had therefore to be considered under the first sentence of the first paragraph of P1A1. More than 16 years had elapsed since the provisional transfer without the applicants having received, under a final consolidation plan, the compensation in land provided for by law. The length of proceedings complaint under A 6(1) could be distinguished from the complaint relating to P1A1. In the former case, the question was one of determining whether the length of the consolidation proceedings had exceeded a 'reasonable time', whereas in the latter case their length – whether excessive or not – was material, together with other elements, in determining whether the disputed transfer was compatible with the guarantee of the right of property. The relevant provincial legislation did not permit any reconsideration of the provisional transfer, notwithstanding the applicants' successful appeals against the consolidation plans. Nor did it provide for the possibility of compensating the applicants financially for the loss they may have sustained on account of the forced exchange of

their land for other, inferior land pursuant to the provisional transfer. The legislature was concerned to ensure that the land in question could be continuously and economically farmed in the interests of the landowners generally and of the community. In addition, although the applicants lost their land in consequence of the transfer decided on in 1970, they received other land in lieu, even if they were not satisfied with it. However, the applicable system suffered from a degree of inflexibility. In the circumstances the necessary balance between protection of the right of property and the requirements of the public interest was lacking: the applicants remained uncertain as to the final fate of their property and had been made to bear a disproportionate burden. There had accordingly been a breach of P1A1.

FS (Republic of Austria to pay the applicants a sum of ATS 650,000 (ATS 350,000 compensation and ATS 300,000 in costs), therefore case struck from the list.

Cited: AGOSI v UK (24.10.1986), Airey v IRL (9.10.1979), Bozano v F (18.12.1986), Buchholz v D (6.5.1981), Deumeland v D (29.5.1986), Eckle v D (15.7.1982), Golder v UK (21.2.1975), Guincho v P (10.7.1984), König v D (28.6.1978), Marckx v B (13.6.1979), Ringeisen v A (16.7.1971), Sporrong and Lönnroth v S (23.9.1982), Sramek v A (22.10.1984), Zimmermann and Steiner v CH (13.7.1983).

Ertak v Turkey 00/146

[Application lodged 1.10.1992; Commission report 4.12.1998; Court Judgment 9.5.2000]

Mr Ismail Ertak complained that his son, Mehmet Ertak, had disappeared after arrest by the police and further that there had been a lack of investigation into that disappearance. The facts were disputed by the Government.

Comm found unanimously V 2, by majority (28–2) NV 25.

Court dismissed unanimously Government's preliminary objection, found V 2.

Judges: Mrs E Palm, President, Mr J Casadevall, Mr L Ferrari Bravo, Mr B Zupancic, Mrs W Thomassen, Mr T Pantiru, Mr F Gölcüklü, ad hoc judge.

The Court based its findings on the facts found by the Commission.

The applicant had done all he could be expected to do to obtain redress. As the authorities had not conducted an effective investigation and denied that his son had been arrested, he could not pursue the civil and administrative remedies mentioned by the Government. Accordingly the preliminary objection of non-exhaustion was dismissed.

There was sufficient evidence to conclude beyond all reasonable doubt that the applicant's son after being arrested and detained had been the victim of serious ill-treatment that had not been acknowledged and he had died in the custody of the security forces. The authorities were under a duty to account for persons in their charge; no explanation had been offered as to what had happened after the applicant's son's arrest. In the circumstances, the Government bore responsibility for the death. There had been a violation of A 2.

The authorities were under an obligation to conduct an effective and thorough investigation into his disappearance. The investigation in the present case was not sufficient and effective and accordingly there had been a violation of A 2 on that account also.

Before the Court the applicant did not pursue his complaint under A 25 and the Court was not required to examine it of its own motion.

There was insufficient evidence to decide that the Turkish authorities had adopted a practice of violating A 2.

Pecuniary damage (GBP 15,000 to be held by the applicant on behalf of the widow and orphan children of his son), non-pecuniary damage (GBP 20,000 to be held by the applicant on behalf of the widow and orphan children of his son, GBP 2,500 to the applicant himself), costs and expenses (GBP 12,000 less FF 14,660.35).

Cited: Akdivar and Others v TR (16.9.1996), Çakici v TR (8.7.1999), Güleç v TR (27.7.1998), Ergi v TR (28.7.1998), Kaya v TR (19.2.1998), Kurt v TR (25.5.1998), McCann and Others v UK (27.9.1995), Ogur v TR (20.5.1999), Yasa v TR (2.9.1998).

Escoubet v Belgium 99/74

[Application lodged 12.9.1994; Commission report 12.3.1998; Court Judgment 28.10.1999]

Mr Alain Escoubet was involved in a road accident at 6.30 pm on 16 June 1994. The Brussels Crown prosecutor, who was informed of the accident by the police officers called to the scene, ordered the applicant's driving licence to be immediately withdrawn on the ground that he was presumed to have been driving with a blood-alcohol level over the legal limit. On 29 June 1995 the police court in Brussels sentenced the applicant to a fine of BEF 22,500 and disqualified him from driving for 45 days. He appealed to the Brussels Criminal Court, which allowed the appeal in part and reduced the sentence. He complained that the immediate withdrawal of his driving licence ordered by the Crown prosecutor with no possibility of an effective appeal to a judicial body had deprived him of his right to a 'tribunal' for the purposes of A 6(1).

Comm found by majority (18–13) V 6(1).

Court found by majority (14–3) 6 not applicable, unanimously not necessary to examine 13.

Judges: Mrs E Palm, President, Mr A Pastor Ridruejo, Mr L Ferrari Bravo, Mr G Bonello, Mr J Makarczyk, Mr P Kûris, Mr R Türmen, Mr J-P Costa, Mrs F Tulkens (Jd), Mrs V Stráznická, Mr M Fischbach (Jd), Mr V Butkevych, Mr J Casadevall (Jd), Mrs Hs Greve, Mr A Baka, Mr R Maruste, Mrs S Botoucharova.

The first issue before the Court was to determine whether A 6 applied. It had to therefore determine whether a 'criminal charge' or a 'civil' right was in issue. In ascertaining whether there was a 'criminal charge', the Court has regard to three criteria: the legal classification of the measure in question in national law, the very nature of the measure, and the nature and degree of severity of the 'penalty'. As regards the classification in domestic law of the immediate withdrawal of a driving licence, according to the Court of Cassation, it was not a measure imposed under the criminal law, since it was a 'preventive measure designed to take a dangerous driver off the roads for a specific period of time'. However, classification in domestic law was not decisive, having regard to the autonomous and substantive meaning to be given to the term 'criminal charge'. As regards the nature of the measure, s 55 of the consolidated Acts did not presuppose any investigation or finding of guilt and its application was totally independent of any criminal proceedings which may subsequently be brought. The immediate withdrawal of a driving licence appeared to be a preventive, precautionary measure; the fact that it was an emergency measure justified its being applied immediately and there was nothing to indicate that its purpose was punitive. Withdrawal of a driving licence could be distinguished from disqualification from driving, a measure ordered by the criminal courts in the context of, and after the outcome of, a criminal prosecution. With regard to the degree of severity, the effect of immediate withdrawal of a driving licence was limited in time, since it could not be withheld for more than 15 days, unless there were special circumstances. The impact of such a measure, in scope and in length, was not sufficiently substantial to allow it to be classified as a 'criminal' penalty. In the instant case the Court observed that the withdrawal of the applicant's driving licence did not cause him significant prejudice, since he was able to get it back six days after he had handed it over to the police and two days after he had requested its return. Therefore A 6 was not applicable under its criminal head. Moreover, the applicant had not submitted any evidence in support of his argument that a 'civil' right was at issue in the present case.

Neither in his memorial, nor in his oral submissions to the Court, did the applicant make any other reference to a complaint based on A 13. Under the circumstances, and since no separate issue appeared to arise under that provision, the Court could see no reason to examine it.

Cited: Agosi v UK (24.10.1986), Demicoli v M (27.8.1991), Deweer v B (27.2.1980), Engel and Others v NL (8.6.1976), Fayed v UK (21.9.1994), Foti and Others v I (10.12.1982), Malige v F (23.9.1998), Neumeister v A (27.6.1968), Öztürk v D (21.2.1984), Pierre-Bloch v F (21.10.1997), Putz v A (22.2.1996), Ravnsborg v S (23.3.1994), Saunders v UK (17.12.1996), Schmautzer v A (23.10.1995), Welch v UK (9.2.1995), Wemhoff v D (27.6.1968).

Estima Jorge v Portugal 98/23

[Application lodged 27.10.1993; Commission report 5.12.1996; Court Judgment 21.4.1998]

Mrs Amélia Alves Estima Jorge, the applicant, and AP, by a notarial deed dated 19 December 1978, jointly agreed to lend to Mr and Mrs O a total of PTE 1,360,000, to be repaid within six months, which period was renewable as often as the parties agreed. The loan bore interest. The borrowers undertook to bear the costs incurred in securing and enforcing the debt. The capital and interest and other costs were secured by a mortgage over a property. The borrowers failed to repay either capital or interest. The lenders brought enforcement proceedings in the Lisbon Court of First Instance against Mr and Mrs O for repayment of the mortgage. They also sought an order for payment of accrued interest at the date of repayment of the loan in full and of costs and expenses. On 29 November 1994 the Bank for Official Deposits delivered a cheque to Mrs Estima Jorge. She complained about the length of proceedings.

Comm found by majority (18–8) V 6(1).

Court found unanimously V 6(1).

Judges: Mr Thór Vilhjálmsson, President, Mr F Gölcüklü, Mr J De Meyer (pd), Mrs E Palm (pd), Mr AB Baka, Mr MA Lopes Rocha, Mr B Repik (pd), Mr J Casadevall, Mr M Voicu.

The present case was distinguishable from previous cases since what was being enforced was not a judgment, but another form of authority to execute, namely a notarial deed providing security for a specific debt. The sole object of the proceedings was recovery of the debt. Conformity with the spirit of the Convention required that the word 'dispute' should not be construed too technically and that it should be given a substantive rather than a formal meaning. Determination of a civil right was constituted at the moment when the right asserted actually became effective. Irrespective of whether the authority to execute took the form of a judgment or a notarial deed, Portuguese law provided that it had to be enforced through the courts, the procedure to be followed being the same in each case. That enforcement procedure was decisive for the effective exercise of the applicant's right. Consequently, A 6(1) was applicable.

The period to be taken into account began on 27 November 1981, when proceedings were issued in the Lisbon Court of First Instance, and ended on 29 November 1994, when Mrs Estima Jorge obtained a payment. It therefore lasted thirteen years. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the parties. The authorities were responsible for a number of delays. Mrs Estima Jorge's application for an attachment on 26 May 1989 was not executed until 8 January 1993, that is to say three years and seven months after it was made. In addition, the financial statement was not sent to the applicant until a year later. A period of 13 years to obtain a final decision on the basis of an authority to execute could not be said to have been reasonable. Therefore there had been a violation of A 6(1).

Pecuniary damage (PTE 1,000,000), non-pecuniary damage (PTE 1,000,000), costs and expenses (PTE 200,000).

Cited: Di Pede v I (26.9.1996), Hornsby v GR (19.3.1997), Martins Moreira v P (26.10.1988), Moreira de Azevedo v P (23.10.1990), Robins v UK (23.9.1997), Silva Pontes v P (23.3.1994), Zappia v I (26.9.1996).

Ettl and Others v Austria (1988) 10 EHRR 255 87/5

[Application lodged 27.10.1980; Commission report 3.7.1985; Court Judgment 24.3.1987]

The applicants were Austrian farmers who complained that they had not had a public hearing by an independent and impartial tribunal as required by A 6(1) in relation to land consolidation proceedings that took place in 1973.

Comm found by majority (10–2) V 6 (1).

Court found unanimously NV 6 (1).

Judges: Mr R Ryssdal, President, Mr G Lagergren, Mr F Gölcüklü, Mr F Matscher, Mr B Walsh, Sir Vincent Evans, Mr C Russo.

A 6(1) was applicable in the present case. The Provincial and Supreme Boards, the Administrative Court and the Constitutional Court were clearly tribunals established by law. The Provincial Board and Supreme Board included judges and civil servants. The independence and impartiality of the judge members was not in issue. The fact that civil servants sat, and even constituted a majority, on the bodies concerned did not in itself contravene A 6(1). The Federal Constitution and the Federal Agricultural Authorities Act made provision for their independence and prohibited public authorities from giving them any instructions concerning their judicial duties. The boards were independent not only of the executive but also of the parties to the case. Neither the Provincial Government nor the Federal Government was a party to the case. In this case the hierarchical links which existed in other contexts between civil servants from the same division were of no consequence from the point of view of A 6. Such links existed only between the chairman and the rapporteur in each of the two boards. The membership of the civil servants who sat as experts could not give rise to doubts about the independence and impartiality of the boards. They were experts in their fields and the boards' composition enabled them to reach balanced decisions, having regard to the various interests at stake. The domestic legislation of many Member States provided many examples of tribunals in which professional judges sat alongside specialists in a particular sphere whose knowledge was desirable and even essential in settling the disputes within the tribunals' jurisdiction. The adversarial nature of the proceedings before the boards was unaffected by the participation of the civil servant experts. As regards the length of the term of office of members of the boards, the Federal Agricultural Authorities Act satisfied the conditions laid down in A 6(1): the five-year term, coupled with virtual irremovability during that period did not put the independence and impartiality of these boards in doubt. The lack of any public hearing, which was normally contrary to A 6(1) was covered by the reservation Austria made when ratifying the Convention. Accordingly, there was no breach of A 6(1) in respect of the Provincial and Supreme Boards. It was consequently unnecessary to determine whether the Administrative Court's review, taken by itself or in conjunction with the Constitutional Court's review, complied, as regards its scope, with the requirements of A 6(1).

Cited: Campbell and Fell v UK (28.6.1984), Ringeisen v A (16.7.1971), Sramek v A (22.10.1984).

Ezelin v France (1992) 14 EHRR 362 91/27

[Application lodged 16.10.1985; Commission report 14.12.1989; Court Judgment 26.4.1991]

Mr Roland Ezelin, a lawyer, took part in a demonstration protesting against 2 court decisions. Graffiti was daubed on buildings, abuse hurled at the judiciary and death threats made against the police. Although the applicant was not one of the graffiti artists nor responsible for the abuse or threatening words he did not dissociate himself from the demonstration. At a judicial investigation into the demonstration, he declined to give evidence. He was reprimanded under the Bar professional conduct rules. He claimed that the disciplinary sanction infringed A 10 and A 11.

Comm found by majority (15–6) V 11, unanimously no separate issue under 10.

Court found unanimously not necessary to examine 10, by majority (6–3) V 11.

Judges: Mr R Ryssdal (pd), President, Mr J Cremona, Mr F Gölcüklü, Mr F Matscher (d), Mr L-E Pettiti (d), Mr B Walsh, Mr A Spielmann, Mr J De Meyer (c), Mr R Pekkanen.

A restriction on freedom of expression could be interpreted as including subsequent punitive measures. The demonstration had not been prohibited. There was interference with the applicant's freedom of peaceful assembly. The lawyers' professional rules were sufficiently precise and the consequences reasonably foreseeable to be 'prescribed by law'. The interference was in pursuit of a legitimate aim, 'prevention of disorder'. In considering whether the sanction was necessary, proportionate to the legitimate aim, a balance had to be struck between the requirements of the purposes set out in A 11(2) and those of free expression by people assembled. Freedom to take part

in a peaceful assembly that had not been prohibited was of such importance that it could be not be restricted so long as the person concerned did not commit any reprehensible act.

Judgment constituted sufficient just satisfaction for non-pecuniary damage. Costs and expenses (FF 40,000).

Cited: Handyside v UK (7.12.1976), Young, James v Webster v UK (13.8.1981), Müller v CH (24.5.1988)

F

F v Italy 99/116

[Application lodged 31.10.1997; Court Judgment 14.12.1999]

The applicant complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mrs M Tsatsa-Nikolovska, Mr A Baka.

The period to be taken into consideration began on 27 June 1986 and was still pending on 24 November 1999. It had lasted more than 13 years, four months at two levels of jurisdiction. The length could not be considered as reasonable.

Non-pecuniary damage (ITL 10,000,000), costs and expenses (ITL 5,000,000).

Cited: Bottazzi v I (28.7.1999).

F v Italy 00/37

[Application lodged 4.4.1997; Court Judgment 25.1.2000]

The applicant complained of the length of civil proceedings.

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 22 December 1978 and was still pending on 22 April 1999. It had lasted 20 years, four months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 35,000,000), costs and expenses (ITL 4,000,000).

Cited: Bottazzi v I (28.7.1999).

F v Switzerland (1988) 10 EHRR 411 87/26

[Application lodged 12.12.1984; Commission report 14.7.1986; Court Judgment 18.12.1987]

The applicant, born in 1943, had married four times since 1963. He married Miss G in 1963 and divorced her on 8 May 1964. On 12 August 1966, he married Mrs B, the couple separated in December 1978, and F cohabited with another woman. Mrs B obtained a divorce on 27 October 1981. On 11 January 1983 Miss N replied to the applicant's advertisement for a secretary. They married on 26 February. On 11 March 1983, F began divorce proceedings in the District Civil Court. On 21 October 1983 the Civil Court imposed on the applicant a three-year prohibition on remarriage. The applicant's appeals to the Appellate Division of the Vaud Cantonal Court and to the Federal Court to discharge the order prohibiting remarriage were dismissed. F and the woman with whom he was living stated that they intended to get married as soon as possible. Her divorce from her previous marriage became absolute on 21 April 1986 and on 22 May 1986 the president of the Lausanne court allowed her application to have the waiting time reduced and gave her leave to remarry as from that date. F's appeal to the Conseil d'Etat was unsuccessful. He married Mrs F on 23 January 1987. F complained that the three-year prohibition on remarriage imposed on him was incompatible with his right to marry.

Comm found by majority (10–7) V 12.

Court found by majority (9–8) V 12.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson (jd), Mrs D Bindschedler-Robert (jd), Mr G Lagergren, Mr F Gölcüklü (jd), Mr F Matscher (jd), Mr J Pinheiro Farinha (jd), Mr L-E Pettiti, Mr B Walsh (jd), Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer (jd), Mr JA Carrillo Salcedo, Mr N Valticos (jd).

The exercise of the right under A 12 gave rise to personal, social and legal consequences. It was subject to the national laws of the Contracting States, but the limitations thereby introduced should

not restrict or reduce the right in such a way or to such an extent that the very essence of the right was impaired. The prohibition imposed on F was applied under rules governing the exercise of the right to marry, as A 12 did not distinguish between marriage and remarriage. A waiting period no longer existed under the laws of other Contracting States. The Convention had to be interpreted in the light of present-day conditions. However, the fact that, at the end of a gradual evolution, a country found itself in an isolated position as regards one aspect of its legislation did not necessarily imply that that aspect offended the Convention, particularly in the field of matrimony which was so closely bound up with the cultural and historical traditions of each society and its deep-rooted ideas about the family unit. The measure complained of amounted to a civil sanction. Although automatically applicable because of its mandatory nature, Article 150 of the Civil Code nonetheless allowed the courts some degree of discretion: the prohibition period to be imposed on the party at fault in the event of divorce granted on the ground of adultery could range from one to three years. The District Civil Court had chosen the maximum period, holding that F's unacceptable attitude rendered him solely responsible for the breakdown of the marriage. The stability of marriage was a legitimate aim which was in the public interest. However, the particular means used may not have been appropriate for achieving that aim. The woman with whom F was cohabiting had, on 22 May 1986, obtained a reduction of the waiting time following her own divorce, which had become absolute a month earlier. The prohibition on F expired on 21 December 1986. During the intervening period the applicant's future wife could consider that she was personally and directly wronged by the measure affecting F. Given that she was neither under age nor insane, her rights were in no way protected by the measure in question. An unborn child could also be adversely affected by such a prohibition. The argument that the prohibition allowed time for reflection was not of sufficient weight to justify the impugned interference in the case of a person of full age in possession of his mental faculties. The Court recalling its previous case-law noted that 'in the area of human rights he who can do more cannot necessarily do less. The Convention permits under certain conditions some very serious forms of treatment ... whilst at the same time prohibiting others which by comparison can be regarded as rather mild.' If national legislation allowed divorce, which was not a requirement of the Convention, A 12 secured for divorced persons the right to remarry without unreasonable restrictions. The situation of judicial separation was different and that in any case occurred prior to any decree of divorce. The disputed measure, which affected the very essence of the right to marry, was disproportionate to the legitimate aim pursued. There was, therefore, a violation of A 12.

Costs and expenses (CHF 14,327).

Cited: Airey v IRL (9.10.1979), Bönisch v A (6.5.1985), Deweer v B (27.2.1980), Dudgeon v UK (22.10.1981), Inze v A (28.10.1987), Rees v UK (17.10.1986).

FCB v Italy (1992) 14 EHRR 909 91/39

[Application lodged 9.5.1986; Commission report 17.5.1990; Court Judgment 28.8.1991]

The applicant was tried in his absence for armed robbery, murder and attempted murder, convicted and sentenced in his absence. The applicant's lawyer was present and informed the Assize Court that the applicant was in custody in The Netherlands. No evidence was submitted to support that claim and the court accepted the prosecution submission to try the applicant *in absentia* as unlawfully absent. The evidence of his detention elsewhere appeared after conviction. However, the Dutch authorities had previously asked the Italian authorities for assistance in their investigation of the applicant. The applicant claimed that trial in his absence violated A 6.

Commission found unanimously V 6(1) and (3)(c).

Court held unanimously V 6(1)+(3)(c).

The applicant had not waived his attendance at the hearing. The court had learnt that the appellant was in custody in The Netherlands but had not adjourned the trial or investigated to see if the applicant consented to trial *in absentia*. It had not been shown that the applicant was aware of the

trial date. Even if indirect knowledge (through his lawyer) sufficed, the applicant did not appear to have waived his right to appear at the trial and defend himself. The action of the judicial authorities (proceeding with the trial) was disproportionate having regard to the prominent place which the right to a fair trial holds in a democratic society.

Costs and expenses (ITL 5,000,000).

Cited: Colozza v I (12.2.1985), Brozicek v I (19.12.1989), Foti and Others v I (10.12.1982), Goddi v I (9.4.1984), Isgrò v I (19.2.1991).

FE v France (2000) 29 EHRR 591 98/97

[Application lodged 26.9.1997; Commission report 22.4.1998; Court Judgment 30.10.1998]

The applicant was born in 1971. On 29 October 1985, during a tonsillectomy operation, he was given a blood transfusion. Tests conducted in December 1988 and January 1989 found that he was HIV positive. The applicant had lodged an application with the Administrative Court against the blood transfusion centre and brought a civil action against the Foundation Saint-Marc, owners of the clinic, in the tribunal de grande instance seeking compensation for the damage he had sustained on account of his infection. When his claim was dismissed he appealed to the Court of Appeal. While that appeal was pending, he submitted a compensation claim to the Fund. He accepted the Fund's offer in April 1993 and thereby lost the right to bring any action against it. His action in the Court of Appeal resulted in his compensation claim being upheld.

Comm found unanimously V 6(1).

Court found by majority (7–2) V 6(1) as regards the right of access to a court, (8–1) V 6(1) as regards the length of the proceedings.

Judges: Mr Thór Vilhjálmsson, President, Mr F Gölcüklü (d), Mr L-E Pettiti (d), Mr C Russo, Mrs E Palm, Mr R Pekkanen, Mr D Gotchev, Mr B Repik, Mr T Pantiru.

The right to a court, of which the right of access was one aspect, was not absolute; it could be subject to limitations which, however, should not restrict the exercise of the right in such a way or to such an extent that the very essence of the right was impaired. It had to pursue a legitimate aim and there had to be a reasonable proportionality between the means employed and the aim sought to be achieved. The degree of access afforded by national legislation had to be sufficient to secure the individual's 'right to a court', having regard to the principle of the rule of law in a democratic society. For the right of access to be effective, an individual had to have a clear, practical opportunity to challenge an act that was an interference with his rights. At the time when he accepted the Fund's offer, the applicant could have reasonably believed that it was possible to pursue an action in the civil courts concurrently with his compensation claim to the Fund, even after he had accepted the Fund's offer. In view of his situation at that time, he could not be criticised for not refusing a solution which met his most urgent needs, since he was entitled to think that it had not been intended that, in the event of an offer being accepted, the Act should deprive victims of the right to bring proceedings against any liable party. In the circumstances, on the date when the applicant accepted the offer, the system was not sufficiently clear or sufficiently attended by safeguards to prevent a misunderstanding as to the procedures for making use of the available remedies and the restrictions stemming from the simultaneous use of them. Consequently, the Court found that the applicant did not have a clear, practical opportunity of challenging the amount of compensation in a court. The applicant did not have an effective right of access to a court. There had therefore been a breach of A 6(1).

The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the parties including what was at stake for the applicant. The case was somewhat complex. The applicant could not be held responsible for any delay. However, there had been delay regarding the conduct of the relevant authorities. What was at stake, in pecuniary and non-pecuniary terms, in the proceedings in the Court of Cassation

was of crucial importance to the applicant in view of the disease from which he was suffering. Notwithstanding a certain complexity, exceptional expedition was called for in this instance, especially since the facts of the controversy had been known to the Court of Cassation for several years. Consequently, the proceedings before the Court of Cassation did not satisfy the reasonable time requirement and there had been a violation of A 6(1).

Damages (FF 1,000,000).

Cited: A and Others v DK (8.2.1996), Ashingdane v UK (28.5.1985), Bellet v F (4.12.1995), Fayed v UK (21.9.1994), Golder v UK (21.2.1975), Kalaç v TR (1.7.1997), Karakaya v F (26.8.1994), Levages Prestations Services v F (23.10.1996), Vallée v F (26.4.1994), X v F (31.3.1992).

FM v Italy (1994) 18 EHRR 570 92/57

[Application lodged 2.3.1987; Commission report 20.2.1992; Court Judgment 23.9.1992]

On 5 February 1986, the applicant, a disabled civilian, instituted proceedings against the Minister of the Interior before the Rome magistrates' court seeking payment of an attendance allowance which the social security authorities had refused her. The taking of evidence began at the hearing of 14 April 1986. On 13 October 1986 the Rome magistrates' court ordered the Minister of the Interior to pay the allowance claimed. The decision was deposited with the registry on 19 December 1986. On 10 January 1987 the Minister of the Interior appealed. On 25 January 1989 the Rome District Court dismissed the appeal. The applicant complained of the length of the proceedings.

Comm found by majority (13–8) V 6(1).

Court unanimously struck case out of the list.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr N Valticos, Mr SK Martens, Mrs E Palm, Mr F Bigi.

SO (due to the applicant's death and the failure to discover any heirs).

Cited: Macaluso v I (3.12.1991), Manunza v I (3.12.1991).

Farmakopoulos v Belgium (1993) 16 EHRR 187 92/44

[Application lodged 4.7.1985; Commission report 4.12.1990; Court Judgment 27.3.1992]

Mr Georgios Farmakopoulos, a Greek national, was apprehended on 11 January 1985 while passing through Belgium following a radiogram from the UK requesting his extradition for murder and theft. As the warrants had not been served within the statutory time limit, the Belgian Minister of Justice ordered that the applicant should leave Belgian territory and that he should remain in custody in the meantime. He was due to be deported to Argentina, the country of his choice, on 7 February. At midday on 6 February he was served with the two British warrants. His appeal was dismissed by the Antwerp Court of Appeal as being out of time. His further appeal to the Court of Cassation was also dismissed. He was extradited to the United Kingdom on 9 August 1985 and sentenced to life imprisonment by the Norwich Crown Court on 4 March 1986. He was thereafter handed over to the Greek authorities. He complained, *inter alia*, that he had been unable to take proceedings in accordance with A 5(4).

Comm found unanimously V 5 (4).

Court unanimously struck the case from the list.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr L-E Pettiti, Mr B Walsh, Mr R Macdonald, Mr C Russo, Mr J De Meyer, Mr R Pekkanen, Mr F Bigi.

Despite being approached by the registry on several occasions over a period of eight months, the applicant had shown no interest in the proceedings pending before the Court. There was no reason of public policy for continuing the proceedings, which were concerned to a large extent with questions of fact, whose examination would furthermore require additional information on

the facts of the case. The Court did not consider it necessary to seek to obtain this information of its own motion.

Cited: Dal Sasso v I (3.12.1991).

Fayed v United Kingdom (1994) 18 EHRR 393 94/26

[Application lodged 30.8.1990; Commission report 7.4.1993; Court Judgment 21.9.1994]

Mr Mohamed Al Fayed, Mr Ali Fayed and Mr Salah Fayed were brothers. They were businessmen. In March 1985 they acquired ownership of the House of Fraser plc (HOF) effected through a public company called House of Fraser Holdings plc (HOFH), previously known as the Al Fayed Investment Trust (UK) Limited. Prior to the HOF takeover, they took active steps to promote their reputations. The takeover was vigorously but unsuccessfully opposed by Lohnro plc and, in particular, its Chief Executive, Mr Rowland, a former business associate, turned rival, of the applicants, who pursued a campaign against the applicants. On 9 April 1987, the Secretary of State appointed two Inspectors to investigate the affairs of HOFH. The Inspectors' provisional conclusions were largely unfavourable to the applicants, concluding that the applicants had dishonestly misrepresented their origins, their wealth, their business interests and their resources to the Secretary of State, the Office of Fair Trading, the press, the HOF Board and HOF shareholders and their own advisers. On 30 March 1989 *The Observer* newspaper published a special edition devoted solely to extracts from and comments on a leaked copy of the Inspectors' report. The report was published on 7 March 1990. In August 1990 the applicants abandoned a libel action against *The Observer* newspaper. The applicants complained that the Inspectors' report had determined their civil right to honour and reputation and denied them effective access to a court in determination of that civil right. They further alleged a denial of effective domestic remedies to challenge the findings of the Inspectors.

Comm by majority (12–1) found NV 6(1) either as regards the making and publication of the Inspectors' or as regards the applicant brothers' access to court whether for proceeding against the Inspectors and the Secretary of State (10–3) or for proceeding against others (12–1), unanimously no separate issue under 13.

Court unanimously dismissed the Government's preliminary objection, found NV 6(1), not necessary to examine 13.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr C Russo, Mr SK Martens (c), Mr R Pekkanen, Mr AN Loizou, Sir John Freeland, Mr L Wildhaber, Mr J Makarczyk.

The grounds on which judicial review may be sought were such that it would not have ensured access to a court for determination of the truth of statements made about the applicants in the Inspectors' report, the absence of such access being the essence of their complaints under the Convention. Nor would the libel actions against *The Observer* have provided a remedy against the Inspectors or the Secretary of State as regards the publication of the damaging statements contained in the Inspectors' report. The objection of non-exhaustion of domestic remedies was not made out by the Government and accordingly dismissed.

In order for an individual to be entitled to a hearing before a tribunal, there had to exist a dispute over one of his or her civil rights or obligations. The result of the proceedings in question had to be directly decisive for such a right or obligation to bring A 6(1) into play. The functions performed by the Inspectors were, in practice as well as in theory, essentially investigative. They did not adjudicate, either in form or in substance. Their findings were not dispositive of anything. They did not make a legal determination as to criminal or civil liability concerning the applicants. The purpose of their inquiry was to ascertain and record facts which might subsequently be used as the basis for action by other competent authorities. Their inquiry did not determine the applicants' civil right to a good reputation, nor was its result directly decisive for that right. Investigative proceedings of the kind in issue fell outside the ambit and intendment of A 6. The investigation by the Inspectors was not such therefore as to attract the application of A 6(1).

The Inspectors' report, published to the world at large, contained statements damaging to the applicants' reputations. A 6 secured to everyone the right to have any claim relating to his civil

rights and obligations brought before a court or tribunal. It embodied the right to a court, of which the right of access, that is the right to institute proceedings before courts in civil matters, constituted one aspect only. Whether a person had an actionable domestic claim might depend not only on the substantive content of the relevant civil right but also on the existence of procedural bars preventing or limiting the possibilities of bringing potential claims to court. However, it would not be consistent with the rule of law in a democratic society or with the basic principle underlying A 6(1) if, for example, a State could, without restraint or control by the Convention enforcement bodies, remove from the jurisdiction of the courts a whole range of civil claims or confer immunities from civil liability on large groups or categories of persons. It was not always an easy matter to trace the dividing line between procedural and substantive limitations of a given entitlement under domestic law. In the present case the Court did not consider it necessary to settle the question of the precise nature of the defence of privilege for the purposes of A 6(1) since it was devoid of significance in the particular circumstances. The Court would proceed on the basis that A 6(1) was applicable to the facts of the case. The legitimacy of the limitation complained of could not be divorced from its context, namely the system of investigation and reporting under the Companies Act 1985. The underlying aim of the system was clearly the furtherance of the public interest. The investigation into the affairs of HOFH and the publication of the resultant report in themselves therefore pursued legitimate aims. The Court could not find that, in the exercise of their responsibility of regulating the conduct of the affairs of public companies, the national authorities exceeded their margin of appreciation to limit the applicant brothers' access to the courts under A 6(1), either as regards the state of the applicable law or as regards the effects of the application of that law to the brothers. Having regard in particular to the safeguards that did exist in relation to the impugned investigation, a reasonable relationship of proportionality could be said to have existed between the freedom of reporting accorded to the Inspectors and the legitimate aim pursued in the public interest. The limitation on the applicants' opportunity, before and after publication of the Inspectors' report, to take legal proceedings to challenge the Inspectors' findings damaging to their reputations did not involve an unjustified denial of their right to a court under A 6(1). There was no violation of A 6(1).

In view of the applicants' effective withdrawal of the complaint under A 13, the Court did not find it necessary also to examine the case under that provision.

Cited: Ashingdane v UK (28.5.1985), Handyside v UK (7.12.1976), Le Compte, Van Leuven and De Meyere v B (23.6.1981), James and Others v UK (21.2.1986), Lithgow and Others v UK (8.7.1986), Oberschlick v A (23.5.1991), Powell and Rayner v UK (21.2.1990), Sporrong and Lönnroth v S (23.9.1982).

Fejde v Sweden (1994) 17 EHRR 14 91/43

[Application lodged 28.7.1986; Commission report 8.5.1990; Court Judgment 29.10.1991]

Mr Hans Fejde was charged on 2 March 1984 with illegal possession of a weapon contrary to the Weapons Act 1973. The City Court sentenced him to 30 day-fines of 10 kronor each. The applicant appealed to the Court of Appeal. He was informed that his case could be dealt with without a hearing and invited to express his views as to the necessity for a hearing or submit his final written observations within the a 14 day time limit. His request for a trial hearing was found to be manifestly unnecessary. The Supreme Court refused him leave to appeal on 3 March 1986 and refused his subsequent application to have his case re-opened. The applicant complained that he had not had a fair trial.

Comm found by majority (17–2) V 6(1).

Court found by majority (13–7) NV 6(1).

Judges: Mr J Cremona (d), President, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh (jd), Sir Vincent Evans, Mr R Macdonald, Mr C Russo (jd), Mr R Bernhardt, Mr A Spielmann (jd), Mr J De Meyer (jd), Mr S K Martens, Mrs E Palm, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou (jd), Mr JM Morenilla, Mr F Bigi (jd).

The manner of application of A 6 to proceedings before courts of appeal depended on the special features of the proceedings involved; account had to be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court. A public hearing had been held at first instance. Even where the court of appeal had jurisdiction to review the case both as to facts and law, A 6 did not always require a right to a public hearing irrespective of the nature of the issue to be decided. The publicity requirement was one of the means whereby confidence in the courts was maintained. However, there were other considerations, including the right to trial within a reasonable time and the related need for expeditious handling of the courts' case-load, which had to be taken into account in determining the need for a public hearing at stages in the proceedings subsequent to the trial at first instance. Provided a public hearing had been held at first instance, the absence of such hearing before a second or third instance might be justified by the special features of the proceedings at issue. Thus, leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, might comply with the requirements of A 6 although the appellant was not given an opportunity of being heard in person by the appeal court. The applicant's appeal did not raise any questions of fact or law which could not be adequately resolved on the basis of the case-file. In addition, considering the minor character of the offence with which he was charged and the prohibition against increasing his sentence on appeal, the Court of Appeal could, as a matter of fair trial, properly decide, as it did, that a public hearing was manifestly unnecessary in the applicant's case. The special features of the case justified the refusal to hold a public hearing. Accordingly, there had been no violation of A 6(1).

Cited: Axen v D (8.12.1983), Ekbatani v S (26.5.1988).

Feldbrugge v The Netherlands (1986) 8 EHRR 425, (1991) 13 EHRR 571 86/2

[Application lodged 16.2.1979; Commission report 9.5.1984; Court Judgment 29.5.1986 (merits), 27.7.1987 (A 50)]

Mrs Geziena Hendrika Maria Feldbrugge was unemployed. On 11 April 1978, the Governing Board of the Occupational Association of the Banking and Insurance, Wholesale Trade and Self-Employment Sector decided that as from 24 March 1978 she was no longer entitled to the sickness allowances she had been receiving until then, as the Association's consulting doctor had judged her fit to resume work on that date. Her appeal to the Appeals Board was rejected, as was her further appeal to the Central Appeals Board. She complained that she had not received a fair trial before the President of the Appeals Board.

Comm found 6(1) not applicable, (8–6) NV 6(1).

Court found by majority (10–7) V 6(1).

Judges (merits): Mr R Ryssdal (jd), President, Mr G Wiarda, Mr J Cremona, Mr Thór Vilhjálmsson, Mr W Ganshof van der Meersch, Mrs D Bindschedler-Robert (jd), Mr G Lagergren (jd), Mr F Gölcüklü, Mr F Matscher (jd), Mr J Pinheiro Farinha (declaration), Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans (jd), Mr C Russo, Mr R Bernhardt (jd), Mr J Gersing (jd), Mr A Spielmann.

Judges (A 50): composition as above, decision unanimous.

A dispute arose following the decision taken on 11 April 1978 by the Governing Board of the Occupational Association of the Banking and Insurance, Wholesale Trade and Self-Employment Sector in Amsterdam. That dispute was genuine and serious, and concerned the actual existence of the right asserted by the applicant to continue receiving a sickness allowance. The outcome of the relevant proceedings was capable of leading – and in the event did lead – to confirmation of the decision being challenged, namely the refusal of the President of the Haarlem Appeals Board to grant the claimed allowance; it was thus directly decisive for the right in issue. The President of the Appeals Board thus had to determine a dispute concerning a right claimed by Mrs Feldbrugge. Whether it was a civil right, national classification provided only a starting point and could not be conclusive of the matter. Whether or not a right was to be regarded as civil had to be determined by reference to the substantive content and effects of the right – and not its legal classification –

under the domestic law of the State concerned. An analysis of the characteristics of the Netherlands system of social health insurance disclosed that the claimed entitlement comprised features of both public law and private law. The public law features (character of the legislation, compulsory nature of the insurance, assumption by the State of responsibility for social protection) did not suffice to establish that A 6 was inapplicable. The private law features (personal and economic nature of the asserted right, connection with the contract of employment, affinities with insurance under the ordinary law) were predominant. None of those various features of private law was decisive on its own, but taken together and cumulatively they conferred on the asserted entitlement the character of a civil right within the meaning of A 6(1), which was therefore applicable.

The permanent medical expert could not himself determine a dispute over a civil right. The sole responsibility for taking the decision fell to the President of the Appeals Board, even when he did no more than ratify the opinion of the expert. There was no breach of the principle of equality of arms inherent in the concept of a fair trial. The Occupational Association did not enjoy a procedural position any more advantageous than Mrs Feldbrugge's, in that had the experts expressed an opinion unfavourable to its standpoint, the Association would likewise have been unable to present oral or written arguments or to challenge the validity of the unfavourable opinion. No lack of fair balance thus obtained between the parties in that respect. However, the President neither heard the applicant nor asked her to file written pleadings and he did not afford her or her representative the opportunity to consult the evidence in the case-file, in particular the two reports which were the basis of the decision of the permanent experts, and to formulate her objections to it. The proceedings conducted before the President of the Appeals Board were not therefore attended, to a sufficient degree, by one of the principal guarantees of a judicial procedure. The conditions of access to the full Appeals Board and the Central Appeals Boards were framed in restrictive terms and prevented the applicant from challenging the merits of the decision by the President of the Appeals Board. Accordingly, the shortcoming found to exist in respect of the procedure before that judicial officer was not capable of being cured at a later stage. There had therefore been a breach of A 6(1).

Non-pecuniary damage (NLG 10,000), consultation expenses (NLG 1,502).

Cited: Benthem v NL (23.10.1985), Bönisch v A (6.5.1985), Delcourt v B (17.1.1970), Engel and Others v NL (8.6.1976), König v D (28.6.1978), Ringeisen v A (16.7.1971).

Cited (A 50): Colozza v I (12.2.1985), Minelli v CH (25.3.1983), Van Droogenbroeck v B (25.4.1983).

Fernandes Magro v Portugal 00/86

[Application lodged 6.6.1997; Court Judgment 29.2.2000]

Mr João Fernandes Magro complained of the length of proceedings before the administrative courts.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr G Ress, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mr I Cabral Barreto, Mrs N Vajic.

The period to be taken into consideration began on 4 December 1990 and ended on 10 March 1998. It had lasted seven years, three months. The period could not be considered reasonable.

Non-pecuniary damage (PTE 900,000), costs and expenses (PTE 250,000).

Cited: Silva Pontes v Portugal (23.3.1994).

Ferrantelli and Santangelo v Italy (1997) 23 EHRR 33 96/26

[Application lodged 2.2.1992; Commission report 2.3.1995; Court Judgment 17.8.1996]

On 26 January 1976 two police officers were murdered in barracks, and clothes, firearms and ammunition were found to be missing. In the night of 11 to 12 February Mr GV was arrested. He

admitted the murders and named others involved. Mr Vincenzo Ferrantelli and Mr Gaetano Santangelo, the applicants, and two other suspects were arrested on 13 February 1976. On 26 October 1977 GV was found dead, said to have committed suicide, in the prison hospital. On 23 January 1978 the applicants, who had not had an opportunity to examine or have examined GV in the proceedings prior to his death, were committed for trial with the two other accused. The proceedings in the Trapani Assize Court began on 25 November 1980 and ended on 10 February 1981 with the acquittal of the applicants, on the basis of the benefit of the doubt. The prosecuting authority and the accused appealed. The applicants, in particular, sought their unqualified acquittal. On 7 March 1986 the Juvenile Section of the Palermo Court of Appeal acquitted the applicants on the basis of the benefit of the doubt. The prosecuting authority and the applicants again appealed to the Court of Cassation. On 12 October 1987 the Court of Cassation quashed the decision and remitted the case to the Juvenile Section of the Caltanisetta Court of Appeal. On 31 May 1988 that court quashed the judgment of the Trapani Assize Court of 10 February 1981. On 2 June 1988 the Assize Court of Appeal, presided over by Judge S P, dealt with the case of the accused, GG. On 6 October 1989 the Palermo Juvenile Court, which was trying the case at first instance, acquitted the applicants on the basis of the benefit of the doubt. The applicants and the prosecuting authority appealed. On 6 April 1991 that court, the Juvenile Court presided over by SP, who had also presided over the Caltanisetta Assize Court of Appeal in GG's trial, sentenced Mr Santangelo to 22 years and five months' imprisonment and a fine of ITL 450,000. Mr Ferrantelli was sentenced to 14 years and 10 months. On 4 June 1991 the prosecuting authority and the applicants appealed to the Court of Cassation. In a judgment of 8 January 1992, deposited in the registry on 28 February, the Court of Cassation dismissed the applicants' appeal. An application of 18 January 1992 seeking a pardon from the President of the Republic was rejected. The applicants complained about the length of proceedings, fairness of trial and lack of impartiality of the tribunal.

Comm found unanimously V 6.

Court found unanimously V 6(1) as regards the length of the proceedings, NV 6(1) and 6(3)(d), as regards the right to a fair trial, by majority (8–1) V 6(1) regarding the lack of impartiality of the Juvenile Section of the Court of Appeal.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr L-E Pettiti, Mr R Macdonald, Mr C Russo, Mr J De Meyer (d), Mr J Makarczyk, Mr D Gotchev.

The relevant period began on 13 February 1976, the date of the applicants' arrest, and ended on 28 February 1992, when the Court of Cassation's judgment was deposited in the registry. It had lasted 16 years and two weeks. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The case was complex having regard to the nature of the charges and to the problems in determining jurisdiction for offences committed by minors acting in concert with adults. Taken separately, the different phases of the proceedings were, in addition, conducted at a regular pace, apart from the inexplicable period of stagnation of nearly two years during the first investigation. Examined as a whole, however, the only possible conclusion was that the reasonable time requirement was not complied with because the applicants were not convicted with final effect until 16 years after the events, which had occurred when they were still minors. There had, accordingly, been a violation of A 6(1).

The admissibility of evidence was primarily a matter for regulation by national law and, as a rule, it was for the national courts to assess the evidence before them. The Court's task was to ascertain whether the proceedings considered as a whole, including the way in which the evidence was taken, were fair. The guarantees in A 6(3)(d) were specific aspects of the right to a fair trial in A 6(1). Normally all the evidence had to be produced in the presence of the accused at a public hearing with a view to adversarial argument. However, the use of statements obtained at the pre-trial stage was not in itself inconsistent with A 6(3)(d) and 6(1), provided that the rights of the defence had been respected. As a rule, these rights required that the defendant be given an adequate and

proper opportunity to challenge and question a witness against him, either when he was making his statements or at a later stage of the proceedings. Although the judicial authorities had not organised a confrontation between all the accused before GV's death, they could not be held responsible for the latter event. The Juvenile Section of the Caltanisetta Court of Appeal carried out a detailed analysis of the prosecution witness's statements and found them to be corroborated by other evidence. The applicants had had a fair trial and there had been no violation of A 6(1) and 6(3)(d).

The existence of impartiality for the purposes of A 6(1) had to be determined according to a subjective test, that is, on the basis of the personal conviction and behaviour of a particular judge in a given case, and also according to an objective test, that is, ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in that respect. The personal impartiality of the judge concerned was not questioned. With regard to the objective test, what was at stake was the confidence which the courts in a democratic society had to inspire in the public. That implied that, in deciding whether in a given case there was a legitimate reason to fear that a particular judge lacked impartiality, the standpoint of the accused was important but not decisive. What was decisive was whether that fear could be held objectively justified. In the present case the judgment of 2 June 1988 of the Caltanisetta Assize Court of Appeal, presided over by Judge SP, contained numerous references to the applicants and their respective roles in the attack on the barracks. The judgment of the Juvenile Section of the Caltanisetta Court of Appeal of 6 April 1991, where Judge SP was the presiding and reporting judge, convicted the applicants citing numerous extracts from the decision of the Assize Court of Appeal concerning another defendant. In the Juvenile Section it was once again Judge SP who presided and indeed he was the reporting judge. Those circumstances were sufficient to hold the applicants' fears as to the lack of impartiality of the Juvenile Section of the Caltanisetta Court of Appeal to be objectively justified. There had, accordingly, been a breach of A 6(1).

Claim for just satisfaction not submitted in time. No claim for costs.

Cited: Barberà, Messegué and Jabardo v E (6.12.1988), Delta v F (19.12.1990), Fey v A (24.2.1993) Hauschildt v DK (24.5.1989), Isgrò v I (19.2.1991), Ribitsch v A (4.12.1995), Thomann v CH (10.6.1996), Tomasi v F (27.8.1992).

Ferrari v Italy 99/45

[Application lodged 14.9.1995; Commission report 20.5.1998; Court Judgment 28.7.1999]

Mrs Marcella Ferrari instituted proceedings in the Rome District Court on 31 January 1990 against a local health clinic in Rome for payment of an adjustment for inflation and of statutory interest in respect of arrears of her widow's pension which had been paid six years late. The court's judgment of 13 March, deposited with the registry on 6 August 1998, allowed the applicant's appeal in part. The applicant complained about the length of proceedings.

Comm found by majority (13–3) V 6(1).

Court found unanimously V 6(1).

Judges: Mrs E Palm, President, Mr A Pastor Ridruejo, Mr L Ferrari Bravo, Mr G Bonello, Mr R Türmen (pd), Mr J-P Costa, Mrs F Tulkens, Mrs V Stráznická, Mr P Lorenzen, Mr W Fuhrmann, Mr M Fischbach, Mr V Butkevych, Mr J Casadevall, Mrs HS Greve, Mr A Baka, Mr R Maruste, Mrs S Botoucharova.

The period to be taken into account began on 31 January 1990, when the applicant instituted proceedings in the Rome District Court against the local health clinic in Rome. It ended on 6 August 1998, when that court's judgment of 13 March 1998 was deposited with the registry. It had therefore lasted just over eight years and six months. A 6(1) imposed on the Contracting States the duty to organise their judicial systems in such a way that their courts could meet the requirements of the provision. It was important to administer justice without delays which might jeopardise its effectiveness and credibility. Since 25 June 1987 (the date of the *Capuano v I* judgment), the Court had already delivered 65 judgments in which it has found violations of A 6(1) in proceedings

exceeding a 'reasonable time' in the civil courts of the various regions of Italy. Similarly, under former A 31 and 32 of the Convention, more than 1,400 reports of the Commission resulted in resolutions by the Committee of Ministers finding Italy in breach of A 6 of the Convention for the same reason. The frequency with which violations were found showed that there was an accumulation of identical breaches which were sufficiently numerous to amount not merely to isolated incidents. Such breaches reflected a continuing situation that had not yet been remedied and in respect of which litigants had no domestic remedy. The accumulation of breaches constituted a practice that was incompatible with the Convention. The length of the proceedings was excessive and failed to meet the reasonable time requirement. Accordingly, there had been a violation of A 6(1).

Non-pecuniary damage (ITL 15,000,000), costs and expenses (ITL 11,275,488).

Cited: Katte Klitsche de la Grange v I (27.10.1994), Salesi v I (26.2.1993).

Ferraro v Italy 91/18

[Application lodged 26.11.1987; Commission report 5.12.1989; Court Judgment 19.2.1991]

On 3 February 1979 Mr Erico Ferraro, an inspector with the Ministry of Transport, was questioned by the police. On 8 February 1979 an arrest warrant was issued against him for forgery and corruption on a charge of falsely certifying that he had carried out approval tests on a number of vehicles, allegedly at the request of a certain M who, in return, had supplied him with watches imported from Japan to sell off on the Italian market. Following a trial on 3 June 1987, the applicant was acquitted. The judgment became final on 3 July 1987 when the time limit for an appeal by the prosecuting authorities expired. He complained of the length of proceedings.

Comm found unanimously V 6(1).

Court unanimously found V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Sir Vincent Evans, Mr C Russo, Mr J De Meyer, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla.

The period to be taken into consideration began on 8 February 1979, the date on which the Italian judicial authorities ordered the applicant's arrest; it ended on 3 July 1987. The reasonableness of the length of proceedings was to be assessed in the light of the particular circumstances of the case. The proceedings were of some complexity owing to the nature of the facts to be established but the applicant did nothing to slow down their progress. The two investigations of the alleged offences extended over a period of approximately five years and eight months from 8 February 1979 to 28 October 1984, after which there was a long period of inactivity in the trial proceedings up until 22 April 1987. A lapse of nearly eight years and five months could not be regarded as reasonable.

Damages (ITL 60,000,000), costs and expenses (ITL 6,008,600 and FF 743).

Cited: Obermeier v A (28.6.1990).

Ferreira de Sousa and Costa Araújo v Portugal 99/99

[Application lodged 30.4.1997; Court Judgment 14.12.1999]

Mr Joaquim de Jesus Ferreira de Sousa and Mrs Rosalina da Costa Araújo complained of the length of boundary dispute proceedings.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr G Ress, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mr I Cabral Barreto, Mrs N Vajic.

The period to be taken into consideration began on 13 February 1991 and ended on 26 January 1998. It had lasted around six years, 11 months. The period could not be regarded as reasonable.

Non-pecuniary damage (PTE 700,000), costs and expenses (PTE 250,000).

Cited: Silva Pontes v P (23.3.1994).

Fertiladour SA v Portugal 00/149

[Application lodged 11.6.1997; Court Judgment 18.5.2000]

Fertiladour – Société Industrielle et Agricole de l'Adour SA complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr G Ress, Mr A Pastor Ridruejo, Mr I Cabral Barreto, Mr V Butkevych, Mr J Hedigan, Mrs S Botoucharova.

The period to be taken into consideration began on 26 May 1987 and was still pending. It had lasted 13 years. The period could not be considered reasonable.

Damages (PTE 1,500,000), costs and expenses (PTE 250,000).

Cited: Silva Pontes v P (23.3.1994).

Fey v Austria (1993) 16 EHRR 387 93/2

[Application lodged 10.11.1988; Commission report 15.10.1991; Court Judgment 24.2.1993]

Mr Hans Jürgen Fey, a pensioner, rented a room from a Mrs Rosa Kröll from 17 to 27 January 1988. During that period he told her that his wife was very ill and was undergoing treatment in hospital and that he was expecting to receive payments under a pension scheme. As a result, Mrs Kröll gave him money and waived the rent. Subsequently, proceedings were instituted against the applicant for fraud. By a rogatory letter the District Court Judge, Mrs Andrea Kohlegger, put questions to the witness. The judge took a number of steps in the applicant's case. At a later date a hearing was held in the District Court before Judge Kohlegger sitting as a single judge. The District Prosecutor was present, but the applicant's lawyer at the time did not appear, although he had been summoned. The applicant and Mrs Kröll were heard and other evidence considered. By judgment of 24 March 1988, the District Court acquitted the applicant of one of the fraud charges but convicted and sentenced him to three months' imprisonment and compensation on the other charge. The applicant's appeal to the Regional Court was dismissed. He complained that the case against him had not been determined by an impartial tribunal as the District Court judge had both undertaken preliminary investigations and tried the case.

Comm found by majority (16–3) V 6(1).

Court found by majority (7–2) NV 6(1).

Judges: Mr R Bernhardt, President, Mr F Gölcüklü, Mr F Matscher, Mr R Macdonald, Mr A Spielmann (d), Mr SK Martens (c), Mr AN Loizou (d), Sir John Freeland, Mr AB Baka.

The existence of impartiality for the purposes of A 6(1) had to be determined according to a subjective test, that is, on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that is, ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect. As to the subjective test, the applicant did not dispute the personal impartiality of Judge Kohlegger. With regard to the objective test, appearances could be of importance. What was at stake was the confidence which the courts in a democratic society inspired in the public and, above all, as far as criminal proceedings were concerned, in the accused. This implied that in deciding whether in a given case there was a legitimate reason to fear that a particular judge lacked impartiality, the standpoint of the accused was important, but not decisive. What was determinant was whether that fear could be held to be objectively justified. The mere fact that a judge had also made pre-trial decisions in the case could not be taken as in itself justifying fears as to his impartiality. What mattered was the extent and nature of the pre-trial measures taken by the judge. The interrogation of the landlady had been conducted by Judge Kohlegger, under a rogatory letter from the investigating judge that asked the District Court to put some very specific questions to the landlady. Judge Kohlegger undertook certain pre-trial measures which were of a preparatory nature. Judge Kohlegger's decision of 18

March 1988 to set the case down for trial did not reflect a belief on her part that there was a likelihood that he was guilty. That decision merely gave effect to the rule, under the applicable law, that the hearing date should be fixed as soon as such preliminary inquiries as may be necessary had been made. It was not until the hearing on 24 March 1988 that Judge Kohlegger was faced with the applicant for the first time and all the evidence in the case was presented. It was only at that stage that she was in a position to form any opinion as to the applicant's guilt. The various measures she had taken prior to the trial could not have led her to reach a preconceived view on the merits. The fears the applicant may have had as to the District Court judge's impartiality could not be held to have been objectively justified. Accordingly, there had been no violation of A 6(1).

Cited: De Cubber v B (26.10.1984), Hauschildt v DK (24.5.1989), Thorgeir Thorgeirson v ISL (25.6.1992).

Ficara v Italy 91/13

[Application lodged 17.5.1986; Commission report 5.12.1989; Court Judgment 19.2.1991]

A complaint was lodged against Mr Antonio Ficara on 28 December 1978 leading subsequently to his prosecution on criminal charges. On 27 June 1979 he was notified that a preliminary investigation had been opened against him. The appeal court acquitted him on 25 January 1989. The time limit for appeal on a point of law by the prosecutor expired on 28 January 1989. He complained of the length of the proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Sir Vincent Evans, Mr C Russo, Mr J De Meyer, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla.

The period to be taken into account began on 27 June 1989 and ended on 28 January 1989. The reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case. The applicant had contributed to the delays by making three requests for adjournments. However, the case was not complex and there were long periods of stagnation in the proceedings, in particular a period of five years when the proceedings were before the Court of Appeal which had been unable to deal with its heavy caseload. A lapse of more than nine years, seven months could not be regarded as reasonable. Accordingly V 6(1).

Non-pecuniary damage (ITL 10,000,000), costs and expenses (ITL 2,000,000).

Cited: Obermeier v A (28.6.1990).

Figus Milone v Italy 93/41

[Application lodged 25.11.1987; Commission report 1.7.1992; Court Judgment 22.9.1993]

Mrs Albina Figus Milone, who used to work for a security firm, Istitutio di Vigilanza, brought proceedings on 26 October 1978 against her former employer in the Turin magistrates' court for unfair dismissal. At the first hearing, on 28 November 1978, the magistrate raised a preliminary question of his own motion and stayed the proceedings pending the decision of the Constitutional Court. The Constitutional Court gave judgment on 16 January 1987. The applicant resumed the proceedings on 16 February 1987 and they ended on 28 May with a friendly settlement. She complained about the length of the proceedings.

Comm found unanimously V 6(1).

Court unanimously accepted the Government's preliminary objection and held that it could not deal with the merits of the case.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr C Russo, Mr I Foighel, Mr F Bigi, Mr AB Baka, Mr MA Lopes Rocha, Mr L Wildhaber, Mr J Makarczyk.

Under A 47, the Court may only be seised of a case within the period of three months provided for in A 32. In order to seise a court, it was not sufficient to decide to seise it. The decision had to be implemented. The Commission had exceeded, albeit by only one day, the time allowed it. No

special circumstance of a nature to suspend the running of time or justify its starting to run afresh was apparent from the file. The application was therefore inadmissible as it was made out of time.

Findlay v United Kingdom (1997) 24 EHRR 221 97/8

[Application lodged 28.5.1993; Commission report 5.9.1995; Court Judgment 25.2.1997]

Mr Alexander Findlay was a member of the Scots Guards. On 29 July 1990, after a heavy drinking session, he held members of his own unit at pistol point and threatened to kill himself and some of his colleagues. He fired two shots, which were not aimed at anyone, and hit a television set, and subsequently surrendered the pistol. He was then arrested. The convening officer convened the general court-martial and appointed the military personnel who were to act as prosecuting officer, assistant prosecuting officer and assistant defending officer. The court-martial consisted of a president and four other members who were subordinate in rank to the convening officer. None of them had legal training. On 11 November 1991, Mr Findlay appeared before the general court-martial at Regent's Park Barracks in London and was represented by a solicitor. He complained that he had been denied a fair hearing before the court-martial and that it was not an independent and impartial tribunal.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr J De Meyer (C), Mrs E Palm, Mr AN Loizou, Mr JM Morenilla, Sir John Freeland, Mr D Gotchev, Mr P Jambrek, Mr K Jungwiert.

The scope of the Court's jurisdiction was determined by the Commission's decision on admissibility and it had no power to entertain new and separate complaints which were not raised before the Commission However, in his application to the Commission the applicant, although not expressly, appeared to have raised in substance most of the matters which formed the basis of his complaints in relation to the provisions of public hearing and tribunal established by law. They were not new and separate complaints, and the Court had jurisdiction to consider them.

A 6(1) was applicable to the court-martial proceedings, since they involved the determination of the applicant's sentence following his plea of guilty to criminal charges.

In order to establish whether a tribunal could be considered as independent, regard had to be had, *inter alia*, to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressures and the question whether the body presented an appearance of independence. Regarding the question of impartiality, there are two aspects to that requirement. First, the tribunal had to be subjectively free of personal prejudice or bias. Secondly, it had to also be impartial from an objective viewpoint, that is, it had to offer sufficient guarantees to exclude any legitimate doubt in that respect. The convening officer played a significant and central role in the applicant's prosecution and was closely linked to the prosecuting authorities. The convening officer appointed the members of the court martial; they were subordinate in rank to him. Many of them, including the president, were directly or ultimately under his command. Furthermore, the convening officer had the power, albeit in prescribed circumstances, to dissolve the court martial either before or during the trial. In order to maintain confidence in the independence and impartiality of the court, appearances may be of importance. Since all the members of the court-martial which decided the applicant's case were subordinate in rank to the convening officer and fell within his chain of command, the applicant's doubts about the tribunal's independence and impartiality could be objectively justified. In addition, the convening officer also acted as confirming officer. Thus, the decision of the court martial was not effective until ratified by him, and he had the power to vary the sentence imposed as he saw fit. That was contrary to the well-established principle that the power to give a binding decision which may not be altered by a non-judicial authority was inherent in the very notion of 'tribunal' and could also be seen as a component of the 'independence' required by A 6(1). Those fundamental flaws in the court-martial system were not remedied by the presence of safeguards, such as the involvement of the judge advocate, who was not himself a member of the tribunal and whose advice to it was not made

public, or the oath taken by the members of the court-martial board. Nor could the defects referred to above be corrected by any subsequent review proceedings. Since the applicant's hearing was concerned with serious charges classified as 'criminal' under both domestic and Convention law, he was entitled to a first-instance tribunal which fully met the requirements of A 6(1). For all those reasons, and in particular the central role played by the convening officer in the organisation of the court martial, the applicant's misgivings about the independence and impartiality of the tribunal which dealt with his case were objectively justified. It was not therefore necessary for the Court to consider the applicant's other complaints under A 6(1), namely that he was not afforded a public hearing by a tribunal established by law.

Pecuniary damage claim dismissed (Court could not speculate as to what the outcome of the court-martial proceedings might have been had the violation not occurred). Finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage. Costs and expenses (GBP 23,956.25 less FF 26,891).

Cited: Bryan v UK (22.11.1995), De Cubber v B (26.10.1984), Eckle v D (15.7.1982), Engel and Others v NL (18.6.1976), James and Others v UK (21.2.1986), Pullar v UK (10.6.1996), Schmautzer v A (23.10.1995, A 50), Silver and Others v UK (25.3.1983), Singh v UK (21.2.1996), Sramek v A (22.10.1984), Van de Hurk v NL (19.4.1994).

Fisanotti v Italy 98/27

[Application lodged 28.4.1994; Commission report 9.7.1997; Court Judgment 23.4.1998]

Mr Gian Carlo Fisanotti was a civil servant until he took early retirement on 31 July 1989. On 13 July 1992 he applied to the Sardinia Regional Division of the Court of Audit for an enhanced pension, claiming a work-related illness. The first hearing was held on 28 January 1995 when, by an order which was deposited with the registry on 4 March 1996, the Regional Division requested the opinion of the Medical Board. On 3 June 1997 the applicant was examined by the Board. On 6 October 1997 the Regional Division set down a hearing for 11 February 1998. The applicant complained about the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Bernhardt, President, Mr C Russo, Mr N Valticos, Mr I Foighel, Mr R Pekkanen, Sir John Freeland, Mr L Wildhaber, Mr J Makarczyk, Mr U Lôhmus.

The relevant period began on 13 July 1992 when the applicant applied to the Sardinia Regional Division of the Court of Audit and had not yet ended. The proceedings had therefore already lasted approximately five years and eight months. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the parties. The Court took note of the efforts of the Italian authorities in connection with legislation on the jurisdiction and organisation of the Court of Audit. However, the introduction of a reform of that nature could not justify delays since States were under a duty to organise the entry into force and implementation of such measures in a way that avoided prolonging the examination of pending cases. In the present case there was no delay linked to the reform. On the other hand, there were several inexplicable periods of inactivity due to the authorities. The applicant's conduct could not be criticised. The case was not particularly complex. The length of the proceedings was not reasonable and accordingly there had been a violation of A 6(1).

Non-pecuniary damage (ITL 12,500,000), costs and expenses (ITL 2,500,000).

Cited: Ceteroni v I (15.11.1996).

Fischer v Austria (1995) 20 EHRR 349 95/10

[Application lodged 11.5.1990; Commission report 9.9.1993; Court Judgment 26.4.1995]

Mr Josef Fischer, the applicant, had owned a refuse tip since 1975 which he operated under a revocable refuse-tipping licence. On 5 December 1986 the tipping licence was revoked by the

Governor of the Land of Lower Austria on the grounds, *inter alia*, that dangerously high levels of toxic substances had been found in the groundwater and the unsuitability of the site for tipping. The applicant's appeal to the Federal Ministry of Agriculture and Forestry was dismissed on 20 July 1987. His further complaint to the Constitutional Court was dismissed without a hearing. The Administrative Court also dismissed his appeal without a hearing. The applicant complained that he had not been able to bring his case before a 'tribunal' which complied with A 6 or to have a public hearing on the issue of the revocation of his tipping licence.

Comm found by majority (12–1) NV 6(1) in respect of the right to have his case determined by a tribunal, unanimously V 6(1) in regard to the lack of an oral hearing in the Administrative Court, by majority (12–1) NV 6(1) in regard to lack of an oral hearing in the Constitutional Court.

Court found by majority (8–1) NV 6(1) as regards the complaint that he was not able to bring his case before a 'tribunal', unanimously V 6(1) as regards the lack of an oral public hearing.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr F Matscher (c), Mr C Russo, Mr SK Martens (so), Mr AN Loizou, Sir John Freeland, Mr D Gotchev, Mr P Jambrek (c).

Under A 6(1) it was necessary that, in the determination of 'civil rights and obligations', decisions taken by administrative authorities which did not themselves satisfy the requirements of A 6(1) were subject to subsequent control by a 'judicial body that had full jurisdiction'. The Austrian Constitutional Court did not have the requisite jurisdiction. Its review was confined to ascertaining whether the administrative decision was in conformity with the Constitution. The decision to revoke the tipping licence was not one which lay exclusively within the discretion of the administrative authorities. It was not the task of the Court to assess the quality of the experts' reports on which the revocation was based. The impugned administrative decision was based on objective criteria that left relatively little room for discretion. The Administrative Court considered all the applicant's submissions on their merits, point by point, without ever having to decline jurisdiction in replying to them or in ascertaining facts. Having regard to the nature of Mr Fischer's concrete complaints as well as to the scope of review necessitated by such complaints, the Administrative Court's review of the decision being challenged fulfilled the requirements of A 6(1).

Regarding the lack of a hearing, the relevant legislation, the Administrative Court Act came into force in 1982, whereas Austria ratified the Convention and made the reservation in respect of A 6 in 1958. Under A 64(1) only laws 'then in force' in the State's territory could be the subject of a reservation. The applicant's complaint that the Administrative Court had not held a hearing was not excluded from review by the reservation, since the provision on which the refusal to hold such a hearing was based was not in force at the time the reservation was made. Only the proceedings before the Administrative Court were in issue; the other authorities which dealt with the applicant's complaint, notably the Austrian Constitutional Court, could not be considered tribunals invested with full jurisdiction for the purposes of A 6. The practice of the Austrian Administrative Court was not to hear the parties unless one of them asked it to do so. The applicant expressly requested an oral hearing in the Administrative Court. That was refused on the ground that it was not likely to contribute to clarifying the case. There was accordingly no question of the applicant's having waived that right. There did not appear to have been any exceptional circumstances that might have justified dispensing with a hearing. The Administrative Court was the first and only judicial body before which the applicant's case was brought; it was able to examine the merits of his complaints; the review addressed not only issues of law but also important factual questions. That being so, and having due regard to the importance of the proceedings in question for the very existence of the applicant's tipping business, the right to a 'public hearing' included an entitlement to an 'oral hearing'. The refusal by the Administrative Court to hold such a hearing amounted therefore to a violation of A 6(1).

Costs and expenses (ATS 200,000).

Cited: Albert and Le Compte v B (10.2.1983), Fredin v Sweden (No 2) (23.2.1994) Obermeier v A (28.6.1990) Ortenberg v A (25.11.1994), Zumtobel v A (21.9.1993).

Fitt v United Kingdom 00/82

[Application lodged 30.11.1995; Commission report 20.10.1998; Court Judgment 16.2.2000]

Mr Barry Fitt was charged with various offences following an armed robbery of a Royal Mail van. The prosecution made applications to the trial judge that they should not be required to disclose certain material to the defence. Having heard submissions from the defence, the trial judge refused to order disclosure. The applicant gave evidence. On 16 May 1994 he was convicted of conspiracy to rob, possession of a firearm and possession of a prohibited weapon, and he was sentenced to 11 years' imprisonment. On 6 June 1995 the Court of Appeal upheld his conviction. The applicant complained that the proceedings before the Crown Court and the Court of Appeal undermined his right to a fair trial.

Comm found by majority (18–12) NV 6(1) in conjunction with 6(3)(b)+(d), unanimously NV 6(2) of the Convention.

Court found by majority (9–8) NV 6(1), unanimously not necessary to examine A 6(2).

Judges: Mr L Wildhaber, President, Mrs E Palm (d), Mr L Ferrari Bravo, Mr L Caflisch, Mr J-P Costa, Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach (d), Mr B Zupancic (d), Mrs N Vajic (d), Mr J Hedigan (d), Mrs W Thomassen (d), Mrs M Tsatsa-Nikolovska (d), Mr T Pantiru, Mr E Levits, Mr K Traja (d), Sir John Laws, ad hoc judge.

The guarantees in A 6(3) were specific aspects of the right to a fair trial in A 6(1). It was a fundamental aspect of the right to a fair trial that criminal proceedings, including the elements of such proceedings which related to procedure, should be adversarial and that there should be equality of arms between the prosecution and defence. The right to an adversarial trial meant, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. In addition, A 6(1) required that the prosecution authorities should disclose to the defence all material evidence in their possession for or against the accused. However, the entitlement to disclosure of relevant evidence was not an absolute right. In any criminal proceedings there might be competing interests, such as national security or the need to protect witnesses at risk of reprisals or keep secret police methods of investigation of crime, which had to be weighed against the rights of the accused, and it might be necessary to withhold certain evidence from the defence so as to preserve the fundamental rights of another individual or to safeguard an important public interest. However, only such measures restricting the rights of the defence which were strictly necessary were permissible under A 6(1). Moreover, in order to ensure that the accused receives a fair trial, any difficulties caused to the defence by a limitation on its rights had to be sufficiently counterbalanced by the procedures followed by the judicial authorities. In cases where evidence had been withheld from the defence on public interest grounds, it was not the role of this Court to decide whether or not such non-disclosure was strictly necessary since, as a general rule, it was for the national courts to assess the evidence before them. The Court had to scrutinise the decision-making procedure to ensure that, as far as possible, it complied with the requirements to provide adversarial proceedings and equality of arms and incorporated adequate safeguards to protect the interests of the accused. The defence were kept informed and permitted to make submissions and participate in the decision-making process as far as was possible without revealing to them the material which the prosecution sought to keep secret on public interest grounds. The material which was not disclosed in the present case formed no part of the prosecution case and was never put to the jury. The fact that the need for disclosure was at all times under assessment by the trial judge provided a further, important, safeguard in that it was his duty to monitor throughout the trial the fairness or otherwise of the evidence being withheld. The judge was fully versed in all the evidence and issues in the case and in a position to monitor the relevance to the defence of the withheld information both before and during the trial. It could be assumed that the judge applied the principles which had recently been clarified by the Court of Appeal in such cases. The trial court had applied standards which were in conformity with the relevant principles of a fair trial embodied in A 6(1). The Court of Appeal had also considered whether or not the evidence should

have been disclosed, so providing an additional level of protection for the applicant's rights. The decision-making procedure complied with the requirements of adversarial proceedings and equality of arms and incorporated adequate safeguards to protect the interests of the accused therefore there had been no violation of A 6(1) in the present case.

The applicant did not pursue before the Court his complaint under A 6(2) and the Court saw no reason to examine it of its own motion.

Cited: Brandstetter v A (28.8.1991), Doorson v NL (26.3.1996), Edwards v UK (16.12.1992), Van Mechelen and Others v NL (23.4.1997).

Foti and Others v Italy (1983) 5 EHRR 313, (1991) 13 EHRR 568 82/7

[Applications lodged 14.3.1976, 2.9.1976, 22.11.1976, 15.4.1977; Commission report 15.10.1980; Court Judgment 10.12.1982]

Mr Benito Foti, Mr Felice Lentini, Mr Demetrio Cenerini and Mr Giovanni Gulli were prosecuted for acts committed in the course of demonstrations that took place in a province of Italy between 1970 and 1973. They complained, *inter alia*, of the length of proceedings.

Commission found unanimously V 6(1), not necessary to consider 13.

Court unanimously rejected the Government's preliminary objection, found unanimously V 6(1) and not necessary to consider 13.

Judges (merits): Mr G Wiarda, President, Mrs D Bindschedler-Robert, Mr D Evrigenis, Mr J Pinheiro Farinha (so), Sir Vincent Evans, Mr C Russo, Mr R Bernhardt.

Judges (A 50): Mr G Wiarda, President, Mr R Ryssdal, Mr W Ganshof van der Meersch, Mrs D Bindschedler-Robert, Mr J Pinheiro Farinha, Mr C Russo, Mr R Bernhardt.

The Government were estopped from raising the argument regarding non-exhaustion of domestic remedies, it was for the State to establish the existence of available remedies and raise the objection before the Commission. That had not been done.

Although the decision to prosecute the applicants dated back to 1970, 1971 and 1973 for the various proceedings in respect of the various applicants, the periods to be considered began only on 1 August 1973, when the recognition by Italy of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after 31 July 1973, account had to be taken of the then state of proceedings. The various ends of the periods to be taken into account for the applicants resulted in the length of time exceeding four years, six months in the first proceedings against Mr Foti, five years, 10 months in the second proceedings against him and three years, 10 months in the third proceedings against him; three years, five months in the case of Mr Lentini; four years, 10 months in the case of Mr Cenerini; five years, two months in the case of Mr Gulli. The reasonableness of the length of the proceedings had to be assessed according to the particular circumstances having regard to the complexity of the case and the conduct of the parties. The cases were not complex and, except in the second Foti case, they were dealt with at one jurisdictional level alone. The applicants were not responsible for delays. The unusual political and social climate at the time and the effects of the troubles on the workings of criminal justice (notably the exceptional backlog of business) had to be considered; in particular, normal lapses of time stemming from the transfer of the cases were not to be regarded as unjustified. However, the six sets of proceedings brought against the applicants were subject to delays incompatible with A 6(1).

It was superfluous to decide on the application of A 13 as the parties had not pursued the matter and in view of the conclusion that there has been a breach of A 6(1).

FS (Mr Foti and Mr Lentini to be paid ITL 6 million each, part of which was destined for their lawyers; partial settlement reached in the case of Mr Gulli, and State to pay ITL 1,000,000 in respect of his lawyer's fees and expenses; ITL 10,000,000 to Mr Cenerini for damage suffered), therefore SO.

Cited: Artico v I (13.5.1980), Deweer v B (27.2.1980), Eckle v D (15.7.1982), Guzzardi v I (6.11.1980), Neumeister v A (27.6.1968), Ringeisen v A (16.6.1971) Van Oosterwijck v B (6.11.1980), Wemhoff v D (27.6.1968).

Foucher v France 97/14

[Application lodged 16.4.1993; Commission report 28.11.1995; Court Judgment 18.3.1997]

Mr Frédéric Foucher and his father were charged with having used insulting and threatening words and behaviour towards public-service employees – two national game and wildlife wardens – on 13 February 1991 in Fontenai-sur-Orne. The applicant decided to conduct his own case but was informed that copies of official reports could not be issued to him. The applicant complained about lack of access to the file and the police court upheld his submissions. The public prosecutor's office and the civil parties appealed to the Caen Court of Appeal. The applicant did not attend the hearing. The Court of Appeal reversed the judgment of the police court. Relying on the official report of the two game wardens and on the statements made by another hunter, the Court of Appeal fined the applicant and his father FF 3,000 each for insulting the game wardens. The Court of Cassation dismissed the applicant's appeal. The applicant complained of an infringement of the rights of the defence in that he had not been able to have access to his case file or to obtain a copy of the documents in it.

Comm found unanimously V 6(1)+6(3).

Court found unanimously V 6(1)+6(3).

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr N Valticos, Mr I Foighel, Mr R Pekkanen, Mr AB Baka, Mr D Gotchev, Mr K Jungwiert, Mr U Lôhmus.

The guarantees in A 6(3) were specific aspects of the right to a fair trial set forth in general in A 6(1). It was therefore appropriate to examine the complaint under the two provisions taken together. Both the Caen Court of Appeal and the Court of Cassation took it as settled that the applicant had not been able to have access to his case file or to obtain a copy of the documents in it and considered that there was no requirement to that effect under A 6 of the Convention. According to the principle of equality of arms, as one of the features of the wider concept of a fair trial, each party must be afforded a reasonable opportunity to present his case in conditions that do not place him at a disadvantage vis-à-vis his opponent. The applicant had chosen to conduct his own case. As he had been committed directly for trial in the police court without a preliminary investigation, the question of ensuring the confidentiality of the investigation did not arise. His conviction by the Caen Court of Appeal was based solely on the game wardens' official report. It was important, therefore, for the applicant to have access to his case file and to obtain a copy of the documents it contained in order to be able to challenge the official report concerning him. Without access, the applicant had been unable to prepare an adequate defence and had not been afforded equality of arms, contrary to A 6(1)+6(3).

Judgment constituted sufficient just satisfaction as regards non-pecuniary damage. Costs and expenses (FF 15,000 less FF 11,357)

Cited: Bulut v A (22.2.1996), Kamasinski v A (19.12.1989), Kremzow v A (21.9.1993), Pullar v UK (10.6.1996).

Fouquet v France (1996) 22 EHRR 279 96/1

[Application lodged 15.4.1992; Commission report 12.10.1994; Court Judgment 31.1.1996]

On 26 March 1985, while he was travelling on a moped, Mr Marc Fouquet, aged 14, was knocked over and seriously injured by a car driven by Mr D. The applicant's father, acting on his son's behalf, brought an action for damages against Mr D and his insurer. The court found Mr Marc Fouquet contributorily negligent and reduced the award of damages by 50%. The applicant and his father appealed to the Poitiers Court of Appeal which, in a judgment of 13 September 1989, upheld the judgment of the court below. A subsequent appeal to the Court of Cassation was dismissed. The applicant complained that the Court of Cassation had made a mistake of fact when considering one of the grounds of appeal submitted to it and that that had given rise to a breach of his right to a fair hearing under A 6.

Comm found unanimously V 6(1).

Court struck case from the list.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr SK Martens, Mr AN Loizou, Mr F Bigi, Mr J Makarczyk.

The Court took note of the friendly settlement reached by the Government and Mr Fouquet and discerned no reason of public policy why the case should not be struck out of the list.

FS (compensation of FF 150,000).

Fox, Campbell and Hartley v United Kingdom (1991) 13 EHRR 157 90/17

[Applications lodged 16.6.1986 and 2.9.1986; Commission report 4.5.1989; Court Judgment 30.8.1990 (merits) and 27.3.1991 (A 50)]

Mr Bernard Fox and Ms Marie Campbell were husband and wife, but separated. They lived in Northern Ireland. On 5 February 1986 they were stopped by police, arrested and questioned under the Northern Ireland (Emergency Provision) Act 1978 about their suspected involvement in and membership of the Provisional IRA. The first applicant was detained for 44 hours and the second for 44 hours and five minutes. Mr Samuel Hartley was arrested at home on 19 August 1986 under the same Act. He was questioned about suspected involvement in a kidnapping thought to be connected to the Provisional IRA. He was detained for 30 hours and 15 minutes and released without charge. The applicants complained of their detentions.

Commission found by majority (7–5) V 5(1), 5(2) and 5(5), (9–3) NV 5(4), unanimously no separate issue under 13.

Court found by majority (4–3) V 5(1), unanimously NV 5(2), by majority (4–3) V 5(5), unanimously not necessary to examine 5(4)+13.

The Court recognised the need for a proper balance to be struck between the defence of institutions of democracy in the common interest and the protection of individual rights. It took into account the special nature of terrorist crime and the exigencies of dealing with it. The applicants did not dispute that their arrest was 'lawful' and 'in accordance with a procedure prescribed by law' but argued that their arrest and detention was not on 'reasonable suspicion' (A 5(1)(c)) but under the 1978 Act on an honestly held suspicion. The Court's task was not to review the impugned legislation *in abstracto* but to examine its application in particular cases. What may be regarded as 'reasonable' depended upon all the circumstances. Terrorist crime fell into a special category. However, the exigencies of dealing with terrorist crime could not justify stretching the notion of 'reasonableness' to the point where the essence of the safeguard in A 5(1)(c) was impaired. A 5(1)(c) should not be applied in such a manner as to put disproportionate difficulties in the way of police involved in counter-terrorism and they could not be asked to disclose confidential sources of information. However, in order to ascertain whether A 5(1)(c) safeguards had been secured, some facts had to be furnished to the Court, particularly in cases where domestic law did not require a reasonable suspicion but set a lower threshold of honest suspicion. The government had not provided any further information: the first two applicants had previous convictions for terrorism connected with the IRA seven years previously, they had been questioned about specific terrorist acts on this occasion, but that was not sufficient to support a conclusion of 'reasonable suspicion'. There had been a breach of A 5(1)(c). The interval of a few hours between arrest and questioning did not fall outside the time constraints imposed by the notion of promptness in A 5(2). All the applicants had been released speedily before any judicial control of their detention had taken place, accordingly not necessary to examine A 5(4). A breach of A 5(1) had been found which could not give rise to an enforceable claim for compensation before national courts and therefore there had been a violation of A 5(5). In the light of the conclusions under A 5(2) and A 5(4) it was not necessary to examine the complaint under A 13.

JS, costs and expenses (GBP 11,000) awarded.

Cited: Brogan v UK (29.11.1988), Ireland v UK (18.1.1978), Klass v D (22.9.1993), Van der Leer v NL (21.2.1990).

Foxley v United Kingdom 00/164

(Application lodged 14.11.1995; Court Judgment 20.6.2000]

Mr Gordon Foxley was convicted on 3 November 1993, at the Crown Court, of 12 counts of corruption committed between 11 December 1979 and 7 August 1984, when he was employed by the Ministry of Defence as an ammunition procurement officer. The court sentenced him to imprisonment and a confiscation Order was made against him. His appeal was dismissed by the Court of Appeal on 6 February 1995. On 8 August 1996 a receiver was appointed to realise his assets. He was declared bankrupt and the same person was his Trustee in Bankruptcy. She made an order that all correspondence was re-directed to her so that she could identify his assets and income. A total of 71 letters were re-directed to the Receiver and Trustee in Bankruptcy which included letters from his legal advisers relating to the proceedings before the European Commission of Human Rights, and affidavits and drafts made or prepared for use in the High Court in relation to the receivership proceedings. Each of the letters was copied to file before being forwarded promptly to the applicant. Although the re-direction Order expired on 27 December 1996, it was only as from 18 January 1997 that the applicant began to receive his mail directly again. During that period there were two mail deliveries to the Trustee in Bankruptcy, a number of the items were copied to file before being forwarded to the applicant. The applicant complained of the interception of his correspondence.

Court found unanimously V 8 as regards the interception of the applicant's correspondence following the expiry of the period of the validity of the re-direction Order and as regards the interception of his correspondence covered by legal professional privilege during the period of the validity of the re-direction Order, not necessary to examine the applicant's complaint under 34 or under 6.

Judges: Mr J-P Costa, President, Mr W Fuhrmann, Mr L Loucaides, Mr P Kûris, Mrs F Tulkens, Mr K Jungwiert, Sir Nicolas Bratza.

There was an interference with the applicant's right to respect for his correspondence. There was a legal basis for the interception of the applicant's correspondence up until 27 December 1996 and its perusal and copying to file by the Trustee in Bankruptcy. The Trustee in Bankruptcy's discretion to open, read and make copies of the applicant's correspondence was not open-ended but confined to particular items which might assist her in her capacity of Trustee in locating and securing the applicant's assets for the benefit of his creditors. However, the interference with the applicant's correspondence continued after the expiry of the Order. Regardless of the alleged breakdown in the administrative arrangements for re-directing the applicant's correspondence relied on by the Government, nevertheless the Trustee in Bankruptcy exercised her discretion to open letters and to retain copies of some of them even though she must have known that the re-direction Order which she herself applied for and obtained no longer provided her with a legal basis to interfere with the applicant's correspondence. On that account, the actions of the Trustee in Bankruptcy after 27 December 1996 were not in accordance with the law. There had therefore been a breach of A 8 and the Court found it was not necessary to examine with respect to these particular items of correspondence whether the other conditions of para 2 of A 8 were complied with.

The interference before the expiry of the Order pursued a legitimate aim; it was in furtherance of the protection of the rights of others, the applicant's creditors. In the field under consideration – the concealment of a bankrupt's assets to the detriment of his creditors – the authorities could consider it necessary to have recourse to the interception of a bankrupt's correspondence in order to identify and trace the sources of his income. Nevertheless, the implementation of the measures had to be accompanied by adequate and effective safeguards which ensured minimum impairment of the right to respect for his correspondence. That is particularly so where correspondence with the bankrupt's legal advisers might be intercepted. The lawyer-client relationship was, in principle, privileged and correspondence in that context, whatever its purpose, concerned matters of a private and confidential nature. It might be difficult to identify from the envelope whether its contents attracted legal professional privilege; however, the

Government had not challenged the accuracy of the applicant's allegations that letters from his legal advisers, once opened, were read, photocopied and a copy committed to file before being forwarded to him. There was no justification for that procedure and the action taken was not in keeping with the principles of confidentiality and professional privilege attaching to relations between a lawyer and his client. The Government did not argue that the privileged channel of communication was being abused; nor had they invoked any other exceptional circumstances which would serve to justify the interference with reference to their margin of appreciation. The fact that the Trustee in Bankruptcy was also the court-appointed Receiver made it even more compelling to forward, unread, the applicant's correspondence from his legal adviser in connection with the receivership proceedings. There was no pressing social need for the opening, reading and copying to file of the applicant's correspondence with his legal advisers and accordingly, the interference was not necessary in a democratic society within the meaning of A 8(2) and there had been a breach in that respect.

For that reason, it was not necessary to examine the applicant's assertion that the facts of the case also gave rise to an interference with the exercise of his right of individual petition pursuant to A 34 of the Convention.

Where a lawyer was involved, an encroachment on professional secrecy might have repercussions on the proper administration of justice and hence on the rights guaranteed by A 6 of the Convention. However, the applicant had not provided the Court with any information on the conduct and outcome of the receivership proceedings. In those circumstances, and having regard to its finding of a violation of A 8, the Court did not consider it was necessary to examine the applicant's complaint under A 6.

Finding of violations constituted sufficient just satisfaction for the alleged non-pecuniary damage sustained by the applicant. Costs and expenses (GBP 6,000 less FF 4,100).

Cited: Amann v CH (16.2.2000), Campbell v UK (25.3.1992), Niemietz v D (16.12.1992).

Frau v Italy 91/12

[Application lodged 22.12.1982; Commission report 5.12.1989; Court Judgment 19.2.1991]

Mr Aventino Frau was a lawyer and a Member of Parliament. He put a parliamentary question to the Minister of the Treasury concerning irregularities in the management of the 'Banco di Milano' which had been put into compulsory liquidation on 16 January 1975. The Director-General of the Bank was arrested for misappropriation of funds and fraudulent bankruptcy and subsequently brought proceedings against the applicant and the applicant's lawyer and adviser for obtaining money from him with menaces. On 21 October 1975 the public prosecutor transmitted the file to the investigating judge requesting him to conduct the investigation in the case. The applicant's parliamentary immunity was lifted. Following a trial the applicant was acquitted on the grounds of insufficient evidence. The judgment was filed with the court registry on 23 November 1979. The applicant appealed against this judgment. The Court of Appeal's judgment was filed with the court registry on 15 July 1982. It confirmed the applicant's acquittal, the judgment being based on the finding that no offence had been committed. The time limit for an appeal on a point of law by the prosecuting authorities expired on 3 July 1982. The applicant complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Sir Vincent Evans, Mr C Russo, Mr J De Meyer, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla.

The period to be taken into consideration began on 20 October 1975, the date on which the prosecuting authorities asked the Chamber of Deputies to lift the applicant's parliamentary immunity. It ended on 3 July 1982. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case. The proceedings were of some

complexity, but there were several periods when they were not carried forward with reasonable expedition. The applicant's conduct did not give rise to any delay. A lapse of time of more than 6 years and 8 months could not be regarded as reasonable; there had therefore been a violation of A 6(1).

Non-pecuniary damage (ITL 20,000,000).

Cited: Obermeier v A (28.6.1990).

Fredin v Sweden (1991) 13 EHRR 784 91/2

[Application lodged 5.3.1986; Commission report 6.11.1989; Court Judgment 18.2.1991]

Mr Anders Fredin, an agricultural engineer, and his wife Mrs Maria Fredin owned several parcels of land including a farm and a gravel pit. In 1963 the family were granted a permit to exploit the land. On 1 July 1973 an amendment to the Nature Conservation Act 1964 empowered the County Administrative Board to revoke permits that were more than ten years old. On 25 August 1983 the County Administrative Board notified the applicants that, in the interest of nature conservation, it was contemplating amending the permit so as to provide that exploitation of the gravel pit should cease by 1 June 1984. The applicants appealed to the Government. The Government (Ministry of Agriculture) dismissed the appeal, stating that they concurred with the County Administrative Board's assessment. The applicants complained that the revocation of the exploitation permit amounted to a deprivation of property contrary to P1A1, that they had not had access to a court to challenge certain of the Government's decisions as required by A 6 and that the County Administrative Board had, in contravention of A 14 taken together with P1A1, discriminated against them because they were the sole independent operators in the area.

Comm found unanimously V 6(1), NV P1A1, P1A1+14.

Court found unanimously NV P1A1, P1A1+14, V 6(1).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson (so), Mr L-E Pettiti, Mr B Walsh, Mr R Macdonald, Mr C Russo, Mr J De Meyer, Mr SK Martens, Mrs E Palm.

The revocation of the permit interfered with the applicants' right to the peaceful enjoyment of their possessions, including the economic interests connected with the exploitation of the gravel pit. P1A1 guaranteed the right of property and comprised three distinct rules. The first, expressed in the first sentence of the first paragraph, was of a general nature, laying down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covered deprivation of possessions and subjected it to certain conditions. The third, contained in the second paragraph, recognised that the Contracting States were entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deemed necessary for the purpose. However, the rules were not 'distinct' in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property. They therefore had to be construed in the light of the general principle laid down in the first rule. There was no formal expropriation of the applicants' property. However, 'deprivation' in P1A1 covered not only formal expropriation but also measures which amounted to a de facto expropriation. The impugned measure was designed to control the applicants' use of their possessions and left unaffected their powers to take formal decisions, within the normal boundaries of the law, concerning the fate of their property and of their company. Considering all the evidence, the Court did not find it established that the revocation took away all meaningful use of the properties in question. The applicants were still the owners of the gravel resources on the property. The revocation of the 1963 permit had serious adverse effects on the income derivable from the possessions involved, and also on their value. However, the exploitation of gravel had become more and more regulated and restricted. The amendment to the 1964 Act empowered the authorities to revoke, without compensation, old permits, such as the applicants', after 10 years had passed. Consequently, the applicants' possibilities of continuing their gravel exploitation business after that date became uncertain. In the light of the above considerations, the revocation of the applicants' permit to exploit gravel

could not be regarded as amounting to a deprivation of possessions within the meaning of the first paragraph of P1A1. The aim of the relevant legislation was the protection of nature. The evidence available did not show that the revocation decision was contrary to Swedish law. The relevant provisions of the 1964 Act indicated the scope and manner of exercise of the discretion conferred on the authorities with sufficient precision, having regard to the subject matter, to meet the requirements of the Convention. The absence of judicial review did not amount, in itself, to a violation of P1A1. An interference had to achieve a 'fair balance' between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In determining whether that requirement was met, it was recognised that the State enjoyed a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement were justified in the general interest for the purpose of achieving the object of the law in question. The applicants suffered substantial losses having regard to the potential of the gravel pit if it had been exploited in accordance with the 1963 permit. However, reliance could not be placed solely on that potential when the effects of the revocation in 1984 came to be assessed; account has to be taken also of the restrictions lawfully imposed on the use of the pit. The applicants must have been aware of the possibility that they might lose their permit after the expiry of the 10 year period. Nor had authorities given them any assurances that they would be allowed to continue to extract gravel after that date. The applicants could only have relied on the authorities' obligation to take due account of their interests, but that obligation could not have founded any legitimate expectations on their part of being able to continue exploitation for a long period of time. The applicants were granted a three-year closing-down period and the authorities showed a certain flexibility in subsequently extending it by eleven months at the applicants' request. For all those reasons it could not be said that the revocation decision was inappropriate or disproportionate. Therefore no violation of P1A1 had been established.

A 14 afforded protection against discrimination, that is, treating differently, without an objective and reasonable justification, persons in 'relevantly' similar situations. For a claim of violation of A 14 to succeed, it had to be established, *inter alia*, that the situation of the alleged victim could be considered similar to that of persons who had been better treated. The applicants' pit appeared to be the only one to have been closed by virtue of the amendment to the legislation. However, that was not sufficient to support a finding that the applicants' situation could be considered similar to that of other ongoing businesses which had not been closed. Accordingly no issue of discrimination contrary to A 14 arose.

A 6: the applicants' right to develop their property in accordance with the applicable laws and regulations was 'civil' within the meaning of A 6(1). There was clearly a 'genuine and serious' dispute between them and the authorities regarding the lawfulness of the impugned decisions and the outcome of that dispute was directly decisive for that right. A 6 was therefore applicable. As the dispute in question could, at the relevant time, be determined only by the Government at the final instance, there had been a violation of A 6(1).

Non-pecuniary damage (SEK 10,000), costs and expenses (SEK 75,000).

Cited: AGOSI v UK (24.10.1986), Allan Jacobsson v S (25.10.1989), Eriksson v S (22.6.1989), Lithgow and Others v UK (8.7.1986), Malone v UK (2.8.1984), Håkansson and Sturesson v S (21.2.1990), Mellacher and Others v A (19.12.1989), Skärby v S (28.6.1990), Sporrong and Lönnroth v S (23.9.1982), Tre Traktörer AB v S (7.7.1989).

Fredin (No 2) v Sweden 94/6

[Application lodged 9.4.1991; Commission report 9.2.1993; Court Judgment 23.2.1994]

The applicant and his wife owned land which included a gravel pit. They held a permit to extract gravel from the pit from 14 April 1983 until 1 December 1988, when the permit was revoked; it had previously been extended on the understanding that the activities in question would be terminated and restoration work carried out on the land by the latter date. The revocation of the permit, and the lack of a court remedy, gave rise to *Fredin (No 1) v S*. Following the revocation on 1 December

1988, the applicant applied to the County Administrative Board for a special extraction permit, so that he could comply with a plan adopted by the Board on 9 March 1987 for the restoration of the pit. The application was dismissed by the Board on 14 March 1989 and an appeal by the applicant against this decision was rejected by the Government (the Ministry of Environment and Energy) on 21 June 1989. The applicant applied to the Supreme Administrative Court for a review, asking for an oral hearing. The Supreme Administrative Court dismissed the request for an oral hearing and on the basis of written observations submitted by the applicant and the County Administrative Board, it concluded unanimously that the Government's decision was not unlawful. The applicant complained that he had been denied a 'fair and public hearing' in breach of A 6(1).

Comm found by majority (16–2) V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr L-E Pettiti, Mr B Walsh, Mr R Macdonald, Mr A Spielmann, Mrs E Palm, Mr I Foighel, Sir John Freeland, Mr MA Lopes Rocha.

A 6 was applicable to the proceedings. In proceedings before a court of first and only instance the right to a 'public hearing' in the sense of A(1) might entail an entitlement to an 'oral hearing'. The Supreme Administrative Court acted as the first and only judicial instance in the contested proceedings. Its jurisdiction included matters of law and factual issues. In such circumstances at least A 6(1) guaranteed a right to an oral hearing. Accordingly, the refusal by the Supreme Administrative Court to hold an oral hearing in the applicant's case constituted a violation of A 6(1).

Non-pecuniary damage (SEK 15,000), costs and expenses (SEK 120,502).

Cited: Håkansson and Sturesson v S (21.2.1990)

Freedom and Democracy Party (ÖZDEP) v Turkey 99/96

(Application lodged 21.3.1994; Commission report 12.3.1998; Court Judgment 8.12.1999]

The Freedom and Democracy Party (ÖZDEP) was founded on 19 October 1992. On 29 January 1993 the Principal State Counsel at the Court of Cassation applied to the Turkish Constitutional Court to have ÖZDEP dissolved on the grounds that it had infringed the principles of the Constitution and the Law on the regulation of political parties in that its programme sought to undermine the territorial integrity and secular nature of the State and the unity of the nation. While the Constitutional Court proceedings were still pending, a meeting of the founding members of ÖZDEP resolved to dissolve the party in order to protect themselves from the consequences of a dissolution order. On 14 July 1993 the Constitutional Court made an order dissolving ÖZDEP. The applicant party complained that its dissolution by the Constitutional Court infringed the rights of its members to freedom of association.

Comm found by majority (29–1) V 11, no separate issue 9 or 10, not necessary to examine separately 14.

Court unanimously dismissed the Government's preliminary objection, found V 11, not necessary to consider 9, 10 or 14.

Judges: Mr L Wildhaber, President, Mr A Pastor Ridruejo, Mr G Bonello, Mr L Caflisch, Mr J Makarczyk, Mr P Kûris, Mr J-P Costa, Mrs F Tulkens, Mr K Jungwiert, Mr M Fischbach, Mr V Butkevych, Mr J Casadevall, Mrs W Thomassen, Mrs Hs Greve, Mr A Baka, Mrs S Botoucharova, Mr F Gölcüklü, ad hoc judge.

The Government did not raise before the Commission the preliminary objection that ÖZDEP did not have standing as a victim. Consequently, an estoppel should arise against them. In its report, however, the Commission examined that issue of its own motion. If an estoppel was nonetheless held to arise against the Government, they would be deprived of an opportunity to make representations on a point that was considered by the Commission of its own motion and was the subject of argument before the Court. That appeared inconsistent with the principles of adversarial procedure and equality of arms. Consequently, the Government had to be permitted to raise the

objection concerned even though it was made out of time. ÖZDEP's leaders resolved to dissolve their party in the hope of avoiding certain effects of a dissolution by the Constitutional Court: The decision of ÖZDEP's leaders to dissolve the party was not made freely. The Law on the regulation of political parties provided that voluntarily dissolved political parties continued to exist for the purposes of dissolution by the Constitutional Court. Therefore, the Government could not contend that ÖZDEP was no longer in existence when the dissolution order was made. Consequently, the Government's preliminary objection was dismissed.

ÖZDEP's dissolution amounted to an interference in the freedom of association of its members. The interference was prescribed by law being based on the Constitution and the Law on the regulation of political parties. The impugned measures could be regarded as having pursued at least one of the legitimate aims set out in A 11, namely the protection of territorial integrity and thus the preservation of national security. Notwithstanding its autonomous role and particular sphere of application, A 11 had to also be considered in the light of A 10. The protection of opinions and the freedom to express them was one of the objectives of the freedoms of assembly and association as enshrined in A 11. That applied all the more in relation to political parties in view of their essential role in ensuring pluralism and the proper functioning of democracy. There was nothing in ÖZDEP's programme that could be considered a call for the use of violence, an uprising or any other form of rejection of democratic principles. On the contrary, the need to abide by democratic rules when implementing the proposed political project was stressed in the programme. Taken together, the passages in issue presented a political project whose aim was in essence the establishment, in accordance with democratic rules, of 'a social order encompassing the Turkish and Kurdish peoples'. In its programme, ÖZDEP also referred to the right to self-determination of the 'national or religious minorities'; however, taken in context, those words did not encourage people to seek separation from Turkey but were intended instead to emphasise that the proposed political project must be underpinned by the freely given, democratically expressed, consent of the Kurds. The fact that such a political project was considered incompatible with the current principles and structures of the Turkish State did not mean that it infringed democratic rules. It was of the essence of democracy to allow diverse political projects to be proposed and debated, even those that called into question the way a State was currently organised, provided that they did not harm democracy. Given the absence of any concrete acts suggesting that the passages concerned might conceal a different political design from the publicly proclaimed one, there was no reason to cast doubts on the genuineness of ÖZDEP's programme. ÖZDEP was therefore penalised solely for exercising its freedom of expression. In view of the essential role played by political parties in the proper functioning of democracy, the exceptions set out in A 11 were, where political parties were concerned, to be construed strictly; only convincing and compelling reasons could justify restrictions on such parties' freedom of association. The interference in issue was radical: ÖZDEP was definitively dissolved with immediate effect, its assets were liquidated and transferred *ipso iure* to the Treasury and its leaders were banned from carrying on certain similar political activities. Such drastic measures should be taken only in the most serious cases. The Court took into account the background of cases before it, in particular the difficulties associated with the fight against terrorism. The Government had failed to explain how, as they claimed, ÖZDEP bore a share of the responsibility for the problems caused by terrorism in Turkey as ÖZDEP scarcely had time to take any significant action. ÖZDEP's dissolution was disproportionate to the aim pursued and consequently unnecessary in a democratic society. It followed that there had been a violation of A 11.

The complaints under A 9, 10 and 14 related to the same matters as those considered under A 11; the Court did not consider it necessary to examine them separately.

Non-pecuniary damage (FF 30,000), costs and expenses (FF 40,000).

Cited: Kolompar v B (24.9.1992), Nikolova v BG (25.3.1999), Okçuoglu v TR (8.7.1999), Open Door and Dublin Well Woman v IRL (29.10.1992), Socialist Party and Others v TR (25.5.1998), United Communist Party of Turkey and Others v TR (30.1.1998), Van Geyseghem v B (21.1.1999), Zana v TR (25.11.1997).

Freitas Lopes v Portugal 99/127

[Application lodged 18.4.1997; Court Judgment 21.12.1999]

Mr Camilo Freitas Lopes complained of the length of two sets of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr G Ress, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mr I Cabral Barreto, Mrs N Vajic.

The proceedings began on 1 June 1987 and 23 January 1992. They were both still pending and had lasted respectively 12 years, six months and seven years, 10 months. The periods could not be considered reasonable.

Non-pecuniary damage (PTE 3,000,000), costs and expenses (PTE 250,000).

Cited: Silva Pontes v P (23.3.1994).

Fressoz and Roire v France 99/1

(Application lodged 3.8.1995; Commission report 13.1.1998; Court Judgment 21.1.1999]

Mr Roger Fressoz was a former publishing director of the weekly satirical newspaper *Le Canard enchaîné*. Mr Claude Roire was a journalist on the paper. In September 1989 there was a period of industrial unrest within the Peugeot motor company. The workforce's demands included pay rises, which the management, led by the company chairman and managing director Mr Jacques Calvet, refused to award. On 27 September 1989, *Le Canard enchaîné* published an article by Mr Roire referring to salary increases awarded to Mr Jacques Calvet. The article was illustrated by a box reproducing a photocopy of extracts from Mr Calvet's last three tax assessments. Following a criminal complaint by Mr Calvet, the applicants were committed for trial before the Criminal Court on charges of handling confidential information concerning Mr Calvet's income obtained through a breach of professional confidence by an unidentified tax official and of handling stolen photocopies of Mr Calvet's tax assessments. On 17 June 1992, Paris Criminal Court acquitted the applicants. The public prosecutor and the civil parties claiming damages appealed. On 10 March 1993, Paris Court of Appeal reversed the judgment and found the applicants guilty of handling photocopies of Mr Calvet's tax returns obtained through a breach of professional confidence by an unidentified tax official. They were sentenced to, respectively, fines of FF 10,000 and FF 5,000 and ordered, jointly and severally, to pay Mr Calvet FF 1 by way of damages for non-pecuniary damage and FF 10,000 by way of reimbursement of legal costs. Their appeal to the Court of Cassation on points of law was dismissed on 3 April 1995. They complained that their conviction by the Court of Appeal constituted a breach of their right to freedom of expression and that the principle of the presumption of innocence had been violated in their case.

Comm found by majority (21–11) V 10, (18–14) no separate issue under 6(2).

Court unanimously dismissed the Government's preliminary objection, found V 10, no separate issue under 6(2).

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr L Caflisch, Mr J Makarczyk, Mr J-P Costa, Mrs V Stráznická, Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach, Mrs N Vajic, Mrs W Thomassen, Mrs M Tsatsa-Nikolovska, Mr T Pantiru, Mr R Maruste, Mr E Levits, Mr K Traja, Mrs S Botoucharova.

The applicants' complaint under A 10 was raised, at least in substance, before the Court of Cassation and therefore the Government's objection of failure to exhaust domestic remedies had to be dismissed.

The applicants' conviction was an interference with the exercise of their right to freedom of expression. The interference was prescribed by law, namely the Criminal Code and the Code of Tax Procedure. The interference was intended to protect the reputation or rights of others and to prevent the disclosure of information received in confidence. The Court recalled its case-law. The Court was unconvinced by the Government's argument that the information was not a matter of general interest. The article was published during an industrial dispute, widely reported in the

press, at one of the major French car manufacturers. The workers were seeking a pay rise which the management were refusing. The article showed that the company chairman had received large pay increases during the period under consideration while at the same time opposing his employees' claims for a rise. By making such a comparison against that background, the article contributed to a public debate on a matter of general interest. It was not intended to damage Mr Calvet's reputation, but to contribute to the more general debate on a topic that interested the public. Not only did the press have the task of imparting information and ideas on matters of public interest: the public also had a right to receive them. That was particularly true in the instant case, as issues concerning employment and pay generally attracted considerable attention. Consequently, an interference with the exercise of press freedom could not be compatible with A 10 unless it was justified by an overriding requirement in the public interest. Although the press played a vital role in a democratic society, journalists could not, in principle, be released from their duty to obey the ordinary criminal law on the basis that A 10 afforded them protection. It fell to be decided whether, in the particular circumstances of the case, the interest in the public's being informed outweighed the duties and responsibilities the applicants had as a result of the suspect origin of the documents that were sent to them. The Court had in particular to determine whether the objective of protecting fiscal confidentiality, which in itself was legitimate, constituted a relevant and sufficient justification for the interference. In that connection, it had to be noted that although the applicants' conviction was based solely on the reproduction in *Le Canard enchaîné* of documents in the possession of the tax authorities that were held to have been communicated to Mr Fressoz and Mr Roire in breach of professional confidence, it inevitably concerned the disclosure of information. The issue did, however, arise as to whether there was any need to prevent the disclosure of information that was already available to the public and might already have been known to a large number of people. As the Government accepted, a degree of transparency existed regarding earnings and pay rises. Local taxpayers could consult a list of the people liable for tax in their municipality, with details of each taxpayer's taxable income and tax liability. While that information could not be disseminated, it was accessible to a large number of people who could in turn pass it on to others. Although publication of the tax assessments in the present case was prohibited, the information they contained was not confidential. Indeed, the remuneration of people who, like Mr Calvet, run major companies was regularly published in financial reviews. Accordingly, there was no overriding requirement for the information to be protected as confidential. If, as the Government accepted, the information about Mr Calvet's annual income was lawful and its disclosure permitted, the applicants' conviction merely for having published the documents in which that information was contained, namely the tax assessments, could not be justified under A 10. In essence, that article left it for journalists to decide whether or not it was necessary to reproduce such documents to ensure credibility. It protected journalists' right to divulge information on issues of general interest provided that they are acting in good faith and on an accurate factual basis and provided reliable and precise information in accordance with the ethics of journalism. Neither Mr Fressoz and Mr Roire's account of the events nor their good faith had been called into question. Mr Roire, who verified the authenticity of the tax assessments, acted in accordance with the standards governing his profession as a journalist. The extracts from each document were intended to corroborate the terms of the article in question. The publication of the tax assessments was thus relevant not only to the subject matter but also to the credibility of the information supplied. In sum, there was not a reasonable relationship of proportionality between the legitimate aim pursued by the journalists' conviction and the means deployed to achieve that aim, given the interest a democratic society had in ensuring and preserving freedom of the press. There had therefore been a violation of A 10.

In the light of the findings under A 10, no separate issue arose under A 6(2).

Pecuniary damage (FF 10,001), costs and expenses (FF 60,000).

Cited: Akdivar and Others v TR (16.9.1996), Castells v E (23.4.1992), De Haes and Gijsels v B (24.2.1997), Goodwin v UK (27.3.1996), Handyside v UK (7.12.1976), Jersild v DK (23.9.1994), Observer and Guardian v UK (26.11.1991), Prager and Oberschlick v A (26.4.1995), Schwabe v A (28.8.1992), Thorgeir Thorgeirson v ISL (25.6.1992), Vereniging Weekblad Bluf! v NL (9.2.1995), Weber v CH (22.5.1990), Worm v A (29.8.1997).

Friedl v Austria (1996) 21 EHRR 83 95/1

[Application lodged 5.6.1989; Commission report 19.5.1994; Court Judgment 31.1.1995]

Mr Ludwig Friedl was one of the participants in a demonstration that he had organised with other persons with a view to drawing public attention to the plight of the homeless. The demonstration began on 12 February 1988 in an underground passage for pedestrians; there was a round-the-clock sit-in of some 50 persons which was organised to coincide with the demonstration. Police accompanied by municipal officials attended and instructed the homeless persons to leave and informed them that their demonstration required an authorisation under the Road Traffic Act. As the demonstrators did not immediately comply, the identities of some of them were taken down. In the course of the operation the police took photographs for use in the event of prosecution. The whole proceedings were also recorded on video-cassette. The applicant complained to the Constitutional Court of breaches of his rights under in particular A 8 and 11 of the Convention. The Constitutional Court rejected his complaint.

Comm found unanimously NV 8, by majority (19–4) V 13 as regards a remedy in respect of the gathering and taking down of personal data, (14–9) NV 13 as regards a remedy in respect of the taking of photographs and their storing.

Court unanimously struck case out of list.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr J De Meyer, Mr R Pekkanen, Mr AB Baka, Mr L Wildhaber.

The Court took formal note of the friendly settlement reached between the Government and Mr Friedl. It discerned no reason of public policy militating against striking the case out of the list.

FS (payment of ATS 148,787.60 to the applicant and destruction of all the photographs and negatives in question), therefore case struck out of list.

Frydlender v France 00/166

[Application lodged 20.11.1995; Commission report 20.10.1998; Court Judgment 27.6.2999]

Mr Nicolas Frydlender was engaged as an official employed under an individual contract by the Economic Development Department of the Ministry for Economic Affairs. Under a contract of 29 September 1977 he was sent to Athens to work as a technical adviser. In a letter dated 10 December 1985, which was served on the applicant on 27 December 1985, the Minister for Economic Affairs informed the applicant that, owing to his inadequate performance, he did not intend to renew his contract when it expired on 13 April 1986. In a letter dated 9 January 1986, served on the applicant on 21 January 1986, the Minister informed him of his final decision not to renew the contract. The applicant lodged three applications for judicial review of this decision with the Paris Administrative Court. In a judgment of 6 January 1989 the Paris Administrative Court, having joined all three applications, dismissed them. On 24 October 1989 the applicant gave notice of an appeal to the Conseil d'Etat on points of law. He lodged a statement of the grounds of appeal on 23 February 1990. In a judgment of 10 May 1995, which was served on the applicant on 26 October 1995, the Conseil d'Etat dismissed the appeal, holding *inter alia* that it had been lawful for the Minister to dismiss the applicant on the ground of inadequate performance. The applicant complained of the length of the administrative proceedings.

Comm found by majority (20–10) V 6(1).

Court found unanimously V 6(1).

Judges: Mrs E Palm, President, Mr J-P Costa, Mr A Pastor Ridruejo, Mr L Ferrari Bravo, Mr L Caflisch, Mrs F Tulkens (C), Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach, Mr V Butkevych, Mr J Casadevall, Mr B Zupanic, Mrs N Vajic, Mr J Hedigan, Mrs W Thomassen, Mr T Pantiru, Mr K Traja.

There was a dispute over a right recognised under domestic law, it was genuine and serious and the outcome of the proceedings was directly decisive for the right concerned. The dispute related to a right which was civil by its nature. In order to determine the applicability of A 6(1) to public

servants, whether established or employed under contract, the Court considered that it should adopt a functional criterion based on the nature of the official's duties and responsibilities. The only disputes excluded from the scope of A 6(1) were those raised by public servants whose duties typified the specific activities of the public service in so far as the latter was acting as the depositary of public authority responsible for protecting the general interests of the State or other public authorities. The documents in the file showed that the applicant, a graduate of the National Agronomic Institute in Paris, was posted to the New York economic development office as head of an autonomous section, to handle more specifically the promotion of French wines, beers and spirits. In view of the nature of the duties performed in the present case by the applicant and the relatively low level of his responsibilities, the Court considered that he was not carrying out any task which could be said to entail, either directly or indirectly, duties designed to safeguard the general interests of the State. *The Pellegrin* judgment was intended to restrict cases in which public servants could be denied the practical and effective protection afforded to them, as to any other person, by the Convention, and in particular by A 6. The Court had to adopt a restrictive interpretation, in accordance with the object and purpose of the Convention, of the exceptions to the safeguards afforded by A 6(1). But the restrictive interpretation would be too seriously weakened if, as the Government wished in the present case, the Court were to find, by analogy or by extension, that the activities of the staff of the economic development offices as a whole, whatever the nature of their duties and their level of responsibility, entailed the exercise of powers conferred by public law. In the light of those considerations, the Court considered that A 6 was applicable in the present case to the dispute over a civil right between Mr Frydlender and the French State.

The proceedings began on 28 February 1986 with the first application to the Paris Administrative Court and ended on 26 October 1995 when the Conseil d'Etat's judgment was served on the applicant, nearly nine years and eight months. The reasonableness of proceedings had to be assessed in the light of the circumstances of the case and with reference to the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute. Neither the complexity of the case nor the applicant's conduct explained the length of the proceedings. The Conseil d'Etat gave judgment nearly six years after the case was referred to it and the Government did not supply any explanation of that delay, which appeared manifestly excessive. It was for the Contracting States to organise their legal systems in such a way that their courts could guarantee to everyone the right to a final decision within a reasonable time in the determination of his civil rights and obligations. An employee who considered that he had been wrongly suspended or dismissed by his employer had an important personal interest in securing a judicial decision on the lawfulness of that measure promptly, since employment disputes by their nature called for expeditious decision, in view of what was at stake for the person concerned, who through dismissal lost his means of subsistence. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the length of the proceedings complained of was excessive and failed to satisfy the reasonable-time requirement. There had accordingly been a violation of A 6(1).

Non-pecuniary damage (FF 60,000), costs and expenses (FF 50,000).

Cited: Caillot v F (4.6.1999), Caleffi v I (24.5.1991), Comingersoll SA v P (6.4.2000), Neigel v F (17.3.1997), Obermeier v A (28.6.1990), Pellegrin v F (8.12.1999).

Fuentes Bobo v Spain 00/87

[Application lodged 5.1.1998; Court Judgment 29.2.2000]

Mr Bernardo Fuentes Bobo had been employed by the Spanish State Television company (TVE) since 1971 as a producer. At the end of 1992, his programme was dropped and no replacement post was offered to him. Following a demonstration by staff on 23 October 1993 about the way TVE was managed, the applicant and a colleague co-authored an article in the newspaper *Diario 16* criticising certain of the management's actions. Following exchange of letters and disciplinary proceedings the applicant was suspended without pay. Identical penalties were imposed on a

certain LCM. The applicant's appeal to the Madrid Labour Court No 10 was dismissed, but the Madrid Labour Court No 34 set aside the penalty imposed on LCM. The applicant appealed to the Madrid High Court, which overturned the lower court's judgment and set aside the disciplinary penalty. In the meantime, the applicant had commented on the penalties and TVE's actions in two radio programmes during which he made remarks about TVE's managers which were considered offensive. Those remarks led to further disciplinary proceedings and ended with the applicant's dismissal on 15 April 1994. The applicant appealed; the Madrid Labour Court No 4 allowed his appeal, but it was overturned by the Madrid High Court. The Supreme Court and Constitutional Court rejected his further appeal. He complained that his dismissal infringed his right to freedom of expression.

Court found by majority (5–2) V 10, unanimously not necessary to examine 14.

Judges: Mr M Pellonpää, President, Mr G Ress, Mr A Pastor Ridruejo, Mr L Caflisch (D), Mr J Makarczyk (D), Mr I Cabral Barreto, Mrs N Vajic.

A 10 also applied when relations between employer and employee were governed by private law and, moreover, the State had a positive obligation in certain cases to protect the right to freedom of expression. Even though the interference concerned had been prescribed by law and pursued a legitimate aim, namely, the protection of the reputation or rights of others, it did not, on the facts of the case and in view of the severity of the penalty imposed on the applicant, meet a pressing social need. The statements had been made in the context of a labour dispute and the failings of the public entity denounced by the applicant were of a general nature. The 'offensive' remarks attributed to the applicant had first been used by radio-show hosts in exchanges that had been both lively and spontaneous. There was nothing to indicate that TVE or the supposed targets of the remarks had taken any legal action against the applicant. Notwithstanding the national authorities' margin of appreciation, the relation between the penalty and the legitimate aim pursued was not reasonably proportionate. Therefore there had been a violation of A 10.

In the light of the finding under A10 it was not necessary to examine A 14.

Pecuniary and non-pecuniary damage (ESP 1,000,000), costs and expenses (ESP 750,000 less FF 6,600).

Cited: Barfod v DK (22.2.1989), Janowski v PL (21.1.1999), Jersild v DK (23.9.1994), Nilsen and Johnsen v N (25.11.1999), Schmidt and Dahlström v S (6.2.1976), Young, James and Webster v UK (13.8.1981).

Funke v France (1993) 16 EHRR 297 93/3

[Application lodged 13.2.1984; Commission report 8.10.1991; Court Judgment 25.2.1993]

Mr Jean-Gustave Funke worked as a sales representative. On 14 January 1980 three Strasbourg customs officers, accompanied by a senior police officer, went to the house of the applicant and his wife to obtain particulars of their assets abroad. The customs officers' search and the seizures did not lead to any criminal proceedings for offences against the regulations governing financial dealings with foreign countries. They did, however, give rise to parallel proceedings for disclosure of documents and for interim orders. The applicant was convicted and fined. His subsequent appeals were unsuccessful. He claimed that his criminal conviction for refusal to produce the documents requested by the customs had violated his right to a fair trial and disregarded the principle of presumption of innocence, that his case had not been heard within a reasonable time and that the search and seizures effected at his home by customs officers had infringed his right to respect for his private and family life, his home and his correspondence.

Comm found by majority (7–5) NV 6(1) as regards the principle of a fair trial, (8–4) NV 6(1) on account of the length of the proceedings, (9–3) NV 6(2), (6–6 with President's casting vote) NV 8.

Court unanimously dismissed the Government's preliminary objection, found by majority (8–1) V 6(1) as regards a fair trial, not necessary to consider other complaints under 6, V 8.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson (d), Mr F Matscher (c), Mr L-E Pettiti, Mr C Russo, Mr N Valticos, Mr JM Morenilla, Mr MA Lopes Rocha, Mr L Wildhaber.

The Government's objection of inadmissibility for lack of victim status was on the basis that no criminal proceedings had been taken against the applicant for contravening the regulations governing financial dealings with foreign countries, and his death on 22 July 1987 finally precluded any prosecution. The applicant's complaints under A 6 related to quite different proceedings, those concerning the production of documents. The objection therefore had to be dismissed.

The customs secured the applicant's conviction in order to obtain certain documents which they believed existed, although they were not certain of the fact. Being unable or unwilling to procure them by some other means, they attempted to compel the applicant himself to provide the evidence of offences he had allegedly committed. The special features of customs law could not justify such an infringement of the right of anyone charged with a criminal offence, within the autonomous meaning of that expression in A 6, to remain silent and not to contribute to incriminating himself. There had accordingly been a breach of A 6(1).

In view of that conclusion it was not necessary to ascertain whether the conviction also contravened the principle of presumption of innocence.

Likewise, it was not necessary to examine the complaint that the proceedings relating to the making and discharge of the interim orders lasted for more than a reasonable time.

All the rights secured in A 8(1) were in issue, except for the right to respect for family life. The interferences complained of were incompatible with A 8 and it was not necessary to consider, therefore, whether they were in accordance with the law. The interferences were in the interests of the economic well-being of the country. Contracting States had a certain margin of appreciation in assessing the need for an interference, but it went hand in hand with European supervision. The exceptions provided for in A 8(2) were to be interpreted narrowly, and the need for them in a given case had to be convincingly established. In the field under consideration – the prevention of capital outflows and tax evasion – States encountered serious difficulties owing to the scale and complexity of banking systems and financial channels and to the immense scope for international investment, made all the easier by the relative porousness of national borders. Therefore States may have to have recourse to measures such as house searches and seizures in order to obtain physical evidence of exchange-control offences and, where appropriate, to prosecute those responsible. Nevertheless, the relevant legislation and practice had to afford adequate and effective safeguards against abuse. That was not so in the present case. The customs authorities had very wide powers. In the absence of any requirement of a judicial warrant, the restrictions and conditions provided for in law appeared too lax and full of loopholes for the interferences with the applicant's rights to have been strictly proportionate to the legitimate aim pursued. In this particular case the customs authorities never lodged a complaint against the applicant alleging an offence against the regulations governing financial dealings with foreign countries. There had been a breach of A 8.

Non-pecuniary damage (FF 50,000), costs and expenses (FF 70,000).

Cited: Klass and Others v D (6.9.1978).

Fusco v Italy 97/61

[Application lodged 12.3.1994; Commission report 28.11.1995; Court Judgment 2.9.1997]

Mrs Raffaella Fusco was a secretary. On 24 April 1980 she was recruited on a fixed-term contract to the accounts department of Benevento District Council. As her contract had not been renewed after 31 December 1983, she required the Council on 31 July 1984 to reinstate her within 60 days. When that time-limit expired she applied to the Campania Regional Administrative Court on 8 October 1984 for judicial review of her employer's tacit refusal and recognition of the existence of a permanent contract of employment, in consideration, *inter alia*, of the conditions under which she had performed her duties, which, she asserted, were comparable to those obtaining in the case of an ordinary contract of employment with the administrative authorities. In a judgment delivered on 18 April 1995 and deposited with the registry on 26 September 1995 the RAC declared the

application inadmissible. On 21 November 1995 she appealed to the Consiglio di Stato and those proceedings were still pending. She complained of the length of proceedings.

Comm found by majority (23–6) V 6.

Court found by majority (8–1) 6(1) not applicable.

Judges: Mr R Bernhardt, President, Mr C Russo, Mr N Valticos, Mr R Pekkanen (D), Mr Ab Baka, Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr P Kûris, Mr E Levits.

The complaint of a lack of fair and public hearing fell outside the scope of the case as defined by the Commission's decision on admissibility, since it was not examined either in that decision or in the report.

In the law of many Member States of the Council of Europe there was a basic distinction between civil servants and employees governed by private law. That had led it to hold that disputes relating to the recruitment, careers and termination of service of civil servants are as a general rule outside the scope of A 6(1). In the instant case the applicant sought judicial review of her employer's tacit refusal to reinstate her in her post and recognition of the existence of a permanent contract of employment. The dispute raised by her related to her recruitment and did not concern a 'civil' right within the meaning of A 6(1). Accordingly, A 6(1) was not applicable in the case.

Cited: Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993), Neigel v F (17.3.1997).

G

G v France (1996) 21 EHRR 288 95/29

[Application lodged 19.7.1989; Commission report 29.6.1994; Court Judgment 27.9.1995]

Mr G, a driving test examiner, was charged on 14 December 1980 with accepting bribes by issuing driving licences in exchange for money. In the course of the investigation and following additional submissions from the prosecuting authority, the investigating judge charged him with 'corruption in the form of soliciting sexual favours' and indecent assault with violence or coercion on P, a driving test candidate. On 18 November 1982, the Rennes Criminal Court sentenced him to five years' imprisonment, two of which were suspended, for accepting bribes as a citizen responsible for a public service and indecent assault with violence or coercion by a person in authority. In so doing, the court was applying a Law of 23 December 1980. His further appeals were dismissed. He complained that his conviction for an act which, at the time of its commission, did not constitute an offence under the law in force infringed A 7 of the Convention and further that he had not had a fair trial.

Comm found unanimously NV 7.

Court found unanimously no jurisdiction to examine A 6(1), NV 7(1).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr A Spielmann, Mrs E Palm, Mr AN Loizou, Mr B Repik, Mr U Lôhmus.

The compass of a case brought before the Court was delimited by the Commission's decision on admissibility. The Commission had found the complaint under A 6 inadmissible. The Court accordingly lacked jurisdiction to take cognisance of it. In addition, a decision by the Commission finding a complaint inadmissible was final and not open to appeal.

A 7(1) embodied generally the principle that only the law could define a crime and prescribe a penalty and prohibited in particular the retrospective application of the criminal law where it was to an accused's disadvantage. The offences of which the applicant was accused fell within the scope of the former Articles 332 and 333 of the Criminal Code, which satisfied the requirements of foreseeability and accessibility. There was consistent case-law from the Court of Cassation, which was published and therefore accessible, on the notions of violence and abuse of authority. As regards the notion of violence, the new provisions in the new Articles 332 and 333 of the Criminal Code merely confirmed that case-law. The acts of which the applicant was accused also fell within the scope of the new legislation. On the basis of the principle that the more lenient law should apply both as regards the definition of the offence and the sanctions imposed, the national courts applied the new Article 333 of the Criminal Code for the imposition of sanctions as that provision downgraded the offence of which Mr G was accused from serious offence to less serious offence. Its application, admittedly retrospective, therefore operated in the applicant's favour. There had been no violation of A 7(1).

Cited: Helmers v S (29.10.1991), Kokkinakis v GR (25.5.1993), Müller and Others v CH (24.5.1988), Powell and Rayner v UK (21.2.1990), Salabiaku v F (7.10.1988).

G v Italy 92/8

[Application lodged 6.3.1987; 5.12.1990; Court Judgment 27.2.1992]

Mr G took proceedings on 27 June 1985 against the X company before the Rome magistrates' court. He alleged that the company, which had employed him until October 1983, had not remunerated him in accordance with the managerial duties which he had discharged, and requested that it be ordered to pay him. On 28 April 1986 the magistrates' court dismissed the applicant's claim. He appealed. On 1 July 1988 the District Court upheld the decision by the magistrates' court. The text of the judgment was lodged with the court registry on 21 July 1988. The applicant complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously NV 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 27 June 1985 when the proceedings against the X company were instituted in the Rome magistrates' court. It ended on 21 July 1989 when the District Court's judgment became final. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. There were delays on the part of the court. Regarding the backlog of the cases in the District Court, A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. The period in question nevertheless appeared acceptable if viewed in the context of the total duration of the proceedings, as it must be. Accordingly, the delays which occurred in the proceedings were not so substantial as to violate A 6(1).

Cited: Pugliese (No 2) v I (24.5.1991), Vocaturo v I (24.5.1991), Wiesinger v A (30.10.1990).

GBZ, LZ and SZ v Italy 99/120

[Application lodged 30.12.1997; Court Judgment 14.12.1999]

GBZ, LZ and SZ complained of the length of criminal proceedings against them.

Court found unanimously V 6(1).

Judges: Mr CL Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska, Mr AB Baka.

The period under consideration began on 20 December 1994 and was still pending on 11 May 1999, a period of four years, four months, 21 days. The period could not be considered reasonable.

Damages (ITL 8,000,000 to each of the applicants), costs and expenses (ITL 500,000).

Cited: Demir and Others v TR (23.9.1998), Eckle v D (15.7.1982), IA v France (23.9.1998), Nikolova v BG (25.3.1999), Pélissier and Sassi v F 25.3.1999, Philis v GR (No 2) (27.6.1997), Portington v GR (23.9.1998), Zana v TR (25.11.1997).

GHH and Others v Turkey 00/176

[Application lodged 26.8.1998; Court Judgment 11.7.2000]

The applicants were Iranian nationals. They were anti-government activists in Iran where the first applicant claimed to have been detained and ill-treated on several occasions. As a result of his treatment the first applicant fled Iran, after which his wife, the second applicant, was subjected to harassment and threats from vigilante groups in connection with his disappearance. On 1 May 1997, the first applicant was interviewed by the UNHCR, which rejected his asylum claim on 13 June 1997. He appealed, and on 21 November 1997, the UNHCR rejected his appeal. On 18 August 1998, the applicants received a deportation order from the Turkish police. On 21 September 1998, the Ministry of Foreign Affairs reconfirmed that the applicants did not meet the criteria for the grant of refugee status. The UNHCR conducted a fresh examination of the first applicant's request for refugee status. Following that examination, and in light of new elements submitted by the first applicant, the UNHCR decided to grant him refugee status. As a result the Ministry of Foreign Affairs directed that the applicants be entitled to remain in Turkey temporarily, for humanitarian reasons, until they were resettled in a third country. In October 1999, the applicants left Turkey and were resettled in the US pursuant to a resettlement programme. The applicants complained that their deportation to Iran would subject them to the risk of death, torture and the break-up of their family and that they had no effective remedy in the domestic law of the respondent State to challenge their deportation from the standpoint of their Convention rights.

Court found unanimously not necessary to examine 2, 3+8, NV 13.

Judges: Mrs E Palm, President, Mrs W Thomassen, Mr Gaukur Jörundsson, Mr C Bîrsan, Mr J Casadevall, Mr R Maruste, judges, Mr F Gölcüklü, ad hoc judge.

The applicants were now living in the US. Given that the fears which they harboured about their forced return to Iran had been removed, they could no longer claim to be victims within the meaning of A 34. On that account no further examination of their complaints under A 2, 3 and 8 of the Convention was required.

It was not the Court's function to review *in abstracto* the compatibility of the asylum regulations of the respondent State with the Convention. Contracting States had the right, as a matter of well-established international law and subject to their treaty obligations including the Convention, to control the entry, residence and expulsion of aliens. Moreover, the right to political asylum was not contained in either the Convention or its Protocols. Where an asylum seeker had an arguable claim that his expulsion would expose him to the risk of treatment prohibited by A 3, the domestic law of the deporting Contracting Party had to guarantee him the availability of a remedy to enforce the substance of his right under that Article. That obligation resulted from A 13, the effect of which was to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the Convention complaint and to grant appropriate relief, although Contracting States were afforded some discretion as to the manner in which they conformed to their obligations under that provision. By the time the Ministry of Foreign Affairs confirmed that the applicants did not meet the requirements for the grant of refugee status (21 September 1998), they had not made out a claim under A 3 which could be said to be arguable on the merits: the UNHCR had on three occasions already rejected their applications for asylum and it was only when the applicants supplied further details that the UNHCR and ultimately the Ministry of Foreign Affairs were led to take a different view of the risk attendant on their deportation. In the absence of information about the new developments, the domestic authorities could not be accused of having underestimated the risk by imposing a deportation order on the applicants and then rejecting their appeal against it. When the merits of the applicants' claim were strengthened in the light of the new developments, the Ministry of Foreign Affairs allowed them to remain and from that moment there was no risk of summary deportation to Iran and no issue under A 13 from that date. Having regard to the conclusion that the applicants could not be considered to have an arguable claim at the material time that their rights under A 2, 3 and 8 would be breached if they were to be removed to Iran, the Court found that there had been no violation of A 13 in the circumstances of their case.

Cited: Cruz Varas and Others v S (20.3.1991), Soering v UK (7.7.1989), Vilvarajah and Others v UK (30.10.1991).

GMN v Italy 99/75

[Application lodged 12.5.1993; Commission report 8.7.1998; Court Judgment 2.11.1999]

The applicant complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr L Ferrari Bravo, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mr A B Baka, Mr E Levits.

The period to be taken into consideration began on 20 October 1979 and ended 19 November 1997. It had lasted more than 18 years. The period could not be considered reasonable.

Non-pecuniary damage (ITL 18,000,000), costs and expenses (ITL 3,476,000).

Cited: Bottazzi v I (28.7.1999).

GS v Austria 99/123

[Application lodged 9.12.1994; Commission report 3.6.1999; Court Judgment 21.12.1999]

In June 1990, the applicant appealed to the Federal Ministry for Health, Sports and Consumer Protection against the refusal of the Provincial Governor to grant him a licence to run a pharmacy. In April 1991, he appealed to he Administrative Court against the administration's failure to decide within the statutory time limit. The Ministry then refused his appeal and the applicant

lodged a further appeal to the Administrative Court in July 1991. In December 1995, he withdrew his appeal after reaching an agreement with another pharmacist. He complained of the length of proceedings.

Comm found unanimously V 6(1)

Court found unanimously V 6(1).

Judges: Mr P Kûris, President, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mrs HS Greve, Mr K Traja, Mr M Ugrekhelidze.

A 6 applied, since the private law aspects of the profession of pharmacist in Austria outweighed the public law features. The proceedings had taken more than 5 years 5 months of which more than 4 years and 4 months were before the Administrative Court, including a period of total inactivity of 3_ years. Although the proceedings were of some complexity, this argument had little weight as regards the proceedings before the Administrative Court, which did not examine the merits. Although the State had taken measures to reduce the court's workload, the applicant's case remained pending, without a decision on the merits, until the end of 1995. No delays were attributable to the applicant and the Court could not subscribe to the Government's argument that the matter was of little significance to him after he obtained a licence to run a pharmacy elsewhere.

Non-pecuniary damages (ATS 15,000), costs and expenses (ATS 32,247.20).

Galinho Carvalho Matos v Portugal 99/88

[Application lodged 6.3.1997; Court Judgment 23.11.1999]

Mrs Maria José Galinho Carvalho Matos complained of the length of civil proceedings involving a road traffic accident.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr G Ress, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mr I Cabral Barreto, Mrs N Vajic.

The period to be taken into consideration began on 18 May 1992 and was still pending. It had lasted seven years, six months. The length of time could not be considered reasonable.

Non-pecuniary damage (PTE 1,000,000).

Cited: Martins Moreira v P (26.10.1988), Silva Pontes v P (23.3.1994).

Gallo v Italy 97/52

[Application lodged 5.7.1993; Commission report 28.11.1995; Court Judgment 2.9.1997]

Mr Alcide Gallo was a caretaker. On 28 August 1986, he instituted proceedings against the centre in the Friuli-Venezia Giulia Regional Administrative Court seeking judicial review of a disciplinary penalty imposed on him by decision of the chairman of the centre's board of governors on 12 August 1986 for failing in his duty of diligence and perturbing 'the continuity and regularity of the service' by taking sick-leave which was considered to be unjustified. The applicant forfeited all but a fraction of his salary. In a judgment of 9 April 1987, the text of which was deposited with the registry on 28 May 1987, the applicant's case was allowed. The centre appealed on 5 October 1987. In a judgment of 12 June 1992, the text of which was deposited with the registry on 8 January 1993, the Consiglio di Stato reversed the lower court's judgment and dismissed the applicant's application. He complained, *inter alia*, of the length of proceedings.

Comm found by majority (25–4) V 6.

Court found by majority (8–1) 6(1) not applicable.

Judges: Mr R Bernhardt, President, Mr C Russo, Mr N Valticos, Mr R Pekkanen (d), Mr AB Baka, Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr P Kûris, Mr E Levits.

The complaint relating to A 14 fell outside the scope of the case as defined by the Commission's decision on admissibility.

Disputes relating to the recruitment, careers and termination of service of civil servants were as a general rule outside the scope of A 6(1). In the present case the applicant sought only judicial review of the decision to suspend him for one month taken by the chairman of the Student Welfare Centre's board of governors. The dispute raised by him thus clearly related to his career and did not concern a 'civil' right within the meaning of A 6(1). Accordingly, A 6(1) was not applicable in the case.

Cited: Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993), Neigel v F (17.3.1997), Scollo v I (28.9.1995).

Gana v Italy 92/28

[Application lodged 2.6.1987; Commission report 5.12.1990; Court Judgment 27.2.1992]

Mrs Serena Gana brought judicial separation proceedings before the Rome District Court on 14 July 1976. The separation was decreed on 27 April 1981. The text of the decision was lodged with the court registry on 5 October 1981. On 23 November 1981, Mr C, the applicant's husband, lodged an appeal. On 6 May 1983, the Court of Appeal dismissed the application by Mr C. He appealed to the Court of Cassation. On 5 February 1988, that court dismissed the appeal. The text of the decision was lodged with the registry on 15 July 1988. The applicant complained of the length of the civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 14 July 1976 when the proceedings were instituted in the Rome District Court. It ended on 15 July 1988 when the Court of Cassation's judgment was filed with the registry. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The parties contributed to a large extent, by several applications for adjournment and by their absence from certain hearings, to slowing down the investigation at first instance and during the appeal proceedings, which, for the rest, would seem to have been conducted at a normal pace. Although the State could not be held responsible for the period of more than 13 months before Mr C's appeal, there were three periods for which the State was responsible representing a total of six years and two months. With regard to the backlog of cases in the Court of Cassation, A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. A lapse of time of 12 years, in a case concerning civil status and capacity where special diligence was required, could not be considered reasonable. There had therefore been a violation of A 6(1).

Non-pecuniary damage (ITL 4,000,000), costs and expenses (ITL 4,000,000)

Cited: Bock v D (23.3.1989), Vocaturo v I (24.5.1991).

García Manibardo v Spain 00/71

[Application lodged 2.9.1997; Court Judgment 15.2.2000]

Mrs Florencia García Manibardo's husband died in a road accident on 10 October 1990. The insurance company of the driver of the other vehicle, Mr P, paid the applicant a sum of money. The widow and children of the presumed driver were also paid compensation but appealed the adequacy of the amount. Mrs P lodged her appeal against the heirs of the applicant's husband, the owner of the vehicle and the insurers of the vehicle. The applicant challenged the case against her, gave written answers to the plaintiff's arguments and requested legal aid. The Amposta Court of First Instance found that it had been the deceased spouse of the applicant who had been driving

the vehicle at the time of the accident and not the plaintiff's husband; the court declared the applicant's husband and insurers to be liable. All the parties appealed. The judge required the applicant to make an advance deposit of the amount she had been ordered to pay as a precondition for her lodging an appeal. The applicant lodged an appeal on the ground of the impossibility of making an advance. The Tarragone Audiencia provincial upheld the judgment of the first instance court and found the applicant's appeal inadmissible as she had not paid the requisite amount in. The applicant lodged an appeal with the Constitutional Court, which was dismissed on 10 March 1997. In the interim the Amposta Court of First Instance ordered, in the context of enforcement, the seizure of property of the applicant to cover payment of the compensation awarded to Mrs P. On 7 January the applicant requested examination of her application for legal aid made on 23 June 1994. The Amposta Court of First Instance granted the applicant legal aid on 15 April l997. She complained that the Tarragona Audiencia Provincial had ruled her appeal inadmissible on the ground that she had not deposited in advance the sum she had been ordered to pay in at a time when no decision had been taken on her entitlement to legal aid.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr G Ress, Mr A Pastor Ridruejo, Mr J Makarczyk, Mr I Cabral Barreto, Mr V Butkevych, Mrs N Vajic.

The domestic legislation and case-law of the Constitutional Court allowed a litigant's economic situation to be taken into consideration, in particular, for him or her to be discharged of the obligation not to make an advance deposit when he or she had been granted legal aid. In this case, even though the applicant had fulfilled all the requirements, she had not been granted the legal aid in the requisite time. However, her appeal had been ruled inadmissible for failure to deposit the requisite amount with the court. In that respect, requiring her to deposit in advance the damages ordered under the first judgment had prevented her from using an existing and available appeal so that she had been subjected to disproportionate interference with her right of access to a court. As a result there had been a violation of A 6(1).

Costs and expenses (ESP 520,572).

Cited: Airey v IRL (9.10.1979), Brualla Gómez de la Torre v E (19.12.1997), Castillo Algar v E (28.10.1998), Delcourt v B (17.1.1970), Edificaciones March Gallego SA v E (19.2.1998), Hiro Balani v E (9.12.1994).

García Ruiz v Spain 99/2

[Application lodged 19.12.1995; Commission report 15.9.1997; Court Judgment 21.1.1999]

Mr Faustino Francisco García Ruiz was registered as a member of the Madrid Bar but worked as a nurse. In August 1985, one M gave him instructions to carry out certain non-contentious property work. He brought a civil action against M for payment for services, advice and technical assistance. The claim was dismissed by a judgment of 24 May 1993. On 4 June 1993, the applicant appealed. By a judgment of 17 March 1995, the Madrid Audiencia Provincial dismissed the appeal and upheld the impugned judgment. On 13 May 1995, the applicant lodged an amparo appeal with the Constitutional Court, which was dismissed on 11 July 1995. He complained, *inter alia*, that the Madrid Audiencia Provincial had failed to give any reply to his arguments in its judgment.

Comm found by majority (22–8) V 6(1).

Court unanimously found NV 6(1).

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr A Pastor Ridruejo, Mr G Bonello, Mr J Makarczyk, Mr P Kûris, Mr R Türmen, Mr J-P Costa, Mrs F Tulkens, Mr M Fischbach, Mr V Butkevych, Mr J Casadevall, Mr J Hedigan, Mrs HS Greve, Mr AB Baka, Mr R Maruste, Mrs S Botoucharova.

Judgments of courts and tribunals had to adequately state the reasons on which they were based. The extent to which that duty to give reasons applied varied according to the nature of the decision and had to be determined in the light of the circumstances of the case. Although A 6(1) obliged

courts to give reasons for their decisions, it could not be understood as requiring a detailed answer to every argument. Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision. In the present case, the first instance judge took into account in his decision the defendant's statements denying the facts alleged by the applicant in his claim. It held that the evidence of a witness called by the applicant was not conclusive and ruled that the applicant had not proved that he had performed the services for which he was claiming a fee. On appeal, the Audiencia Provincial first stated that it accepted and deemed to be reproduced in its own decision the statement of the facts set out in the judgment at first instance, thus ruling that the applicant had not proved that he had performed as counsel the non-contentious services which formed the basis of his claim. It went on to say that it likewise endorsed the legal reasoning of the impugned decision in so far as it was not incompatible with its own findings. On that point, it held that there was not the slightest evidence in the case file to prove that the applicant had acted as counsel in summary foreclosure proceedings, although he might have performed non-contentious services. It therefore dismissed the appeal and upheld the judgment delivered at first instance. The case was then referred to the Constitutional Court, which, in its judgment of 11 July 1995, dismissed the applicant's amparo appeal on the grounds that, according to the trial courts, the applicant had not established that he had rendered the professional services for which he was claiming a fee and that assessment of the facts was a matter over which the Constitutional Court did not have jurisdiction. In so far as the applicant's complaint may be understood to concern assessment of the evidence and the result of the proceedings before the domestic courts, the Court reiterated that it was not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while A 6 guaranteed the right to a fair hearing, it did not lay down any rules on the admissibility of evidence or the way it should be assessed, which were therefore primarily matters for regulation by national law and the national courts. The applicant had the benefit of adversarial proceedings. At the various stages of those proceedings he was able to submit the arguments he considered relevant to his case. The factual and legal reasons for the first-instance decision dismissing his claim were set out at length. In the judgment at the appeal stage the Audiencia Provincial endorsed the statement of the facts and the legal reasoning set out in the judgment at first instance in so far as they did not conflict with its own findings. The applicant could not therefore validly argue that that judgment lacked reasons, even though in the present case a more substantial statement of reasons might have been desirable. Taken as a whole, the proceedings in issue were fair for the purposes of A 6(1).

Cited: Helle v SF (19.12.1997), Higgins and Others v F (19.2.1998), Hiro Balani v E (9.12.1994), Ruiz Torija v E (9.12.1994), Schenk v CH (12.7.1988), Van de Hurk v NL (19.4.1994).

Garyfallou AEBE v Greece (1999) 28 EHRR 344 97/69

[Application lodged 12.10.1991; Commission report 11.4.1996; Court Judgment 24.9.1997]

The applicant company, Garyfallou AEBE was an international carrier. On 24 March 1986, the Deputy Minister of Commerce ordered the applicant company to pay a fine of 500,000 drachmas for having violated the rules concerning import and export trade, when importing glass panels from Romania. On 9 April 1986, the applicant company challenged the imposition of the fine before the First Instance Administrative Court which subsequently referred the case to the Supreme Administrative Court. The application was rejected. In a judgment of 9 April 1996, the Supreme Administrative Court referred the case to the Athens First Instance Administrative Court before which a hearing took place on 27 September 1996. On 18 June 1997, the Athens First Instance Administrative Court notified its decision to the applicant company. The ministerial order of 24 March 1986 was held to be ineffective. The applicant company complained, *inter alia*, of the length of proceedings.

Comm found unanimously V 6(1).

Court unanimously dismissed the Government's preliminary objection, found V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Mr A Spielmann, Mr N Valticos, Mr R Pekkanen, Mr JM Morenilla, Mr B Repik, Mr P van Dijk.

Regarding the Government's objection that the applicant company's fresh complaint relating to the length of proceedings operated an unacceptable *mutatio litis*, the Court noted that the said complaint was introduced before the Commission decided on the admissibility of the application. The Government were given the opportunity to make any relevant submissions before the Commission and had availed themselves of that opportunity. The Court saw no reason to depart from its well-established principle that the compass of the case before it was delimited by the Commission's decision on admissibility. The allegation that the new complaint was time-barred would only apply if the two identifiable sets of proceedings were treated separately. The issue was closely linked to the substance of the applicant company's complaint and the Court therefore joined to the merits the Government's preliminary objection.

The Court recalled its case-law on determining whether an offence qualified as 'criminal' for the purposes of the Convention. The fine imposed on the applicant company was not characterised under domestic law as a criminal sanction. The applicant company was fined 500,000 drachmas; however, it risked a maximum fine equal to the value of the imported goods, that was nearly three times the amount actually fined. In the event of non-payment, national law provided for the seizure of the applicant company's assets and the detention of its directors for up to one year. In those circumstances, the sanction to which the applicant company and its legal representatives were liable was sufficiently severe to warrant considering the charge against them to be a criminal charge for the purposes of the Convention. A 6(1) was applicable in the instant case.

The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law. From the introduction of the original action in the first-instance administrative court in April 1986, the applicant company constantly sought to obtain judicial examination of the lawfulness of the ministerial order and of the fine imposed. That fact alone was sufficient to warrant the examination of both sets of proceedings as a whole. Issues of domestic law, such as the legal characterisation of the action to be introduced or the jurisdictional organisation of the national courts, which resulted in the applicant company's case being shuttled back and forth between the different administrative tribunals, were irrelevant to this end. State authorities had the duty to organise their judicial system in such a way as to meet each of the requirements in A 6(1). In the absence of any other explanation by the Government, the proceedings, which had lasted over 11 years, did not comply with the requirement in A 6(1) that criminal charges be determined within a reasonable time. It was necessary to examine the proceedings brought by the applicant company in their entirety. It followed that the Government's preliminary objection that the complaint concerning the length of proceedings in respect of the first set of proceedings was out of time had to fail. There had accordingly been a violation of A 6(1).

Costs and expenses (GRD 1,200,000).

Cited: Bendenoun v F (24.2.1994), Campbell and Fell v UK (28.6.1984), Engel and Others v NL (8.6.1976), Kemmache v F (27.11.1991), Lutz v D (25.8.1987), Mauer v A (18.2.1997), Öztürk v D (21.2.1984), Phocas v F (23.4.1996), Tusa v I (27.2.1992), Weber v CH (22.5.1990).

Gaskin v United Kingdom (1990) 12 EHRR 36 89/14

[Application lodged 17.2.1983; Commission report 13.11.1987; Court Judgment 7.7.1989]

Mr Graham Gaskin was taken into care by Liverpool City Council from 1959 until 1977 and was boarded out to foster parents. He claimed that he was ill-treated in care and sought details of his confidential records from the Council. The Council released a number of files in which the contributors gave their consent but refused to release others. He claimed refusal of access to all his records was a breach of A 8 and 10.

Comm found by majority (6–6 casting vote by the acting President) V 8, (11–0 with one abstention) NV 10.

Court held by a majority (11–6) V 8 and unanimously NV 10.

Judges: Mr R Ryssdal (jd), President, Mr J Cremona (jd), Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü (jd), Mr F Matscher (jd), Mr L-E Pettiti, Mr B Walsh (d), Sir Vincent Evans (jd), Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer, Mr JA Carrillo Salcedo, Mr N Valticos Mr SK Martens.

The Court held, without expressing an opinion on whether general rights of access to personal data and information may be derived from A 8(1), that records contained in the file in this case did relate to the applicant's private and family life in such a way that the question of access fell within the ambit of A 8. Although the essential object of A 8 was to protect an individual against arbitrary interference by public authorities, there may be in addition positive obligations inherent in an effective 'respect' for family life. By refusing access, the UK could not be said to have 'interfered' with the applicant's private or family life. The substance of the applicant's complaint was not that the State had acted, but that it had failed to act. In determining whether or not positive obligations of the State under A 8 existed, the Court would have regard to the fair balance that had to be struck between the general interest of the community and the interests of the individual. In striking the balance, the aims mentioned in A 8(2) may be of certain relevance, although this provision was concerned with the negative obligations flowing therefrom. Confidentiality of public records was of importance for receiving objective and reliable information. Such confidentiality contributed to the effective operation of the child care system and served a legitimate aim by protecting the rights of contributors as well of children in need of care. A system which made access to records dependent on the consent of the contributor could, in principle, be considered to be compatible with the obligations under A 8, taking into account the State's margin of appreciation. Such a system was only in conformity with the principle of proportionality if it provided that an independent authority finally decided whether access had to be granted in cases where a contributor failed to answer or withheld consent. No such procedure was available in this case therefore there had been a breach of A 8.

The right to freedom to receive information prohibited a Government from restricting a person from receiving information that others wished or might be willing to impart to him. In this case, A 10 did not embody an obligation on the State to impart the information in question to the individual. There had been no interference with the applicant's right to receive information as protected by A 10.

Non-pecuniary damage (GBP 5,000) legal fees and expenses (GBP 11,000 less FF 8,295).

Cited: Airey v IRL (9.10.1979), B v UK (9.6.1988), Belilos v CH (29.4.1988), Johnston and Others v IRL (18.12.1986), Leander v S (26.3.1987), Rees v UK (17.10.1986).

Gast and Popp v Germany 00/85

[Application lodged on 1.5.1995; Commission report 28.5.1998; Court Judgment 25.2.2000]

Mrs Gabriele Gast was a political scientist and Mr Dieter Popp was an insurance agent. In 1990 they were arrested and following separate criminal trials convicted, on suspicion of having committed espionage on behalf of the former German Democratic Republic. Their appeals to the Federal Court of Justice were dismissed in 1992. They appealed to the Federal Constitutional Court. The processing of the cases was postponed as the Second Division of the Federal Constitutional Court envisaged rendering a leading decision in some test cases. On 23 May 1995 the Second Section of the Second Division of the Federal Constitutional Court, in separate decisions, refused to admit the applicants' constitutional complaints. They complained of the length of proceedings.

Comm found by majority (20–11) NV 6(1).

Court found unanimously NV 6(1).

Judges: Mrs E Palm, President, Mr J Casadevall, Mr L Ferrari Bravo, Mr R Türmen, Mr B Zupancic, Mrs W Thomassen, Mr R Maruste.

The relevant test in determining whether Constitutional Court proceedings might be taken into account in assessing the reasonableness of the length of proceedings was whether the result of the Constitutional Court proceedings was capable of affecting the outcome of the dispute before the ordinary courts. It followed that Constitutional Court proceedings did not in principle fall outside the scope of A 6(1). The proceedings before the Federal Constitutional Court were directly related to the question of the accusations of espionage being well-founded. In the event of a successful outcome of the constitutional complaint proceedings, the Constitutional Court quashed the impugned decision and referred the matter back to the competent court. If the legislation in question was declared void a reopening of criminal proceedings was permissible. In the factual circumstances underlying the numerous complaint proceedings before the Federal Constitutional Court, relating to conviction for espionage or treason following German unification, these proceedings were a further stage of the respective criminal proceedings and their consequences could be decisive for the convicted persons. While the applicants' constitutional complaints were rejected in the course of preliminary proceedings, the Federal Constitutional Court was able to do so after having examined and rendered a leading decision on the merits of all relevant arguments on 15 May 1995. In those circumstances, A 6(1) was applicable to the proceedings in issue.

The Court was concerned only with the length of the proceedings before the Federal Constitutional Court. The relevant periods began on 18 July and 13 August 1992, respectively, the dates on which the applicants appealed to the Federal Constitutional Court. It ended on 9 June and 3 June 1995, respectively, the dates on which the Constitutional Court's decisions of 23 May 1995 were notified to the first applicant and the second applicant's counsel. It therefore lasted about two years and ten months in the first applicant's case and about two years and nine months in the second applicant's case. The reasonableness of the length of proceedings was to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law. The legal issues were, on the whole, complex. The applicants' conduct did not cause any delay in the proceedings. As regards the conduct of the Federal Constitutional Court, A 6(1) imposed on the Contracting States the duty to organise their judicial systems in such a way that their courts could meet each of its requirements, including the obligation to hear cases within a reasonable time. Although that obligation applied also to a Constitutional Court, it could not be construed in the same way as for an ordinary court. Its role as guardian of the Constitution made it particularly necessary for a Constitutional Court sometimes to take into account other considerations than the mere chronological order in which cases were entered on the list, such as the nature of a case and its importance in political and social terms. It was reasonable for the Federal Constitutional Court to have grouped cases so as to obtain a comprehensive view of the legal issues arising from the convictions of espionage and treason following German unification, balancing what was at stake for the numerous persons sentenced to imprisonment for treason or espionage and the serious political and social implications of other cases to which the Federal Constitutional Court could reasonably give priority. Although the applicants were already serving their prison sentences, their punishment did not cause prejudice to them to such an extent as to impose on the court concerned a duty to deal with the cases as a matter of very great urgency. Moreover, they were released in 1994. Any delays that occurred did not appear substantial enough for the length of the proceedings before the Federal Constitutional Court to have exceeded a reasonable time within the meaning of A 6(1), having regard to the fact that the criminal proceedings against the first and second applicants, including the pre-trial stage, the trial and the appeal proceedings, only lasted about one year and ten months and about two years and three months respectively. Accordingly, no violation of A 6(1).

Cited: A and Others v DK (8.2.1996), Cesarini v I (12.10.1992), Deumeland v D (29.5.1986), Bock v D (29.3.1989), König v D (28.6.1978), Pammel and Probstmeier v D (1.7.1997) Ruiz-Mateos v E (23.6.1993), Salerno v I (12.10.1992), Süßmann v D (16.9.1996).

Gasus Dosier- und Fördertechnik GmbH v The Netherlands (1995) 20 EHRR 403 95/6

[Application lodged 6.7.1989; Commission report 21.10.1993; Court Judgment 23.2.1995]

The applicant company, Gasus Dosier- und Fördertechnik GmbH (hereinafter 'Gasus'), were a limited liability company. In 1980, they sold a concrete mixer and ancillary equipment to a Dutch company, Atlas, on condition that title would not pass until the full price had been paid. The machine was seized by the Tax Bailiff to cover Atlas' tax debts. On 22 May 1981, Gasus brought proceedings against Atlas's trustee in bankruptcy before the Utrecht Regional Court to obtain an order for the concrete mixer to be returned. They were unsuccessful. Their appeals to the Hague Court of Appeal and the Supreme Court were rejected. They complained that they had been deprived of their possessions in violation of P1A1.

Comm found by majority (6–6 with the casting vote of its President) NV P1A1.

Court unanimously dismissed the Government's preliminary objection, found by majority (6–3) NV P1A1.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr R Macdonald, Mr C Russo (d), Mr SK Martens, Mr I Foighel (d), Mr G Mifsud Bonnici, Mr P Jambrek, Mr K Jungwiert (d).

The purpose of the requirement that domestic remedies had to be exhausted was to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations were submitted to the Convention institutions. That meant that the complaint which it was intended to bring before the Commission had to first be raised, at least in substance and in compliance with the relevant requirements of domestic law, before the appropriate national courts. The applicant company did provide the Netherlands courts with the opportunity of preventing or putting right the alleged violation of P1A1. The preliminary objection therefore failed.

The notion 'possessions' in P1A1 had an autonomous meaning which was not limited to ownership of physical goods: certain other rights and interests constituting assets could also be regarded as 'property rights', and thus as 'possessions', for the purposes of this provision. In the present context it was immaterial whether the applicant company's right to the concrete mixer was to be considered as a right of ownership or as a security right in rem. The seizure and sale of the concrete mixer constituted an 'interference' with the applicant company's right to the peaceful enjoyment of a possession within the meaning of P1A1. The Court recalled its case-law. The interference complained of in this case was the result of the tax authorities' exercise of their powers in relation to the regulation of the collection of direct taxes. The applicant company's complaints were therefore examined under the rule in the second paragraph of P1A1. In passing tax laws the legislature had to be allowed a wide margin of appreciation, especially with regard to the question whether, and if so, to what extent the tax authorities should be put in a better position to enforce tax debts than ordinary creditors are in to enforce commercial debts. The power given to the tax authorities to recover tax debts dispensed them from having to consider whether goods were actually the property of the tax debtor, in order to facilitate the enforcement of tax debts. However, an interference had to achieve a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights; there had to be a reasonable relationship of proportionality between the means employed and the aim pursued. The grant to the tax authorities of a power to recover tax debts against goods owned by certain third parties – such as a seller of goods who retained his title – did not in itself prompt the conclusion that a fair balance between the general interest and the protection of the individual's fundamental rights had not been achieved. The power of recovery against goods which were in fact in a debtor's possession, although nominally owned by a third party, was a not uncommon device to strengthen a creditor's position in enforcement proceedings; it could not be held incompatible per se with the requirements of P1A1. The essential question was whether as a consequence of the tax authorities' actions against the goods to which title had been retained the vendor had had to bear an individual and excessive burden. A State could legitimately, within its

margin of appreciation, differentiate between retention of title and other forms of ownership. The applicant company were engaged in a commercial venture which, by its very nature, involved an element of risk. The applicant company could have eliminated their risk altogether by declining to extend credit to Atlas or obtained additional security which passed the risk on to another party. It was therefore unnecessary for the Court to establish whether the applicant company could have ascertained the existence and extent of Atlas's tax debts. Nor was it material that the applicant company bore no responsibility for the tax debt. The owners of goods subject to seizure had knowingly allowed them to serve as 'furnishings' of the tax debtor's premises. They might therefore be held responsible to some extent for enabling the tax debtor to present a semblance of creditworthiness. Whether or not the tax authorities were under any legal or other obligation to be more flexible in respect of tax debtors in temporary financial difficulties, they did not have the same means at their disposal as commercial creditors for protecting themselves against the consequences of their debtors' financial problems. Nor did they have any other means of protecting themselves against their debtors' attempts to solve such problems by vesting the title to their 'furnishings' in another party as a device for borrowing against a security. The fact that the concrete mixer to which the applicant company had reserved title was seized while goods subject to the bank's fiduciary ownership rights were spared did not suffice to demonstrate that the seizure of the concrete mixer was arbitrary. That distinction was based on the case-law, and accorded with the stated policy of the Minister of Finance. Under Netherlands law, third parties whose goods were seized might have the use that had been made of the powers conferred by the legislation adequately reviewed by a tribunal under a procedure which met the requirements of A 6(1). The requirement of proportionality had been satisfied and accordingly, there had been no violation of P1A1.

Cited: AGOSI v UK (24.10.1986), Fayed v UK (21.9.1994), Hentrich v F (22.9.1994), James and Others v UK (21.2.1986), Pine Valley Developments Ltd and Others v IRL (29.11.1991), Saïdi v F (20.9.1993).

Gautrin and Others v France (1999) 28 EHRR 196 98/34

[Applications lodged 7.1.1993; Commission report 26.11.1996; Court Judgment 20.5.1998]

The 105 applicants were medical practitioners and all members of the organisation 'SOS Médecins', whose object was to provide emergency medical services on call to patients. A number of doctors' unions and département councils of the Medical Association lodged complaints with the professional disciplinary bodies against the members of those associations. They maintained, *inter alia*, that by using a flashing blue light without permission from the authorities and displaying the name 'SOS Médecins' on their vehicles, in telephone directories and in advertising brochures, the members of the associations were contravening the Code of Professional Conduct, which prohibited advertising. On 28 January 1990, the regional council of the Ile-de-France ordre des médecins held that there had been a breach of the Code of Professional Conduct and suspended or reprimanded the doctors concerned. The applicants appealed against those decisions to the disciplinary section of the National Council of the ordre des médecins. On 25 March 1992, that section upheld the decisions of the regional council as to the finding that there had been a breach of the Code of Professional Conduct, but reduced the penalties. The applicants complained that the hearings before the regional council of the Ile-de-France ordre des médecins and the National Council of the ordre had not been held in public and that those bodies had not been impartial.

Comm found unanimously V 6(1).

Court unanimously dismissed the Government's preliminary objections, found V 6(1) in that the applicants' case was not heard in public, V 6(1) in that the applicants' case was not heard by an impartial tribunal.

Judges: Mr Thór Vilhjálmsson, President, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr AB Baka, Mr MA Lopes Rocha, Mr P Kûris, Mr U Lôhmus.

It was clear from the Court's settled case-law that disciplinary proceedings in which what was at stake was the right to continue to practise medicine as a private practitioner gave rise to disputes over civil rights within the meaning of A 6(1), which was therefore applicable.

A 26 required persons wishing to make an application to the Strasbourg institutions to have prior recourse to such domestic remedies as were 'adequate' and 'effective'. At the material time the Decree of October 1948 expressly precluded holding in public hearings before the regional councils of the ordre des médecins and the disciplinary section of the National Council of the ordre and it was the Conseil d'Etat's settled case-law that the provisions of A 6(1) were inapplicable to proceedings before those bodies. In those circumstances, an appeal on points of law based on that complaint would not have been an 'adequate' and 'effective' remedy. The preliminary objection of non-exhaustion was therefore dismissed.

The holding of court hearings in public constituted a fundamental principle enshrined in A 6 (1). That public character protected litigants against the administration of justice without public scrutiny; it was also one of the means whereby people's confidence in the courts could be maintained. By rendering the administration of justice transparent, publicity contributed to the achievement of the aim of A 6(1). It was not suggested that circumstances existed to permit dispensing with a public hearing in this case. The fact that the applicants would have had a hearing in public if they had appealed to the Conseil d'Etat was irrelevant. There had been a breach of A 6(1) in that the applicants' case was not heard 'in public' by the Ile-de-France regional council of the ordre des médecins or by the disciplinary section of the National Council of the ordre.

The applicants' complaint was not of bias on the part of any individual member of the disciplinary bodies hearing their cases, but of the 'objective' bias of those bodies. The right of challenge could only be exercised in respect of individual members of the tribunal, not in respect of the tribunal as a whole. Therefore the exercise by the applicants of their right of challenge would not have constituted an 'effective' remedy. The preliminary objection based on failure to exercise the right of challenge was therefore dismissed. Regarding the objection based on failure to appeal on points of law, if the Conseil d'Etat had quashed the decision of the disciplinary section of the National Council of the ordre, it would not have been bound to rule on the merits of the case. If, however, it had remitted the case, it could only have done so to the same body without there being any requirement that it be differently constituted; it would only have been after a second appeal on points of law that the Conseil d'Etat would have been required to decide the case finally. In the circumstances, it could not be maintained that such a remedy would, in the instant case, have been adequate. Consequently, that preliminary objection was dismissed.

Conferring the duty of adjudicating on disciplinary offences on professional disciplinary bodies did not in itself infringe the Convention. Nonetheless, in such circumstances the Convention called for at least one of the following two systems: either the professional disciplinary bodies themselves complied with the requirements of A 6(1), or they did not so comply but were subject to subsequent review by a judicial body that had full jurisdiction and did provide the guarantees of A 6(1). There were two tests for assessing whether a tribunal was impartial within the meaning of A 6 (1): the first consisted in seeking to determine the personal conviction of a particular judge in a given case, and the second in ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in that respect. Only the second of those tests was relevant in the instant case. The members of the regional council and 32 of the 38 members of the National Council, from among whose members the disciplinary section was elected, were practitioners directly appointed by the département councils. As a result, those two bodies had a worrying connection with the competitors of SOS Médecins and it was understandable that the applicants suspected the members of those bodies of bias. Regard being had mainly to the special context and special nature of the dispute the professional disciplinary bodies had to decide, neither the Ile-de-France regional council of the ordre des médecins, nor the disciplinary section of the National Council of the ordre was an 'impartial' tribunal within the meaning of A 6(1).

Present judgment constituted just satisfaction for any alleged non-pecuniary damage. Costs and expenses (FF 13,650 to Dr Fillion, FF 6,030 Dr Boyer and FF 50,000 jointly to the other 102 applicants).

Cited: Albert and Le Compte v B (10.2.1983), Diennet v F (26.9.1995), Higgins and Others v F (19.2.1998), Le Compte, Van Leuven and De Meyere v B (23.6.1981), König v D (28.6.1978), Saraiva de Carvalho v P (22.4.1994), Stran Greek Refineries and Stratis Andreadis v GR (9.12.1994).

Gaygusuz v Austria (1997) 23 EHRR 365 96/32

[Application lodged 17.5.1990; Commission report 11.1.1995; Court Judgment 16.9.1996]

Mr Cevat Gaygusuz was a Turkish national who lived in Austria from 1973 until September 1987. He worked in Austria, with interruptions, from 1973 until October 1984. From then until 1 July 1986 periods when he was unemployed alternated with periods when he was certified unfit for work for medical reasons, and he was in receipt of the corresponding benefits. He applied to the Linz Employment Agency on 6 July 1987 for an advance on his pension in the form of emergency. The agency rejected the application on the ground that the applicant did not have Austrian nationality, which was one of the conditions laid down in the 1977 Unemployment Insurance Act for entitlement to an allowance of that type. His appeal to the Upper Austria Regional Employment Agency was dismissed. His subsequent appeals to the Constitutional Court and Administrative Court were rejected. He complained that he was a victim of discrimination based on national origin following the Austrian authorities' refusal to grant him emergency assistance and that he had not had a fair trial.

Comm found by majority (12–1) NV 6(1), unanimously V 14+P1A1, no separate issue under 8.

Court found unanimously V 14+P1A1, not necessary to consider 6(1), no separate issue arises under 8.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr F Matscher (pd), Mr R Macdonald, Mr C Russo, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou, Mr K Jungwiert.

A 14 complemented the other substantive provisions of the Convention and the Protocols. It had no independent existence since it had effect solely in relation to the enjoyment of the rights and freedoms safeguarded by those provisions. Although the application of A 14 did not presuppose a breach of those provisions – and to that extent it was autonomous – there could be no room for its application unless the facts at issue fell within the ambit of one or more of them. The refusal to grant the applicant emergency assistance was based exclusively on the finding that he did not have Austrian nationality and did not fall into any of the categories exempted from that condition. The right to emergency assistance – in so far as provided for in the applicable legislation – was a pecuniary right for the purposes of P1A1. That provision was therefore applicable without it being necessary to rely solely on the link between entitlement to emergency assistance and the obligation to pay 'taxes or other contributions'. Accordingly, as the applicant was denied emergency assistance on a ground of distinction covered by A 14, namely his nationality, A 14 was also applicable.

A difference of treatment was discriminatory, for the purposes of A 14, if it had no objective and reasonable justification, that is, if it did not pursue a legitimate aim or if there was not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Moreover, the Contracting States enjoyed a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justified a different treatment. The applicant was legally resident in Austria and worked there at certain times, paying contributions to the unemployment insurance fund in the same capacity and on the same basis as Austrian nationals. The authorities' refusal to grant him emergency assistance was based exclusively on the fact that he did not have Austrian nationality as required by the 1977 Unemployment Insurance Act. It had not been argued that he failed to satisfy the other statutory conditions for the award of the social benefit in question. He was accordingly in a like situation to Austrian nationals regarding his entitlement thereto. The difference in treatment between Austrians and non-Austrians as regards entitlement to emergency assistance, of which the applicant was a victim, was

not based on any objective and reasonable justification. Even though, at the material time, Austria was not bound by reciprocal agreements with Turkey, it undertook, when ratifying the Convention, to secure 'to everyone within its jurisdiction' the rights and freedoms defined in A 1 of the Convention. There had accordingly been a breach of A 14 of the Convention taken in conjunction with P1A1.

Having regard to the finding of violation of A 14+P1A1 it was not necessary to examine the case under A 6(1).

Having regard to the conclusion regarding A 14+P1A1 no separate issue arose under A 8.

Pecuniary damage (by majority 8–1) ATS 200,000), costs and expenses (ATS 100,000).

Cited: Darby v S (23.10.1990), Inze v A (28.10.1987), Karlheinz Schmidt v D (18.7.1994).

Gea Catalán v Spain (1995) 20 EHRR 266 95/5

[Application lodged 14.10.1991; Commission report 30.11.1993; Court Judgment 10.2.1995]

Mr Francisco Gea Catalán was a bank employee. Criminal proceedings were brought against him for obtaining property by deception. He was committed for trial in the Barcelona Audiencia Provincial. As civil party, the bank lodged submissions which essentially reproduced those of the public prosecutor. The applicant was convicted and sentenced to imprisonment. His appeals to the Supreme Court and Constitutional Court were dismissed. He complained that he had not been informed of a component of the charge against him.

Comm found unanimously V 6(1).

Court unanimously dismissed the Government's preliminary objection, NV 6(3)(a).

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr R Macdonald, Mr A Spielmann, Mr J De Meyer, Mr I Foighel, Mr JM Morenilla, Mr MA Lopes Rocha, Mr B Repik.

The applicant had expressed the wish to take part in the proceedings and had submitted, albeit belatedly, a claim for just satisfaction. It could not therefore be inferred that he did not intend to pursue his complaints. In addition, there had been neither a friendly settlement, nor arrangement, nor other fact of a kind to provide a solution of the matter. The preliminary objection that the applicant's inactivity was tantamount to an implied withdrawal accordingly had to be dismissed.

The discrepancy complained of was clearly the result of a clerical error, committed when the prosecution submissions were typed and subsequently reproduced on various occasions by the prosecuting authority and the civil party. That was also the view taken by the Supreme Court and the Constitutional Court in dismissing the applicant's appeal on points of law and his amparo appeal. Having regard to the clarity of the legal classification given to the findings of fact set out in the investigating judge's committal order of 1 July 1986, the Court failed to see how the applicant could complain that he had not been informed of all the components of the charge, since the prosecution submissions were based on the same facts. The applicant's complaint was unfounded and therefore there had been no breach of A 6(3)(a).

Cited: Bunkate v NL (26.5.1993).

Gelli v Italy 99/65

[Application lodged 14.7.1997; Court Judgment 19.10.1999]

Mr Licio Gelli was suspected *inter alia* of association aiming at political conspiracy, seeking and obtaining classified information, false pretences, espionage, fraud, aggravated slander and extortion, forgery in public deeds in relation to an investigation concerning the bankruptcy of the private bank Banco Ambrosiano and activities of the Masonic lodge called 'Propaganda 2' (P2). Warrants were issued in 1982 and on 13 September 1982 the applicant was arrested in Switzerland and detained with a view to extradition. The applicant escaped from Champ-Dollon prison on 10 August 1983. On 21 September 1987, the applicant was again arrested in Switzerland and was extradited to Italy on 17 February 1988. On 16 April 1994, the Assize Court of Rome found the

applicant guilty. His appeal to the Rome Assize Court of Appeal was dismissed. He further appeal to the Court of Cassation resulted in some of the charges being dropped as time-barred and a reduction in sentence. The judgment was filed with the Registry on 24 December 1996. He complained of the length of proceedings.

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska, Mr AB Baka.

The proceedings began at the latest on 13 September 1982, when the applicant was arrested, and ended on 24 December 1996, when the final judgment was filed with the court registry. The applicant escaped from prison on 10 August 1983 and absconded until 21 September 1987, when he was arrested again. When an accused person fled from a State which respected the principle of the rule of law, it could be assumed that he was not entitled to complain of the unreasonable duration of the proceedings following his flight, unless he could show sufficient reason to rebut that assumption. In the present case, the applicant failed to do so, and in particular he failed to prove that his absconding did not have any prejudicial impact on the length of the proceedings *in absentia;* it followed that the four years and one month during which the applicant absconded would not be counted towards the length of the proceedings at issue. The period to be taken into consideration therefore lasted approximately 10 years and two months for three levels of jurisdiction. The reasonableness of the length of proceedings had be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law. The proceedings at issue were extremely complex. No delay appeared attributable to the applicant's conduct, save for the period during which he absconded from prison, which at any event had not been counted towards the period to be taken into consideration. There appeared to have been a very long delay between the decision of 26 March 1985 whereby the Rome District Court was found to be competent to deal with the case, and the judgment of the Judge for the Preliminary Investigations on committals for trial on 18 November 1991 for which no explanation was provided by the Government. That delay, which covered more than half of the total length of the period under consideration, was of itself sufficient to conclude that the case was not heard within a reasonable time. There had accordingly been a breach of A 6(1).

Non-pecuniary damage (ITL 20,000,000), costs and expenses (ITL 2,000,000).

Cited: Ledonne v I (No 1) (12.5.1999), Pélissier et Sassi v F (25.3.1999), Wemhoff v Germany (judgment of 27.6.1968).

Georgiadis v Greece (1997) 24 EHRR 606 97/28

[Application lodged 27.2.1993; Commission report 27.2.1996; Court Judgment 29.5.1997]

Mr Anastasios Georgiadis was a minister of religion of the Christian Jehovah's Witnesses of Greece. On 11 September 1991, he lodged an application to be exempted from military service. His application was rejected on the ground that he was not a minister of a 'known religion' and he was ordered to report for duty at a military training centre in Nauplia on 20 January 1992. He presented himself at the centre, as ordered, but refused to join his unit, invoking his status as a minister of a 'known religion'. Charges of insubordination resulted in his acquittal. He was not, however, awarded compensation. He complained that he did not have a fair hearing in the matter of compensation for his allegedly unlawful detention.

Comm found unanimously V 6(1), not necessary to examine 13.

Court found unanimously V 6(1), not necessary to examine 13.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr N Valticos, Mr R Pekkanen, Mr AN Loizou, Mr AB Baka, Mr D Gotchev, Mr P Kûris, Mr U Lôhmus.

Regardless of its characterisation under domestic law, the Code of Criminal Procedure created a right for a person having been detained to claim compensation following his or her acquittal.

However, the Code excluded from compensation situations where it was established that the detained person was 'intentionally or by gross negligence' responsible for his own detention. The Code also prevented decisions regarding the obligation of the State to pay compensation to be challenged separately. The army rulings that no compensation should be granted to the applicant for his detention pending trial, because his detention was due to his own gross negligence, meant that the outcome of the proceedings was directly decisive for establishing the applicant's right to compensation. Although the prerequisite for the operation of the relevant part of the code, detention followed by an acquittal, concerned public law issues, the right to compensation created by that provision was, by its very nature, of a civil character. Its typically private law features confirmed that conclusion, as did the fact that it is for the civil courts to decide on the precise amount of the compensation to be granted. No decision on the question of compensation should have been taken without affording the applicant an opportunity to submit to the courts his arguments on the matter. A procedure whereby civil rights were determined without ever hearing the parties' submissions could not be considered to be compatible with A 6(1). In addition, the permanent army tribunals' rulings *proprio motu* on the question of compensation effectively precluded the applicant from making an application himself. Moreover, it was not open to him to challenge those rulings. Regarding the alleged lack of adequate reasons in the decisions of the military tribunals, it was noted that, in discarding the State's liability for the applicant's detention, the domestic courts referred to the applicant's own 'gross negligence'. In doing so, they repeated the wording of the Code. The extent to which a court's duty to give reasons applied varied according, inter alia, to the nature of the decision. Whether a court had failed to fulfil the obligation to state reasons, deriving from A 6, could only be determined in the light of the circumstances of the case. The lack of precision of the concept of 'gross negligence' which involved an assessment of questions of fact, required that the courts give more detailed reasons, particularly since their finding was decisive for the applicant's right to compensation. Therefore, there had been a violation of A 6(1).

In view of the findings concerning A 6(1), it was not necessary to examine the case under A 13.

Present judgment constituted just satisfaction for any non-pecuniary damage. Costs and expenses (GRD 750,000).

Cited: Baraona v P (8.7.1987), Kerojärvi v SF (19.7.1995), Ruiz Torija v E (9.12.1994), Tsirlis and Kouloumpas v GR (29.5.1997), Zander v S (25.11.1993).

Georgiadis v Greece 00/104

[Application lodged 26.3.1998; Court Judgment 28.3.2000]

Mr Dimitrios Georgiadis, a retired judge, made an application to the General State Finance Office to obtain a supplementary pension pursuant to an inter-ministerial decision. The application was refused and the applicant appealed to the Audit Office which on 4 July 1996 allowed the appeal and fixed the amount of the additional pension. The judgment was enforceable as soon as it was served on the authorities concerned, but they refused to comply with it and pay the amount due. The judgment became final on 26 September 1997, the State not having entered an appeal on points of law. In July 1997, new legislation was passed which stated, *inter alia*, that the inter-ministerial decision did not apply to pensions, that all claims based on it were barred, that all pending legal proceedings were annulled and that sums paid, with the exception of those awarded in final court decision, were to be paid back. The Court of Audit held the new enactment unconstitutional and contrary to A 6 and dismissed an appeal by the State. The applicant had still not received the amount owing to him.

Court found unanimously V 6(1), V P1A1.

Judges: Mr M Fischbach, President, Mr CL Rozakis, Mr B Conforti, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska, Mr AB Baka, Mr E Levits.

The issue in the case was the State's obligation to make back payment of a pension to a civil servant in accordance with the legislation in force. It was therefore a civil right and A 6(1) applied.

The execution of a court judgment had to be considered as an integral part of the proceedings for the purposes of A 6. If the authorities refused or omitted to enforce judgment or delayed in doing so, the guarantees under A 6 would become purposeless. Furthermore, the principle of the rule of the law and the notion of fair trial precluded any interference by the legislature with the administration of justice designed to influence the judicial outcome of a dispute in which the State was a party. The refusal of the State General Accounting Department to comply with the judgment of the Court of Audit amounted to a denial of justice. Accordingly, there had been a violation of A 6(1).

The judgment of the Court of Audit had given rise to a debt in the applicant's favour and not a contingent right as argued by the Government. The applicant's inability to enforce that judgment amounted to an interference with his right to the peaceful enjoyment of his possessions. By intervening after the final judgment of the Audit Court, the new law had upset the fair balance between the protection of a property right and the demands of the general interest. In addition, the State General Accounting Department's refusal to pay the sum owed to the appellants after the Court of Audit had declared the new law unconstitutional was a further interference with the applicant's right to respect for peaceful enjoyment of his possessions. That interference was contrary to P1A1 as the refusal in question was manifestly unlawful under domestic law.

Pecuniary damage (GRD 11,043,786), non-pecuniary damage (GRD 1,000,000), costs and expenses (GRD 1,000,000).

Cited: Antonakopoulos, Vortsela and Antonakopoulou v GR (14.12.1999), Francesco Lombardo v I (26.11.1992), Hornsby v GR (19.3.1997), Iatridis v GR (25.3.1999), Papageorgiou v GR (22.10.1997), Stran and Stratis Andreadis v GR (9.12.1994).

Gerber v France 00/102

[Application lodged 27.9.1996; Court Judgment 28.3.2000]

Mr Gerber complained of the length of civil proceedings.

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr L Loucaides, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 3 April 1980 and ended in August 1998. It had lasted around 18 years and 4 months; the period could not be considered reasonable.

Non-pecuniary damage (FF 100,000), costs and expenses (FF 35,000).

Cited: Doustaly v F (23.4.1998), Nikolova v BG (25.3.1999), Richard v F (22.4.1998).

Gerger v Turkey 99/31

[Application lodged 22.6.1994; Commission report 11.12.1997; Court Judgment 8.7.1999]

Mr Haluk Gerger was a journalist. On 23 May 1993, a memorial ceremony was held in Ankara for Denis Gezmis, Yusuf Aslan and Hüseyin Inan, founders of an extreme left-wing movement among university students at the end of the 1960s. They had been sentenced to death for seeking to destroy the constitutional order by violence and executed in May 1972. The applicant was invited to speak at the ceremony, but was unable to attend and sent the organising committee a message that was read out in public. The applicant was accused of disseminating propaganda against the unity of the Turkish nation and the territorial integrity of the State. On 9 December 1993, the National Security Court found the applicant guilty and sentenced him to one year, eight months' imprisonment and a fine of TRL 208,333,333. On 22 April 1994, the Court of Cassation dismissed an appeal by the applicant. On 23 September 1995 the applicant completed his prison sentence. However, as he had not paid the fine that had been imposed, he was kept in detention to serve an additional day's imprisonment for every TRL 10,000 due. On 26 October 1995, he paid the balance of the fine and was released. He complained that his conviction constituted a violation of A 9 and 10. He further submitted that, by failing to give adequate reasons in its judgment, the National

Security Court had denied him a fair hearing and that he had been discriminated against, in that the conditions for obtaining automatic parole under the terrorism legislation were stricter than those under the general law.

Comm found by majority (30–2) V 10, considered jointly with A 9, unanimously NV 14+5(1), by majority (31–1) V 6(1) in that the applicant's case had not been heard by an independent and impartial tribunal, not necessary to examine separately the complaint that the National Security Court had given inadequate reasons in its judgment.

Court found by majority (16–1) V 10, dismissed unanimously the Government's preliminary objections, by majority (16–1) V 6(1) in that the Ankara National Security Court was not independent and impartial, unanimously not necessary to examine the applicant's other complaint under A 6(1), NV 14+5(1).

Judges: Mr L Wildhaber (declaration), President, Mrs E Palm (jc), Mr A Pastor Ridruejo, Mr G Bonello (c), Mr J Makarczyk, Mr P Kûris, Mr J-P Costa, Mrs F Tulkens (jc), Mrs V Stráznická, Mr M Fischbach (jc), Mr V Butkevych, Mr J Casadevall (jc), Mrs HS Greve (jc), Mr A Baka, Mr R Maruste, Mr K Traja, Mr F Gölcüklü (d), ad hoc judge.

The Court considered that the complaint should be considered from the standpoint of A 10 alone.

The applicant's conviction amounted to an interference with the exercise of his right to freedom of expression. Such an interference breached A 10 unless it satisfied the requirements of A 10(2). The interference was prescribed by law, the section satisfied the foreseeability requirements inherent in the notion of 'law'. Having regard to the sensitivity of the security situation in south-east Turkey and to the need for the authorities to be alert to acts capable of fuelling additional violence, the measures taken against the applicant could be said to have been in furtherance of certain of the aims of the protection of national security and territorial integrity and the prevention of disorder and crime. The Court recalled its case-law. There was little scope under A 10(2) for restrictions on political speech or on debate on matters of public interest. Furthermore, the limits of permissible criticism were wider with regard to the government than in relation to a private citizen, or even a politician. In a democratic system, the actions or omissions of the government had to be subject to the close scrutiny not only of the legislative and judicial authorities, but also of public opinion. Moreover, the dominant position which the government occupied made it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means were available for replying to the unjustified attacks and criticisms of its adversaries. Nevertheless, it remained open to the competent State authorities to adopt, in their capacity as guarantors of public order, measures, even of a criminal law nature, intended to react appropriately and without excess to such remarks. Finally, where such remarks constituted an incitement to violence against an individual or a public official or a sector of the population, the State authorities enjoyed a wider margin of appreciation when examining the need for an interference with freedom of expression. The Court took into account the background to the cases submitted. The applicant's message was read out only to a group of people attending a commemorative ceremony, which considerably restricted its potential impact on national security, public order or 'territorial integrity'. It did not constitute an incitement to violence, armed resistance or an uprising. The nature and severity of the penalties imposed were also factors to be taken into account when assessing the proportionality of the interference. The applicant's conviction was disproportionate to the aims pursued and accordingly not necessary in a democratic society. There had therefore been a violation of A 10.

Although the applicant did not allege a lack of impartiality or independence on the part of the Ankara National Security Court in his application to the Commission, in his memorial lodged with the Court, he made a general reference to the report of the Commission, which had concluded that the complaint was founded. The Commission had considered the complaint of its own motion and despite inviting a response from the Government, the Government had not done so. Therefore, the Government were estopped from raising the preliminary objection.

The status of military judges sitting as members of National Security Courts provided some guarantees of independence and impartiality. However, certain aspects of the judges' status made their independence and impartiality questionable: for example, the fact that they were servicemen who still belonged to the army, which in turn took its orders from the executive, the fact that they

remained subject to military discipline and the fact that decisions pertaining to their appointment were to a great extent taken by the administrative authorities and the army. It was understandable that the applicant should be apprehensive about being tried by a bench which included a regular army officer, who was a member of the Military Legal Service. On that account he could legitimately fear that the Ankara National Security Court might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. In other words, the applicant's fears as to that court's lack of independence and impartiality could be regarded as objectively justified. The proceedings in the Court of Cassation were not able to dispel these fears since that court did not have full jurisdiction. Therefore, there had been a breach of A 6(1).

In view of the finding of a violation of the applicant's right to be tried by an independent and impartial tribunal it was not necessary to examine the complaint that the National Security Court had not given sufficient reasons for its decision.

Although A 5(1)(a) did not guarantee a right to automatic parole, an issue might arise under that provision taken together with A 14 of the Convention if a settled sentencing policy affected individuals in a discriminatory manner. In principle, the aim of the relevant law in the present case was to penalise people who committed terrorist offences and anyone convicted under that law would be treated less favourably with regard to automatic parole than persons convicted under the ordinary law. From that fact, the distinction was made not between different groups of people, but between different types of offence, according to the legislature's view of their gravity. There was no ground for concluding that that practice amounted to a form of 'discrimination' that was contrary to the Convention. Consequently, there had been no violation of A 14 taken together with A 5(1)(a).

Non-pecuniary damage (by majority (16–1) FF 40,000), costs and expenses ((16–1) FF 20,000).

Cited: Aytekin v TR (23.9.1998), Çiraklar v TR (28.10.1998), Fressoz and Roire v F (21.1.1999), Incal v TR (9.6.1998), Wingrove v UK (25.11.1996), Zana v TR (25.11.1997).

Gergouil v France 00/97

[Application lodged 15.12.1997; Court Judgment 21.3.2000]

Mr Christian Gergouil complained about the length of proceedings in respect of an employment dispute.

Court found by majority (5–2) NV 6(1).

Judges: Sir Nicolas Bratza, President (d), Mr J-P Costa, Mrs F Tulkens (d), Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja, Mr M Ugrekhelidze.

The period to be taken into consideration began on 14 October 1993 and ended on 7 January 1998. It had lasted four years, two months, 24 days. The Court of Cassation stage lasted 2 years 2 months and one day which was rather long. Apart from that there was not any significant period of inactivity attributable to the national authorities. Having regard to the global length of the proceedings, the authorities had shown necessary diligence.

Cited: Doustaly v F (23.4.1998), Proszak v PL (16.12.1997), Richard v F (22.4.1998).

Ghezzi v Italy 00/54

[Application lodged 5.6.1997; Court Judgment 8.2.2000]

Mr Giuseppe Ghezzi complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska.

The period to be taken into consideration began on 20 April 1971 and ended on 13 October 1999. It had lasted more than 28 years and five months at one level of jurisdiction, of which 26 years and two months were after the coming into force of Italy's recognition of the right of individual petition. The period could not be regarded as reasonable.

Non-pecuniary damage (ITL 100,000,000), costs and expenses (ITL 1,000,000).

Cited: Bottazzi v I (28.7.1999).

Ghilino v Italy 99/78

[Application lodged 28.10.1996; Commission report 15.9.1998; Court Judgment 2.11.1999]

The applicant complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr L Ferrari Bravo, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mr A B Baka, Mr E Levits.

The period to be taken into consideration began on 13 July 1991 and was still pending. It had lasted more than eight years, three months. The period could not be considered reasonable.

Non-pecuniary damages (ITL 12,000,000), costs and expenses (ITL 5,000,000).

Cited: Bottazzi v I (28.7.1999).

Gianetti and De Lisi v Italy 00/22

[Application lodged 24.2.1995; Court Judgment 25.1.2000]

Maria Giovanna Gianetti and Aniello De Lisi complained of the length of civil proceedings.

Court found unanimously V 6(1), not necessary to examine P1A1.

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 26 February 1988 and was still pending on 9 October 1999. It had lasted more than 11 years and seven months at one level of jurisdiction. The period could not be considered reasonable.

Having regard to the conclusion with regard to A 6(1) it was not necessary to also examine P1A1.

No claim made for damages or costs.

Cited: Bottazzi v I (28.7.1999), Zanghì v I (19.2.1991).

Gilberti v Italy 91/57

[Application lodged 21.1.1987; Commission report 15.1.1991; Court Judgment 3.12.1991]

Mrs Silvia Gilberti brought an action on 11 March 1985 against the Istituto Nazionale della Previdenza Sociale before the Rome magistrates' court in order to be reinstated in her right to a disability pension, which had been withdrawn with effect from 1 October 1983, and to obtain a court order for the pension arrears. The magistrates' court dismissed the applicant's claim on 10 July 1986. She appealed to the District Court, which dismissed her appeal on 16 October 1990. The judgment was filed with the registry on 17 June 1991. The applicant complained of the length of the proceedings.

Comm found unanimously V 6(1).

Court unanimously struck case out of the list.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr SK Martens.

Despite several reminders from the registry, the applicant showed no interest in the proceedings before the Court. There had been an implied withdrawal which constituted a fact of a kind to provide a solution to the matter. The Court discerned no reason of public policy for continuing the

proceedings. It noted previous cases in which it had reviewed the reasonableness of the length of civil proceedings. Accordingly, the case was struck out of the list.

Cited: Brigandì v I (19.2.1991), Caleffi v I (24.5.1991), Capuano v I (25.6.1987), Owners' Services Ltd v I (28.6.1991), Pretto and Others v I (8.12.1983), Pugliese (No 2) v I (24.5.1991), Santilli v I (19.2.1991), Vocaturo v I (24.5.1991), Zanghì v I (19.2.1991).

Gillow v United Kingdom (1989) 11 EHRR 335, (1991) 13 EHRR 593 86/12

[Application lodged 25.1.1980; Commission report 3.10.1984; Court Judgment 24.11.1986 (merits), 14.9.1987 (A 50)]

Mr Joseph Gillow and his wife Mrs Yvonne Gillow were both British citizens. In 1956, following Mr Gillow's appointment as Director of the recently created States of Guernsey Horticultural Advisory Service, they sold their home in Lancashire and moved to Guernsey. In 1957 they built a house, called 'Whiteknights'. The applicants did not require a licence to occupy the house, since they had residence qualifications. In August 1960, Mr Gillow resigned from his post in Guernsey and worked overseas for various development agencies until his retirement in 1978. During that period, the house was let. On 29 April 1979, the applicants went back to Guernsey. Under the Housing Laws they needed a licence to occupy the property. The Housing Authority rejected the application for a long term licence to occupy 'Whiteknights' in the light of the 'present adverse housing situation'. Their applications for extensions to stay to repair and sell the property were rejected and they were ordered to leave the house, on pain of prosecution. They sought to appeal the decision but in the meantime they were summonsed and appeared before the magistrates' court. Mr Gillow was convicted of occupying 'Whiteknights' without a licence and fined. The applicants finally sold 'Whiteknights' on 15 April 1980. On 8 July 1980, the Royal Court dismissed their appeal regarding the licence to occupy. Mr Gillow's appeal against his conviction was heard and dismissed by the Royal Court on 26 August 1980. They complained that the restrictions imposed on their occupation of 'Whiteknights' constituted an interference with their rights to respect for their home and to the peaceful enjoyment of their possessions, which interference also had a discriminatory character. They further complained that, in the proceedings which took place in Guernsey, there had been a violation of their rights of access to court and to a fair hearing.

Comm found unanimously V 8, V P1A1, by majority (10–1) NV 6, unanimously NV 14.

Court found unanimously V 8, NV 14+8, NV 6, P1 and 4 NA.

Judges: (merits) Mr G Wiarda, President, Mr R Ryssdal, Mr Thór Vilhjálmsson, Mr G Lagergren, Mr L-E Pettiti, Sir Vincent Evans, Mr R Macdonald.

Judges: (A 50) Mr G Wiarda, President, Mr R Ryssdal, Mr J Cremona, Mr W Ganshof van der Meersch, Mr F Gölcüklü, Sir Vincent Evans, Mr C Russo.

The Court had no jurisdiction to investigate the applicants' complaint under Protocol No 4 as that instrument had not been ratified by the UK.

The applicants had not established any other home elsewhere in the UK. Although the applicants had been absent from Guernsey for almost 19 years, they had in the circumstances retained sufficient continuing links with 'Whiteknights' for it to be considered their 'home', for the purposes of A 8. The fact that, on pain of prosecution, the applicants were obliged to obtain a licence to live in their own house on their return to Guernsey in 1979, the refusal of the licences applied for, the institution of criminal proceedings against them for unlawful occupation of the property and, in Mr Gillow's case, his conviction and the imposition of a fine constituted interferences with the exercise of the applicants' right to respect for their home. The interferences were in accordance with the law; there could be no doubt as to the constitutional validity and accessibility of the housing law and the the scope of the discretion in the law, coupled with the provision for judicial control of its exercise, was sufficient to satisfy the requirements of the Convention inherent in the expression 'in accordance with the law'. The relevant legislation was designed to promote the economic well-being of the island. It was not established that the legislation pursued any other purpose. The Guernsey legislature was better placed than the

international judge to assess the effects of any relaxation of the housing controls. Furthermore, when considering whether to grant a licence, the Housing Authority could exercise its discretion so as to avoid any disproportionality in a particular case. It followed that the statutory obligation imposed on the applicants to seek a licence to live in their 'home' could not be regarded as disproportionate to the legitimate aim pursued. There had accordingly been no breach of A 8 as far as the terms of the contested legislation were concerned. However, the decisions by the Housing Authority to refuse the applicants permanent and temporary licences to occupy 'Whiteknights', as well as the conviction and fining of Mr Gillow, constituted interferences with the exercise of their right to respect for their 'home' which were disproportionate to the legitimate aim pursued. There had accordingly been a breach of A 8 as far as the application of the legislation in the particular circumstances of the applicants' case was concerned.

As to the applicability of P1 to the island of Guernsey, an express declaration was required for its application to the island. According to the records of the Council of Europe, no such declaration extending the provisions of the Protocol to Guernsey had been communicated by the UK to the Secretary General of the Council of Europe. Therefore, P1A1 was not applicable in the present case and the Court had no jurisdiction to entertain the complaints under it.

Preferential treatment for persons with strong attachments to the island was legitimate for the purposes of the restrictions permitted under A 8. The difference in treatment complained of therefore had an objective and reasonable justification. As to the alleged discrimination on the ground of property or wealth, the introduction of rateable-value limits reflected the Government's desire to exclude from the control of the Housing Authority the small percentage of expensive houses likely to be sought after by better-off persons not considered to be in need of protection, while providing necessary protection for persons of more limited means who had strong connections with Guernsey. In view of the legitimate objectives being pursued in the general interest and having regard to the State's margin of appreciation, the policy of different treatment could not be considered as unreasonable or as imposing a disproportionate burden on owners of more modest houses like the applicants, taking into account the possibilities open to them under the licensing system. The facts of the case did not therefore disclose a breach of A 14 of the Convention, taken in conjunction with A 8.

The proceedings against the decisions of the Housing Authority to refuse to grant licences to occupy 'Whiteknights was concerned with the applicants' right to occupy their own home, which was a civil right within the meaning of A 6(1). The prosecution of Mr Gillow for unlawful occupation of the house involved the determination of a criminal charge. A 6 applied in respect of both proceedings. The Royal Court entertained the appeal even though it had been lodged out of time, and thus remedied the failure on the lawyer's part to properly perform his duty. The applicants had failed to show how their effective right of access to court had been interfered with by the refusal to allow them to occupy their house without facing prosecution. The adjournment of a hearing was a matter which fell in principle within the discretion of the competent national court. In addition, Mrs Gillow's civil appeal was not lodged until the day already appointed for the criminal. In those circumstances, the decision of the magistrate not to adjourn was not open to criticism. Access to the original taped transcript of the first instance proceedings by the accused was in principle a question within the discretion of the domestic courts. In the present case, although access to the tape was refused, the Registrar of the Royal Court checked the transcript and pronounced it accurate. The evidence did not therefore disclose that any unfairness resulted in that connection. There was a factual nexus between the two appeals heard by the Royal Court. With one exception, each member of the Royal Court who had sat in the first case also took part in the second, but that in itself was not reasonably capable of giving rise to legitimate doubts as to the impartiality of the Royal Court. Regarding the partiality of the Jurat who had earlier sat as Magistrate in the criminal proceedings against Mrs Gillow and the other Jurat who had previously been President of the Housing Authority, the former had only taken a decision to adjourn, ultimately *sine die*, the hearing on the charges against Mrs Gillow and the latter did not appear from the evidence at any stage to have been involved, directly or indirectly, in the applicants' case. The performance of those previous functions was not sufficient to give rise to legitimate doubt as

to the impartiality of the two Jurats in question. Accordingly there had been no violation of A 6(1). The applicants other complaints concerning the Royal Court were not pursued during the hearings and the Court did not consider it necessary to examine them.

Damage (GBP 10,735 to Mrs Gillow), costs and expenses (GBP 2,134).

Cited: Ireland v UK (18.1.1978), Lingens v A (8.7.1986), Malone v UK (2.8.1984), McGoff v S (26.10.1984), Silver and Others v UK (25.3.1983), Sunday Times v UK (26.4.1979), Zimmermann and Steiner v CH (13.7.1983).

Giorgio v Italy 00/33

[Application lodged 8.4.1997; Court Judgment 25.1.2000]

Mr Francesco Giorgio complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 30 May 1984 and was still pending on 26 November 1999. It had lasted nearly 15 years, six months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 48,000,000), costs and expenses (ITL 2,000,000).

Cited: Bottazzi v I (28.7.1999).

Girolami v Italy 91/17

[Application lodged 8.10.1987; Commission report 5.12.1989; Court Judgment 19.2.1991]

Mr Dino Girolami was a butcher's assistant. He was prosecuted for fraud to the detriment of a co-operative society on the occasion of a transaction concerning the sale of meat. The warrant for the applicant's arrest issued on 25 March 1978 could not be executed, as the applicant had fled. On 19 November 1979, the applicant appeared before the investigating judge and was questioned. On 3 April 1987 the Livorno court acquitted the applicant. The judgment became final on 3 May 1987. He complained of the length of proceedings.

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Sir Vincent Evans, Mr C Russo, Mr J De Meyer, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla.

The period to be taken into consideration began on 25 March 1978, the date on which the public prosecutor's office ordered the applicant's arrest. It ended on 3 May 1987; the period for which the applicant was on the run, namely from 25 March 1978 to 30 May 1979, was excluded from the calculation. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case. The case was not a complex one and there was a long period of stagnation from 24 May 1980 to 11 January 1985. The applicant's flight undoubtedly served to slow down the progress of the proceedings; nevertheless, the Court could not regard as reasonable the remaining lapse of time of approximately eight years. There had therefore been a violation of A 6(1).

Present judgment constituted sufficient just satisfaction. Costs and expenses (ITL 1,210,000).

Cited: Obermeier v A (28.6.1990).

Gitonas and Others v Greece (1998) 26 EHRR 691 97/40

[Applications lodged 12.6.1991, 2.11.1991, 16.5.1995. 28.5.1995; Commission reports 7.3.1996, 28.11.1996, 21.1.1997; Court Judgment 1.7.1997]

In the general election of 8 April 1990, Mr Konstantinos Gitonas was elected as a Socialist Party member, Mr Dimitrios Paleothodoros was elected as member of the electoral coalition 'Zante

Initiative for Progress, Development and Simple Proportional Representation', Mr Nicolaos Sifounakis was elected as member for the Socialist Party, Mr Ioannis Kavaratzis and Mr Gerassimos Giakoumatos were elected as members for the 'Nea Dimokratia' Party. They had held the posts respectively of Deputy Head of the Prime Minister's private office, Directors General of a television channel, First Deputy Director of the Social Security Fund and Second Deputy Director of the Social Security Fund. Those posts gave grounds for disqualification from standing for election under the legislation and following complaints the Special Supreme Court annulled their elections. They complained that the annulment of their election by the Special Supreme Court pursuant to the Greek Constitution infringed the right of the electorate freely to choose its representatives and, by the same token, their own right to be elected.

Comm found by majority (9–8 in the case of Mr Gitonas and Others, 16–12 in the case of Mr Kavaratzis and 14–12 in the case of Mr Giakoumatos) V P1A3.

Court found unanimously NV P1A3.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr L-E Pettiti, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr R Pekkanen, Mr P Kûris, Mr J Casadevall.

P1A3 implied subjective rights to vote and to stand for election. Those rights were not absolute. Since P1A3 recognised them without setting them forth in express terms or defining them, there was room for 'implied limitations'. In their internal legal orders the Contracting States made the rights to vote and to stand for election subject to conditions which were not in principle precluded under P1A3. They had a wide margin of appreciation in that sphere, but it was for the Court to determine in the last resort whether the requirements of Protocol No 1 had been complied with; it had to satisfy itself that the conditions did not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they were imposed in pursuit of a legitimate aim; and that the means employed were not disproportionate. States enjoyed considerable latitude to establish in their constitutional order rules governing the status of parliamentarians, including criteria for disqualification. The relevant provision of the Constitution, which was applied in the applicants' case, established grounds for disqualification that were both relative and final in that certain categories of holders of public office were precluded from standing for election and being elected in any constituency where they had performed their duties for more than three months in the three years preceding the elections. Such disqualification served a dual purpose that was essential for the proper functioning and upholding of democratic regimes, namely ensuring that candidates of different political persuasions enjoyed equal means of influence and protecting the electorate from pressure from such officials who, because of their position, were called upon to take many, and sometimes important, decisions and enjoyed substantial prestige in the eyes of the ordinary citizen, whose choice of candidate might be influenced. The system introduced by the Constitution was somewhat complex. However, the Court had not encountered any incoherencies and would not say that the system was arbitrary. As for the objective establishment of criteria for disqualification, which was laid down by the Constitution and prevented the Special Supreme Court from having regard to any special features of the case, the Court did not find it unreasonable having regard to the enormous practical difficulty in proving that a position in the civil service had been used to electoral ends. It was primarily for the national authorities, and in particular the courts of first instance and of appeal, which were specially qualified for the task, to construe and apply domestic law. The positions held by the applicants were not among those expressly referred to in the relevant part of the Constitution. However, that did not guarantee them a right to be elected. The Special Supreme Court had sole jurisdiction under the Constitution to decide any dispute over disqualifications and, as in any judicial order where such a system existed, anyone elected in breach of the applicable rules would forfeit his position as a Member of Parliament. In the instant case the Special Supreme Court, after analysing the nature of the posts held by the applicants and the applicable legislation, held that the posts were similar to the ones described in the Greek constitution; it further found that the conditions relating to when the position was held, and the

duration and extent of the duties, were met in the case of each of the applicants. On reasonable grounds it considered it necessary to annul their election. There was nothing in the judgments of the Special Supreme Court to suggest that the annulments were contrary to Greek legislation, arbitrary or disproportionate, or thwarted 'the free expression of the opinion of the people in the choice of the legislature'. Consequently, there had been no violation of P1A3.

Cited: Mathieu-Mohin and Clerfayt v B (2.3.1987).

Glasenapp v Germany (1987) 9 EHRR 25 86/7

[Application lodged 7.11.1980; Commission report 11.5.1984; Court Judgment 28.8.1986]

Mrs Julia Glasenapp was appointed as a secondary schoolteacher, which involved being treated as a probationary civil servant. As a civil servant, she was required to sign a declaration of loyalty to the Constitution prior to her appointment. Subsequently, the secret service revealed that she had lived in a block of flats among whose tenants there were Maoist Communists. She admitted in a letter that she was involved in a kindergarten run by Communists and did not dissociate herself from such policies of the Communists. As a result, she was dismissed for wilful deceit in signing her declaration of loyalty. She complained of the revocation of her provisional appointment as a secondary school teacher, relying on A 10.

Comm found by majority (9–8) V 10.

Court dismissed the Government's preliminary objection, found by majority (16–1) NV 10.

Judges: Mr R Ryssdal, President, Mr W Ganshof van der Meersch, Mr J Cremona (c), Mr G Wiarda, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert (jc), Mr G Lagergren, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha (jc), Mr L-E Pettiti (declaration/jc), Mr B Walsh (jc), Sir Vincent Evans, Mr R Macdonald, Mr C Russo (jc), Mr R Bernhardt (jc), Mr A Spielmann (pd).

The Government's preliminary objection of incompatibility of the application with the provisions of the Convention related to the interpretation and application of the Convention and was a question going to the merits, which could not be tried merely as a preliminary issue. Regarding exhaustion of domestic remedies, in substance, the applicant had ventilated before the domestic courts the grievance which she submitted to the Commission and then the Court. She thereby provided the national authorities with the opportunity which was, in principle, intended to be afforded to Contracting States by A 26, namely of putting right the violations alleged against them. The Constitutional Court had held that it was not necessary to plead the relevant Article of the Basic Law; it was sufficient that the rights alleged to have been disregarded should be apparent from the complainant's submissions. In addition, the case-law of the Federal Constitutional Court had established that in the case of civil servants, the Basic Law safeguarded the expression of political opinions only in so far as such expression was reconcilable with the duty of allegiance to the Constitution. Accordingly, the objection that domestic remedies were not exhausted could not be sustained.

The Convention deliberately excluded a right of access to a post in the Civil Service. However, that did not totally exclude civil servants from the protection of the Convention, which applied to everyone within the jurisdiction of the Contracting States, and therefore A 10 applied. The status of probationary civil servant that the applicant had acquired through her appointment as a secondary school teacher accordingly did not deprive her of the protection afforded by A 10. Access to the civil service lay at the heart of the issue. In refusing the applicant such access, the Land Authority took account of her opinions and attitude merely in order to satisfy itself as to whether she possessed one of the necessary personal qualifications for the post in question. That being so, there had been no interference with the exercise of the right protected under A 10(1).

Cited: Abdulaziz, Cabales and Balkandali v UK (28.5.1985), Airey v IRL (9.10.1979), Barthold v D (25.3.1985), 'Belgian Linguistic' case (9.2.1967), De Jong, Baljet and van den Brink v NL (22.5.1984), Engel and Others v NL (8.6.1976), Guzzardi v I (6.11.1980), Schmidt and Dahlström v S (6.2.1976), Swedish Engine Drivers' Union (6.2.1976).

Glebe Visconti v Italy 00/23

[Application lodged 29.4.1997; Court Judgment 25.1.2000]

Mrs Gerda Glebe Visconti complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 9 February 1988 and was still pending. It had lasted about 11 years and 11 months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 37,000,000).

Cited: Bottazzi v I (28.7.1999).

Goddi v Italy (1984) 6 EHRR 457 84/4

[Application lodged 1.5.1980; Commission report 14.7.1982; Court Judgment 9.4.1984]

Mr Francesco Goddi was a shepherd. On 6 June 1975, he was tried for various firearms offences and sentenced to 18 months' imprisonment and a serious offence fine. He appealed to the Bologna Court of Appeal. The hearing of 3 December 1977 was held in the absence of the applicant and his lawyer and also of the party seeking damages, the co-accused and his lawyer, and the three witnesses who had been summoned. The Court of Appeal declared the applicant to be unlawfully absent (he had been recently arrested). Mr Bezicheri, the applicant's chosen lawyer, failed to appear, since he had not received the notification which had been sent to the applicant's previous lawyers. At the hearing on 3 December, the Court of Appeal assigned another lawyer, Mr Straziani, to act for the applicant. Mr Straziani did no more than refer back to the grounds of appeal, which had been drafted by the previous lawyer. The hearing was concluded on the same day. The Court of Appeal accepted the senior public prosecutor's submissions and imposed on the applicant heavier sentences. The applicant's appeal to the Court of Cassation was dismissed on 8 November 1979. The applicant complained that he had not been able to appear at the hearing himself, that he had been deprived of the services of the lawyer of his own choosing, by reason of the fact that the date of the hearing had been notified to another lawyer, who was no longer acting for him, and that the defence provided by Mr Straziani, the officially appointed lawyer, had not been effective.

Comm found unanimously V 6(3)(c).

Court found unanimously V 6(3)(c).

Judges: Mr G Wiarda, President, Mr Glacergren, Mr L Liesch, Mr F Gölcüklü, Mr B Walsh, Mr C Russo, Mr J Gersing.

The aim pursued by A 6(3)(c) was not achieved before the Bologna Court of Appeal. The applicant's chosen lawyer did not attend the hearing and was therefore unable to fulfil the task entrusted to him by the applicant. The applicant was also unable to appear as he was in prison. Mr Straziani, who was designated on the spot as the officially appointed lawyer, was acquainted neither with the case-file nor with his client; in addition, he did not have the requisite time to prepare himself since the Court of Appeal refused the request for an adjournment and the hearing closed on the same day, the outcome being the imposition of heavier sentences than those imposed at first instance. Therefore, the applicant did not have the benefit on 3 December 1977 of a defence that was 'practical and effective', as required by A 6(3)(c). Nevertheless, it had to be ascertained whether and to what extent that factual situation was attributable to the Italian State. On the evidence, the public prosecutor's office could not be regarded as responsible for the applicant's non-appearance before the appeal court. The applicant maintained that he told the prison authorities the date of the hearing of the criminal proceedings, but that was contested by the Government. Neither the applicant nor the Government adduced any evidence in support of their assertions and there was no other information before the Court which would enable it to resolve

that disputed issue of fact. Accordingly, on that point, it was not established that the Italian authorities were at fault. The failure to notify Mr Bezicheri was instrumental in depriving the applicant of a 'practical and effective' defence. The preceding phases of the proceedings should have led the Bologna Court of Appeal to believe that only Mr Bezicheri could have provided the defence on 3 December 1977: unlike the previous lawyer, who had never appeared before the Court of Appeal, Mr Bezicheri had taken part in the previous hearing. Accordingly, it was necessary to send the notification in question to him. The fact that Mr Bezicheri was absent was all the more disturbing because the applicant himself was also absent. No reproach could be levelled against the applicant for his conduct. As regards the defence provided for the applicant on 3 December 1977 by the officially appointed lawyer, it was not the Court's task to express an opinion on the manner in which Mr Straziani considered that he should conduct the case. The Court had to determine whether the Bologna Court of Appeal took steps to ensure that the accused had the benefit of a fair trial, including an opportunity for an adequate defence. Mr Straziani did not have the time and facilities he would have needed to study the case-file, prepare his pleadings and, if appropriate, consult his client. The Court of Appeal should have taken measures, of a positive nature, calculated to permit the officially appointed lawyer to fulfil his obligations in the best possible conditions. No inference could be drawn from the fact that Mr Straziani himself made no such request. The exceptional circumstances of the case – the absence of Mr Goddi and the failure to notify Mr Bezicheri – required the Court of Appeal not to remain passive. Taken together, those considerations led the Court to find that there was a failure to comply with the requirements of A 6(3)(c) at the stage of the hearing of 3 December 1977 before the Bologna Court of Appeal. That failure was not remedied by the Court of Cassation since its judgment of 8 November 1979 dismissed the applicant's appeal on points of law. There had therefore been a violation.

Damages (ITL 5,000,000).

Cited: Artico v I (13.5.1980).

Goisis v Italy 93/42

[Application lodged 16 May 1989; Commission report 1.7.1992; Court Judgment 22.9.1993]

Mr Mario Goisis took proceedings on 4 January 1989 against three persons in the Bergamo magistrates' court. He sought to have them ordered to move the low wall which enclosed their properties. In a judgment of 7 April 1993, which was filed at the registry on 14 April, the magistrate declined jurisdiction in favour of the Bergamo District Court. The proceedings were resumed on 26 May 1993. The applicant complained about the length of proceedings.

Comm found by majority (5–3) V 6(1), NV 13.

Court unanimously held it could not consider the merits.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr C Russo, Mr I Foighel, Mr F Bigi, Mr AB Baka, Mr MA Lopes Rocha, Mr L Wildhaber, Mr J Makarczyk.

The Commission exceeded, albeit by only one day, the time allowed for referring the case to the Court. No special circumstance of a nature to suspend the running of time or justify its starting to run afresh was apparent from the file. The request bringing the case before the Court was consequently inadmissible as it was made out of time.

Golder v United Kingdom (1979–80) 1 EHRR 524 75/1

[Application lodged 1969; Court Judgment 21.2.1975]

Mr Sidney Elmer Golder was serving a sentence of 15 years' imprisonment in Parkhurst Prison for robbery with violence. On 24 October 1969, a serious disturbance occurred in a recreation area of the prison. A prison officer, who had taken part and been injured in quelling the disturbance, made a statement identifying his assailants, including the applicant. The applicant and other prisoners suspected of having participated in the disturbance, were segregated from the main body of

prisoners. The prison governor stopped the applicant's letters to his Member of Parliament and to a Chief Constable about the disturbance and the ensuing hardships it had entailed for him. In November, the accusations against the applicant were withdrawn by the prison officer and he was returned to his ordinary cell. On 20 March 1970, he addressed a petition to the Home Secretary requesting a transfer to another prison and permission to consult a solicitor with a view to taking civil action for libel against the prison officer accuser. His requests were refused. He complained about his treatment.

Comm found unanimously that 6(1) guaranteed a right of access to the courts, V 6(1) in respect of restrictions on right of a convicted prisoner to institute proceedings, V (6) in respect of restrictions imposed by the present practice of the UK authorities, by majority (7–2) 8(1) was applicable, (8–1) V 8,

Court found by majority (9–3) V 6(1), unanimously V 8.

Judges: Mr G Balladore Pallieri, President, Mr H Mosler, Mr A Verdross (so), Mr E Rodenbourg, Mr M Zekia (so), Mr J Cremona, Mrs IH Pedersen, Mr T Vilhjálmsson, Mr R Ryssdal, Mr A Bozer, Mr WJ Ganshof van der Meersch, Sir Gerald Fitzmaurice (so).

By forbidding the applicant to make contact with his solicitor, the Home Secretary impeded the launching of the applicant's contemplated action. Hindrance could contravene the Convention just like a legal impediment. The right which the applicant wished to invoke against the prison officer was a 'civil right' within the meaning of A 6(1). A 6(1) did not state a right of access to the courts or tribunals in express terms. It enunciated rights which were distinct, but stemmed from the same basic idea and which, taken together, made up a single right not specifically defined in the narrower sense of the term. While the right to a fair, public and expeditious judicial procedure could apply only to proceedings in being, it did not necessarily follow that a right to the very institution of such proceedings was thereby excluded. In civil matters, the rule of law could not be conceived without there being a possibility of having access to the courts. The principle whereby a civil claim had to be capable of being submitted to a judge ranked as one of the universally recognised fundamental principles of law. It would be inconceivable that A 6(1) should describe in detail the procedural guarantees afforded to parties in a pending lawsuit and should not first protect that which alone made it possible to benefit from such guarantees, that is, access to a court. The fair, public and expeditious characteristics of judicial proceedings were of no value at all if there were no judicial proceedings. The right of access constituted an element which was inherent in the right stated by A 6(1). A 6(1) secured to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In that way the Article embodied the 'right to a court', of which the right of access, that is, the right to institute proceedings before courts in civil matters, constituted one aspect only. To that were added the guarantees laid down by A 6(1) as regards both the organisation and composition of the court, and the conduct of the proceedings. In sum, the whole made up the right to a fair hearing. The right of access to the courts was not absolute, there was room for limitations permitted by implication. The applicant could justifiably wish to consult a solicitor with a view to instituting legal proceedings. It was not for the Home Secretary himself to appraise the prospects of the action contemplated; it was for an independent and impartial court to rule on any claim that might be brought. In declining to accord the leave which had been requested, the Home Secretary failed to respect the applicant's right to go before a court as guaranteed by A 6(1).

A 8: The interference was in accordance with the law, namely the Prison Rules 1964. The necessity for interference with the exercise of the right of a convicted prisoner to respect for his correspondence had to be appreciated having regard to the ordinary and reasonable requirements of imprisonment. Even having regard to the power of appreciation left to the Contracting States, the Court could not discern how the considerations of prevention of disorder, the interests of public safety and the protection of the rights and freedoms of others, could oblige the Home Secretary to prevent the applicant from corresponding with a solicitor with a view to suing the prison officer for libel. The applicant was seeking to exculpate himself and could justifiably wish to write to a solicitor. It was not for the Home Secretary himself to appraise the prospects of the action contemplated; it was for a solicitor to advise the applicant on his rights and then for a court to rule

on any action that might be brought. The Home Secretary's decision proved to be all the less necessary in a democratic society in that the applicant's correspondence with a solicitor would have been a preparatory step to the institution of civil legal proceedings and, therefore, to the exercise of a right embodied in A 6. There had been a violation of A 8.

Findings constituted sufficient just satisfaction.

Cited: De Becker v B (27.3.1962), Delcourt v B (17.1.1970), De Wilde, Ooms and Versyp v B (18.6.1971), Lawless v IRL (1.7.1961), Matznetter v A (10.11.1969), Neumeister v A (27.6.1968), Ringeisen v A (16.7.1971), Wemhoff v D (27.6.1968).

Golino v Italy 92/19

[Application lodged 16.4.1986; Commission report 15.1.1991; Court Judgment 27.2.1992]

Mr Luigi Golino was involved in a traffic accident on 24 August 1980 which caused him serious injury. By summons served on 4 September 1982, he claimed damages in respect of the accident against Mrs F and Mr M before the Santa Maria Capua Vetere District Court. On 14 March 1989, the District Court ordered the defendants to pay damages. The text of the decision was lodged with the registry on 27 May 1989. He complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 4 September 1982 when the proceedings were instituted against Mrs F and Mr M in the Santa Maria Capua Vetere District Court. It ended, at the latest, on 27 May 1990 when the District Court's judgment became final. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law. The investigation took just under six years. There were two periods of stagnation. Regarding the Government's plea of the backlog of cases, A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. The State could not be held responsible for the year which elapsed until the decision, the text of which was lodged with the registry on 27 May 1989, became final. However, the Court could not regard as reasonable the lapse of time in the present case.

Non-pecuniary damage (ITL 2,000,000).

Cited: Pugliese (No 2) v I (24.5.1991), Vocaturo v I (24.5.1991).

Goodwin v United Kingdom (1996) 22 EHRR 123 96/15

[Application lodged 27.9.1990; Commission report 1.3.1994; Court Judgment 27.3.1996]

Mr William Goodwin was a journalist employed by Morgan Grampian plc, publishers. On 2 November 1989, a source gave him information about Tetra Ltd, to the effect that the company had financial problems. The information was unsolicited and was not given in exchange for any payment. It was provided on an unattributable basis. The applicant maintained that he had no reason to believe that the information derived from a stolen or confidential document. Intending to write an article about Tetra, he telephoned the company to check the facts and seek its comments on the information. The information derived from a draft of Tetra's confidential corporate plan, a copy of which had disappeared. On 7 November 1989, the High Court of Justice granted Tetra an *ex parte* interim injunction restraining the publishers from publishing any information derived from the corporate plan. On 14 November 1989, the publishers were ordered to disclose their source. They failed to do so. On 22 November 1989, the applicant was ordered to disclose the source's identity in order to enable Tetra to bring proceedings against the source to recover the document, obtain an injunction preventing further publication or seek damages for the expenses to which it had been put. The applicant's appeal to the Court of Appeal was dismissed and the decision was upheld by the House of Lords. The applicant failed to comply with the High Court

order and on 10 April 1990, he was fined GBP 5,000 for contempt of court. The applicant complained that the imposition of a disclosure order requiring him to reveal the identity of a source violated his right to freedom of expression under A 10.

Comm found by majority (11–6) V 10.

Court found by majority (11–7) V 10.

Judges: Mr R Ryssdal (jd), President, Mr R Bernhardt (jd), Mr Thór Vilhjálmsson (jd), Mr F Matscher (jd), Mr B Walsh (jd/d), Mr C Russo, Mr A Spielmann, Mr J De Meyer (c), Mr N Valticos, Mrs E Palm, Mr F Bigi, Sir John Freeland (jd), Mr AB Baka (jd), Mr D Gotchev, Mr B Repik, Mr P Jambrek, Mr P Kûris, Mr U Lôhmus.

The measures constituted an interference with the applicant's right to freedom of expression. The impugned disclosure order and the fine had a basis in national law, namely, the Contempt of Court Act. Regarding the applicant's argument that as far as the disclosure order was concerned, the relevant national law failed to satisfy the foreseeability requirement, the interpretation of the relevant laws by the House of Lords did not go beyond what could be reasonably foreseen in the circumstances. The interference pursued the aim of protecting Tetra's rights. Freedom of expression constituted one of the essential foundations of a democratic society and the safeguards to be afforded to the press were of particular importance. Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure had on the exercise of that freedom, such a measure could not be compatible with A 10 unless it was justified by an overriding requirement in the public interest. The Court's task was to review under A 10 the decisions taken by the national courts pursuant to their power of appreciation. The purpose of the disclosure order was largely the same as that already being achieved by the injunction, namely, to prevent dissemination of the confidential information contained in the plan. The injunction was effective in stopping dissemination of the confidential information by the press. A vital component of the threat of damage to the company had thus already largely been neutralised by the injunction. That being so, in so far as the disclosure order merely served to reinforce the injunction, the additional restriction on freedom of expression which it entailed was not supported by sufficient reasons for the purposes of A 10(2). The further purposes served by the disclosure order (preventing publication to customers or competitors by the applicant journalist's source and unmasking a disloyal employee or collaborator, who might have continuing access to its premises, in order to terminate his or her association with the company) were relevant reasons. However, it would not be sufficient, *per se*, for a party seeking disclosure of a source to show merely that they would be unable without disclosure to exercise the legal right or avert the threatened legal wrong on which they based their claim in order to establish the necessity of disclosure. The considerations to be taken into account by the Convention institutions for their review under A 10(2) tipped the balance of competing interests in favour of the interest of democratic society in securing a free press. On the facts of the present case, the Court could not find that Tetra's interests in eliminating, by proceedings against the source, the residual threat of damage through dissemination of the confidential information otherwise than by the press, in obtaining compensation and in unmasking a disloyal employee or collaborator were, even if considered cumulatively, sufficient to outweigh the vital public interest in the protection of the applicant journalist's source. The Court did not, therefore, consider that the further purposes served by the disclosure order, when measured against the standards imposed by the Convention, amounted to an overriding requirement in the public interest. There was not a reasonable relationship of proportionality between the legitimate aim pursued by the disclosure order and the means deployed to achieve that aim. The restriction which the disclosure order entailed on the applicant journalist's exercise of his freedom of expression could not be regarded as having been necessary in a democratic society, within the meaning of A 10(2), for the protection of Tetra's rights under English law, notwithstanding the margin of appreciation available to the national authorities. Accordingly, both the order requiring the applicant to reveal his source and the fine imposed upon him for having refused to do so gave rise to a violation of his right to freedom of expression under A 10.

Finding of violation constituted just satisfaction for the non-pecuniary damage. Costs and expenses (GBP 37,595.50 less FF 9,300).

Cited: Jersild v DK (23.9.1994), SW v UK (22.11.1995), Sunday Times v UK (No 2) (26.11.1991), Tolstoy Miloslavsky v UK (13.7.1995).

Gori v Italy 91/62

[Application lodged 15.10.1987; Commission report 15.1.1991; Court Judgment 3.12.1991]

Mrs Maria Gori was unemployed. On 11 March 1985, she brought proceedings against the Istituto Nazionale della Previdenza Sociale (INPS) before the Rome magistrates' court in order to establish her right to a disability pension. The court delivered judgment on 22 June 1989, the text being lodged with the registry on 2 October 1989. She complained of the length of proceedings.

Comm found unanimously V 6(1).

Court unanimously struck the case out of the list.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr SK Martens.

Despite several reminders from the registry, the applicant showed no interest in the proceedings before the Court. There had been an implied withdrawal which constituted a 'fact of a kind to provide a solution of the matter'. The Court discerned no reason of public policy for continuing the proceedings. It noted previous cases in which it had reviewed the reasonableness of the length of civil proceedings. Accordingly, the case was struck out of the list.

Cited: Brigandì v I (19.2.1991), Caleffi v I (24.5.1991), Capuano v I (25.6.1987), Owners' Services Ltd v I (28.6.1991), Pretto and Others v I (8.12.1983), Pugliese (No 2) v I (24.5.1991), Santilli v I (19.2.1991), Vocaturo v I (24.5.1991), Zanghì v I (19.2.1991).

Gozalvo v France 99/85

[Application lodged 23.7.1997; Court Judgment 9.11.1999]

Mr Manuel Gozalvo underwent a blood transfusion and subsequently became infected with hepatitis. He complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr L Loucaides, Mr P Kûris, Mrs F Tulkens, Mr K Jungwiert, Mrs HS Greve.

The period to be taken into consideration began on 16 December 1993, and ended on 6 October 1999. It had lasted five years and more than nine months. The period could not be considered reasonable.

Non-pecuniary damage (FF 120,000).

Cited: Doustaly v F (23.4.1998), Kamasinski v A (19.12.1989), Karakaya v F (26.8.1994), Richard v F (22.4.1998), Vallée v F (26.4.1994), X v F (31.3.1992).

Gradinger v Austria 95/36

[Application lodged 22.5.1989; Commission report 19.5.1994; Court Judgment 23.10.1995]

On 1 January 1987, at about 4 am, while driving his car, Mr Josef Gradinger caused an accident which led to the death of a cyclist. On 15 May 1987, the St Pölten Regional Court convicted him of causing death by negligence and sentenced him to 200 day-fines of 160 Austrian schillings with 100 days' imprisonment in default of payment. The court found that the applicant had been drinking before the accident, but not to such an extent as to be caught by the Criminal Code. On 16 July 1987, the St Pölten district authority issued a sentence order imposing on the applicant a fine of ATS 12,000, with two weeks' imprisonment in default, for driving under the influence of drink. The applicant appealed to the Lower Austria regional government, which dismissed his appeal on 27 July 1988. On 11 October 1988, the Constitutional Court declined to accept his appeal for

adjudication. A further appeal, to the Administrative Court, was dismissed as ill-founded on 29 March 1989. The applicant complained that he had been convicted, contrary to the *non bis in idem* principle, by an administrative authority which could not be considered an independent and impartial tribunal and which had called on the services of its own experts.

Comm found unanimously V 6(1) as regards right to an independent and impartial tribunal, V P7A4, unanimously no separate issue under A 6(1) regarding the lack of a hearing in the Administrative Court.

Court found unanimously V 6(1) as regards access to a court, not necessary to examine the complaints based on the lack of a hearing in the Administrative Court and that court's failure to take evidence from witnesses, V P7A4.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Mr R Macdonald, Mr SK Martens (so), Mr I Foighel, Mr JM Morenilla, Sir John Freeland, Mr J Makarczyk.

In order to determine whether an offence qualified as 'criminal' for the purposes of the Convention, it was first necessary to ascertain whether or not the provision defining the offence belonged, in the legal system of the respondent State, to criminal law; next, the 'very nature of the offence' and the degree of severity of the penalty risked had to be considered. Although the offences in issue and the procedures followed in the case fell within the administrative sphere, they were nevertheless criminal in nature. That was reflected in the terminology employed. In addition, the fine imposed on the applicant was accompanied by an order for his committal to prison in the event of his defaulting on payment. Those considerations were sufficient to establish that the offence of which the applicant was accused could be classified as 'criminal' for the purposes of the Convention. It followed that A 6 applied.

The applicant based his complaints on A 6, whereas the wording of the Austrian reservation mentioned only A 5 and made express reference solely to measures for the deprivation of liberty. Moreover, the reservation only came into play where both substantive and procedural provisions of one or more of the four specific laws indicated in it had been applied. Here, however, the substantive provisions of a different Act, the Road Traffic Act 1960, were applied. The reservation in question did not therefore apply in the instant case.

Decisions taken by administrative authorities which did not themselves satisfy the requirements of A 6(1) had to be subject to subsequent control by a judicial body that had full jurisdiction. The Constitutional Court was not such a body. In the present case, it could look at the impugned proceedings only from the point of view of their conformity with the Constitution, and that did not enable it to examine all the relevant facts. It accordingly lacked the powers required under A 6(1). The powers of the Administrative Court had to be assessed in the light of the fact that the court in this case was sitting in proceedings that were of a criminal nature for the purposes of the Convention. It followed that when the compatibility of those powers with A 6(1) was being gauged, regard had to be had to the complaints raised in that court by the applicant as well as to the defining characteristics of a judicial body that had full jurisdiction. Those included the power to quash in all respects, on questions of fact and law, the decision of the body below. As the Administrative Court lacked that power, it could not be regarded as a tribunal within the meaning of the Convention. It followed that the applicant did not have access to a tribunal. There had, accordingly, been a violation of A 6 on that point.

Having regard to the conclusions above, the Court did not consider it necessary to examine the complaints regarding the Administrative Court's failure to hold a hearing or take evidence from witnesses.

Regarding the reservation, there was no 'brief statement' of the law which was said not to conform to P7A3 (compensation for wrongful conviction) and P7A4 (right not to be tried or punished twice). The 'declaration' did not afford to a sufficient degree a guarantee that it did not go beyond the provisions expressly excluded by Austria. Accordingly, the declaration did not satisfy the requirements of A 64(2). Therefore, the 'declaration' was invalid and it was not necessary also to examine whether the other requirements of A 64 were complied with.

The aim of P7A4 was to prohibit the repetition of criminal proceedings that had been concluded by a final decision. P7A4 did not therefore apply before new proceedings had been opened. In the

present case, in as much as the new proceedings reached their conclusion in a decision later in date than the entry into force of P7, namely, the Administrative Court's judgment of 29 March 1989, the conditions for applicability *ratione temporis* were satisfied. According to the St Pölten Regional Court, the aggravating circumstance referred to in the Criminal Code, namely a blood alcohol level of 0.8 grams per litre or higher, was not made out with regard to the applicant. On the other hand, the administrative authorities found, in order to bring the applicant's case within the ambit of the Road Traffic Act, that that alcohol level had been attained. The provisions in question differed not only as regards the designation of the offences but also as regards their nature and purpose. The offence provided for in the Road Traffic Act represented only one aspect of the offence punished under the Criminal Code. Nevertheless, both impugned decisions were based on the same conduct. Accordingly, there had been a breach of P7A4.

Costs and expenses (ATS 150,000).

Cited: Albert and Le Compte v B (10.2.1983), Belilos v CH (29.4.1988), Chorherr v A (25.8.1993), Demicoli v Malta (27.8.1991), Fischer v A (26.4.1995), Öztürk v D (21.2.1984).

Granger v United Kingdom (1990) 12 EHRR 469 90/6

[Application lodged 5.12.1985; Commission report 12.12.1988; Court Judgment 28.3.1990]

Mr Joseph Granger gave evidence in a trial involving serious incidents between rival groups in Glasgow in the early 1980s which had culminated in a fire-raising attack on industrial premises, followed by a petrol-bomb attack on an apartment resulting in the death of six members of the same family. He was subsequently arrested and prosecuted in the High Court of Justiciary for perjury. He was found guilty and sentenced to imprisonment. His application for legal assistance, to the Supreme Court Legal Aid Committee of the Law Society of Scotland, was refused, as the Committee was not satisfied that the applicant had substantial grounds for his appeal. As a consequence, the applicant represented himself at the appeal hearing before the High Court of Justiciary. The court refused the appeal. The applicant complained of the refusal of legal aid for his appeal.

Comm found unanimously V 6(3)(c), by majority (11–1) no separate issue under 6(1), unanimously NV 5, NV 8, unanimously NV 13 in respect of the applicant's complaints under 5 and 8, no separate issue under 13 in respect of the applicant's complaints under 6.

Court unanimously rejected Government's preliminary objection, found V 6(3)(c)+6(1), not necessary to examine 5, 8, 13.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Sir Vincent Evans, Mr C Russo, Mr J De Meyer, Mr SK Martens.

The preliminary objection of non-exhaustion was rejected partly on the grounds of estoppel as the government had not raised the complaint earlier and partly as being without foundation as the government had not furnished the necessary proof of the availability of a remedy that the applicant should have exhausted.

The application of A 6(1) and (3)(c) to the appellate courts depended on the special features of the proceedings; account had to be taken of the entirety of the proceedings and of the role of the appellate court. The question of whether the interests of justice required a grant of legal aid had to be determined in the light of the case as a whole, not only at the time the legal aid decision was given, but also the time the appeal was heard. The applicant did not have sufficient means, his personal liberty was at stake, the case was complex with one of the issues requiring an adjournment to allow for further detailed consideration. There was no review of the refusal of legal aid by the High Court. In all the circumstances it would have been in the interests of justice for free legal assistance to have been given to the applicant at least at that stage of the proceedings.

The claims under 5, 8 and 13 were not pursued before the Court, which saw no need to examine them of its own motion.

Non-pecuniary damage (by majority (4–3) GBP 1,000), costs and expenses (GBP 7,000).

Cited: Artico v I (13.5.1980), Bricmont v B (7.7.1989), Brozicek v I (19.12.1989), Eckle v D (1983), Kostovski v NL (20.11.1989), Monnell and Morris v UK (2.3.1987), Pakelli v D (25.4.1983).

Gregory v United Kingdom (1995) 25 EHRR 577 97/9

[Application lodged 7.7.1993; Commission report 18.10.1995; Court Judgment 25 February 1997]

Mr David Gregory was a black British citizen. He was tried for robbery at Manchester Crown Court in November 1991. After the jury retired to consider their verdict, a note was passed by them to the judge stating that racial overtones were being shown and requesting one member to be discharged. The trial judge showed the note to counsel for the prosecution and defence and consulted them on the appropriate response to it. The judge recalled the jury and directed them to decide the case according to the evidence in the case and nothing else and reminding them of their duty. The jury eventually delivered a ten to two majority verdict finding the applicant guilty. He was sentenced to six years' imprisonment. His appeal to the Court of Appeal was dismissed. He complained that he had not been given a fair trial by an independent and impartial tribunal and that he had been discriminated against on grounds of his race and/or colour.

Comm found by majority (8–3) NV 6, unanimously no separate issue under 14+6.

Court found by majority (8–1) NV 6(1), unanimously NV 14+6.

Judges: Mr R Ryssdal, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr F Matscher, Mr A Spielmann, Mr N Valticos, Mr I Foighel, Mr A B Baka, Sir John Freeland.

It was of fundamental importance in a democratic society that the courts inspired confidence in the public and above all, as far as criminal proceedings were concerned, in the accused. To that end a tribunal, including a jury, had to be impartial from a subjective as well as an objective point of view. There was no evidence of actual or subjective bias on the part of one or more jurors. It was not possible under English law for the trial judge to question the jurors about the circumstances which gave rise to the note. The members of the jury were committed by oath or affirmation to faithfully try the applicant and to give a true verdict according to the evidence. The trial judge sought the views of both prosecution and defence counsel. He dealt with the allegation by means of a firmly worded redirection to the jury having had the benefit of submissions from both counsel. No more was required under A 6 to dispel any objectively held fears or misgivings about the impartiality of the jury than was done by the judge. While the guarantee of a fair trial might in certain circumstances require a judge to discharge a jury, it also had to be acknowledged that that might not always be the only means to achieve that aim. In circumstances such as those in issue, other safeguards, including a carefully worded redirection to the jury, might be sufficient. The judge had taken sufficient steps to check that the court was established as an impartial tribunal within the meaning of A 6(1) and he offered sufficient guarantees to dispel any doubts in that regard. Therefore, there had been no violation of A 6(1). The applicant's complaint under A 14 did not give rise to any separate issue. Therefore, there had been no violation under that head.

Cited: Padovani v I (26.2.1993), Pullar v UK (10.6.1996), Remli v F (23.4.1996).

Grigoriades v Greece (1999) 27 EHRR 464 97/89

[Application lodged 17 March 1994; Commission report 25.6.1996; Court Judgment 25 November 1997]

Mr Panayiotis Grigoriades was a conscripted probationary reserve officer holding the rank of second lieutenant. In the course of his military service, he claimed to have discovered a number of abuses committed against conscripts. On 30 April 1989, he failed to return to his unit after leave. On 10 May 1989, he sent a letter to his unit's commanding officer through a taxi driver. Taking the view that the content of the letter constituted an insult to the armed forces, the commanding officer instituted criminal proceedings against the applicant under the Military Criminal Code. The applicant was tried on 27 June 1989 by the Permanent Army Tribunal of Ioannina on charges of desertion and insulting the army. He was found guilty and was sentenced to imprisonment for both offences. He appealed to the Military Appeal Court which quashed his conviction for

desertion but upheld his conviction for insulting the army. His appeal to the Court of Cassation was rejected. He alleged a violation of the right to freedom of expression and complained that he had been convicted under an imprecise provision of criminal law.

Comm found by majority (28–1) V 10, unanimously NV 7.

Court found by majority (12–8) V 10, unanimously NV 7.

Judges: Mr R Ryssdal, President, Mr R Bernhardt (c), Mr F Gölcüklü (jd), Mr L-E Pettiti (jd), Mr B Walsh, Mr R Macdonald, Mr C Russo (d), Mr A Spielmann, Mr N Valticos, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou (d), Mr JM Morenilla (d), Sir John Freeland (d), Mr L Wildhaber (c), Mr P Jambrek (c), Mr K Jungwiert, Mr U Lôhmus, Mr J Casadevall (d), Mr V Butkevych.

The applicant's conviction for insulting the army, and the sentence imposed on him, constituted an interference with his freedom of expression. The conviction had a basis in national law, namely, the Military Criminal Code as in force at the time. The provision was couched in very broad terms, but from the meaning of the word 'insult' it ought to have been clear to the applicant that he risked incurring a criminal sanction. The interference complained of was prescribed by law. An effective military defence required the maintenance of an appropriate measure of discipline in the armed forces and accordingly, the interference complained of pursued the legitimate aims of protecting national security and public safety. The Court recalled its case-law as to the necessity of the interference. A 10 applied to military personnel as to all other persons. Nevertheless, it was open to the State to impose restrictions on freedom of expression where there was a real threat to military discipline. It was not, however, open to the national authorities to rely on such rules for the purpose of frustrating the expression of opinions, even if these were directed against the army as an institution. The applicant had a letter delivered to his commanding officer. The contents of the letter included certain strong and intemperate remarks concerning the armed forces in Greece. However, those remarks were made in the context of a general and lengthy discourse critical of army life and the army as an institution. The letter was not published by the applicant or disseminated by him to a wider audience and it had not been alleged that any other person had knowledge of it. Nor did it contain any insults directed against either the recipient of the letter or any other person. Against such a background the objective impact on military discipline was insignificant. The prosecution and conviction of the applicant therefore could not be justified as necessary in a democratic society within the meaning of A 10(2). There had thus been a violation of that Article.

The complaint under A 7 coincided with the applicant's allegation that his conviction and sentence were not prescribed by law. For the reasons already stated, there had been no violation of A 7.

Finding of V 10 constituted just satisfaction in respect of any non-pecuniary damage (by majority 17–3). Costs and expenses (GRD 2,000,000).

Cited: Sunday Times v UK (6.11.1980), Vereinigung demokratischer Soldaten Österreichs and Gubi v A (19.12.1994), Vogt v D (26.9.1995).

Groppera Radio AG and Others v Switzerland (1990) 12 EHRR 321 90/5

[Application lodged 9.2.1984; Commission report 13.10.1988; Court Judgment 28.3.1990]

The applicants (a limited company, its sole shareholder, and two journalist employees) relied on A 10, complaining that the ban on cable retransmission in Switzerland of their broadcasts from Italy infringed their right to impart information and ideas regardless of frontiers. They also claimed to be victims of a breach of A 13 for want of any remedy against a federal council ordinance.

Comm found by a majority V 10, unanimously NV 13.

Court dismissed the Government's preliminary objection regarding victim, found by a majority NV 10, unanimously no need to consider 13.

Victim under A 25 meant the person directly affected by the act or omission in issue, a violation being conceivable even in the absence of any detriment. Detriment was relevant only to the

application of A 50. Although the bans contained in a 1983 Ordinance and two administrative decisions of 1984 were not formally directed to the applicants, who continued to broadcast freely over the air, they were affected by the measures as shown by the loss of an appreciable proportion of their audience. There was no ground for distinguishing between the different applicants; they all had a direct interest in the continued transmission of the programmes by cable. All of them could claim to be victims of the alleged violation.

It was not necessary to give a precise definition of what was meant by 'information' and 'ideas'. Both broadcasting of programmes over the air and cable retransmission of such programmes were covered by the right enshrined in the first two sentences of A 10(1), without there being a need to draw distinctions according to the content of the programmes. The administrative decisions amounted to an interference by a public authority. The third paragraph of A 10(1) was applicable to the case. The object and purpose of the third sentence of A 10(1) and the scope of its application had to be considered in the context of the Article as a whole and in particular in relation to the requirements of para 2. The purpose of the third sentence of A 10(1) was to make it clear that States were permitted to control by a licensing system the way in which broadcasting, particularly the technical aspects, was organised in their territories. It did not provide, however, that licensing measures should not be subject to the requirements of para 2, as that would lead to a result contrary to the object and purpose of A 10 taken as a whole. The interference was in accordance with the third sentence of para 1. The scope of the concepts of foreseeability and accessibility depended to a considerable degree on the content of the instrument in issue, the field it was designed to cover and the number and status of those to whom it was addressed. In the present case, the relevant provisions of international telecommunications law were highly technical and complex and primarily intended for specialists who knew how the rules could be obtained. The rules in issue were sufficiently clear and precise to enable the applicants and their advisers to regulate their conduct in the matter. The interference pursued the dual aims of prevention of disorder in telecommunications and protection of the rights of others by allowing a fair allocation of frequencies internationally and nationally. Both aims were legitimate and fully compatible with A 10(2). The State had not overstepped the margin of appreciation as most Swiss companies had ceased retransmitting the programmes in question, the Swiss authorities never jammed the broadcasts, the ban was imposed on a company incorporated under Swiss law whose subscribers all lived on Swiss territory and continued to receive the programmes of several other stations and the procedure chosen could appear necessary in order to prevent evasion of the law and not as a form of censorship against the content or tendencies of the programmes.

Cited: Johnston v IRL (18.12.1986); Markt Intern Verlag GmbH v D (20.11.1989).

Guagenti v Italy 00/79

[Application lodged 23.8.1994; Commission report 30.11.1998; Court Judgment 15.2.2000]

Mr Agostino Guagenti complained of the length of civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr L Ferrari Bravo, Mr G Bonello, Mrs M Tsatsa-Nikolovska, Mr P Lorenzen, Mr AB Baka, Mr E Levits.

The period to be taken into consideration began on 9 July 1980 and ended on 26 September 1995. It had lasted more than 15 years and two months at seven levels of jurisdiction. The period could not be considered to be reasonable.

Non-pecuniary damages (ITL 15,000,000), costs and expenses (ITL 5,000,000).

Cited: Bottazzi v I (28.7.1999).

Guérin v France (2000) 29 EHRR 210 98/55

[Application lodged 11 July 1994; Commission report 11.4.1997; Court Judgment 29 July 1998]

Mr Yves Guérin was a deputy police sergeant. On 29 November 1990, he was charged with accepting a bribe and remanded in custody. In a judgment of 6 June 1991, the Nice Criminal Court acquitted him. The prosecution appealed and in a judgment of 14 October 1991 in the applicant's absence, the Aix-en-Provence Court of Appeal set aside the judgment at first instance and sentenced the applicant to two years' imprisonment. The applicant's request for a retrial was granted. He was found guilty, sentenced to imprisonment and a warrant issued for his arrest. On 24 November 1992, the applicant was admitted to a psychiatric institution, where he stayed until 16 December 1992, when the police enforced the warrant for his arrest. On 26 November 1992, acting through a lawyer, the applicant lodged an appeal on points of law. In a judgment of 19 January 1994, the Court of Cassation declared the appeal inadmissible on points of law as the applicant had not complied with the warrant for his arrest. He complained that his right to a court had been infringed.

Comm found by majority (29–1) V 6(1).

Court found by majority (20–1) V 6(1).

Judges: Mr R Bernhardt, President, Mr L-E Pettiti (d), Mr A Spielmann, Mr J De Meyer, Mrs E Palm, Mr I Foighel, Mr AN Loizou, Sir John Freeland, Mr AB Baka, Mr MA Lopes Rocha, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr P Jambrek, Mr K Jungwiert, Mr P Kûris, Mr E Levits, Mr J Casadevall, Mr P. van Dijk, Mr M Voicu, Mr V Butkevych.

The right to a court, of which the right of access was one aspect, was not absolute; it might be subject to limitations permitted by implication, particularly regarding the conditions of admissibility of an appeal. However, those limitations should not restrict exercise of the right in such a way or to such an extent that the very essence of the right was impaired. They had to pursue a legitimate aim and there had to be a reasonable proportionality between the means employed and the aim sought to be achieved. Where an appeal on points of law was declared inadmissible solely because, as in the present case, the appellant had not surrendered to custody pursuant to the judicial decision challenged in the appeal, that ruling compelled the appellant to subject himself in advance to the deprivation of liberty resulting from the impugned decision, although that decision could not be considered final until the appeal has been decided or the time limit for lodging an appeal had expired. That impaired the very essence of the right of appeal, by imposing a disproportionate burden on the appellant, thus upsetting the fair balance that had to be struck between the legitimate concern to ensure that judicial decisions were enforced, on the one hand, and the right of access to the Court of Cassation and exercise of the rights of the defence on the other. The Court emphasised the crucial role of proceedings in cassation, which formed a special stage of criminal proceedings whose consequences might prove decisive for the accused. A 6(1) did not compel the Contracting States to set up courts of appeal or of cassation. Nevertheless, a State which did institute such courts was required to ensure that persons amenable to the law should enjoy before those courts the fundamental guarantees contained in A 6. As the Court had held in Poitrimol, the inadmissibility of the appeal on points of law, on grounds connected with the applicant's having absconded, amounted to a disproportionate sanction, having regard to the signal importance of the rights of the defence and of the principle of the rule of law in a democratic society. The applicant did not attempt to evade enforcement of the arrest warrant. Living in Brest, he was acquitted at first instance and travelled to Aix-en-Provence to attend the hearings in the Court of Appeal. He was not in court for the delivery of the judgment, but no statutory provision obliged him to attend, since in French law such attendance was a right, not an obligation. The day after the judgment of the Court of Appeal, he was admitted to a psychiatric institution. The police could have apprehended him at any time, and indeed did so on 16 December 1992 at the hospital he was in. Having regard to all the circumstances of the case, the Court considered that the

applicant suffered an excessive restriction of his right of access to a court, and therefore of his right to a fair trial. There had accordingly been a breach of A 6(1).

Non-pecuniary damage (FF 20,000), costs and expenses (FF 48,722).

Cited: Ashingdane v UK (28.5.1985), Bellet v F (4.12.1995), Delcourt v B (17.1.1970), Fayed v UK (21.9.1994), Golder v UK (21.2.1975), Levages Prestations Services v F (23.10.1996), Poitrimol v F (23.11.1993), Tolstoy Miloslavsky v UK (13.7.1995).

Guerra and Others v Italy (1998) 26 EHRR 357 98/8

[Application lodged 18.10.1988; Commission report 29.6.1996; Court Judgment 19 February 1998]

The 40 applicants all lived in the town of Manfredonia which was approximately 1 km away from the Enichem Agricoltura company's chemical factory. In 1988, the factory, which produced fertilisers and caprolactam (a chemical compound used in the manufacture of synthetic fibres such as nylon), was classified as 'high risk'. In the course of its production cycle, the factory released large quantities of inflammable gas and chemicals. Accidents due to malfunctioning had already occurred in the past, the most serious one on 26 September 1976, when the scrubbing tower for the ammonia synthesis gases exploded, allowing several tonnes of potassium carbonate and bicarbonate solution, containing arsenic trioxide, to escape. 150 people were admitted to hospital with acute arsenic poisoning. Following complaints by the residents, there had been criminal proceedings in the Foggia magistrates' court which had resulted in some convictions. The applicants complained that the lack of practical measures, in particular to reduce pollution levels and major-accident hazards arising out of the factory's operation, infringed their right to respect for their lives and physical integrity. They also complained that the relevant authorities' failure to inform the public about the hazards and about the procedures to be followed in the event of a major accident, as required by domestic legislation, infringed their right to freedom of information as guaranteed by A 10.

Comm found by majority (21–8) V 10.

Court by majority (19–1) dismissed the Government's preliminary objection, found by majority (18–2) 10 not applicable, unanimously V 8, not necessary to consider 2.

Judges: Mr R Bernhardt (jc), President, Mr Thór Vilhjálmsson (pc/pd), Mr F Gölcüklü, Mr F Matscher, Mr B Walsh (c), Mr R Macdonald, Mr C Russo (jc), Mr A Spielmann, Mrs E Palm (c), Mr AN Loizou, Sir John Freeland, Mr MA Lopes Rocha, Mr G Mifsud Bonnici (pd/pc), Mr J Makarczyk (jc), Mr B Repik, Mr P Jambrek (c), Mr P Kûris, Mr E Levits, Mr J Casadevall, Mr P van Dijk (jc).

The Court's jurisdiction extended to all cases concerning the interpretation and application of the Convention which were referred to it in accordance with A 48 and in the event of dispute as to whether the Court had jurisdiction, the matter was settled by the decision of the Court. Since the Court was master of the characterisation to be given in law to the facts of the case, it did not consider itself bound by the characterisation given by an applicant, a government or the Commission. By virtue of the *jura novit curia* principle, it has, for example, considered of its own motion complaints under Articles or paragraphs not relied on by those appearing before it and even under a provision in respect of which the Commission had declared the complaint to be inadmissible while declaring it admissible under a different one. A complaint was characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on. The Court had full jurisdiction only within the scope of the case, which was determined by the decision on the admissibility of the application. Within the compass thus delimited, the Court could deal with any issue of fact or law that arose during the proceedings before it. In the present case, the grounds based on A 8 and 2 were not expressly set out in the application or the applicants' initial memorials lodged in the proceedings before the Commission. Clearly, however, those grounds were closely connected with the one pleaded. The Court, therefore, had jurisdiction to consider the case under A 8 and 2 of the Convention as well as under A 10.

An urgent application under the Code of Civil Procedure would have been a practicable remedy if the applicants' complaint had concerned failure to take measures designed to reduce or eliminate pollution; in the instant case, however, such an application would probably have resulted in the factory's operation being suspended. Instituting criminal proceedings would at most have secured conviction of the factory's managers, but certainly not communication of any information. Neither remedy would have enabled the applicants to achieve their aim and the preliminary objection of non-exhaustion was therefore dismissed.

A 10 imposed on States not just a duty to make available information to the public on environmental matters, but also a positive obligation to collect, process and disseminate such information, which by its nature could not otherwise come to the knowledge of the public. The protection afforded by A 10 therefore had a preventive function with respect to potential violations of the Convention in the event of serious damage to the environment and A 10 came into play even before any direct infringement of other fundamental rights, such as the right to life or to respect for private and family life, occurred. In cases concerning restrictions on freedom of the press, the Court had recognised that the public had a right to receive information as a corollary of the specific function of journalists, which was to impart information and ideas on matters of public interest. Although the prefect of Foggia prepared the emergency plan on the basis of the report submitted by the factory and the plan was sent to the Civil Defence Department, the applicants had yet to receive the relevant information. Freedom to receive information, referred to in A 10(2), basically prohibited a government from restricting a person from receiving information that others wished or might be willing to impart to him. That freedom could not be construed as imposing on a State, in circumstances such as those of the present case, positive obligations to collect and disseminate information of its own motion. A 10 was not applicable in the present case.

The direct effect of the toxic emissions on the applicants' right to respect for their private and family life meant that A 8 was applicable. Italy could not be said to have 'interfered' with the applicants' private or family life; the applicants complained not of an act by the State but of its failure to act. However, although the object of A 8 was essentially that of protecting the individual against arbitrary interference by the public authorities, it did not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there might be positive obligations inherent in effective respect for private or family life. In the present case, it need only be ascertained whether the national authorities took the necessary steps to ensure effective protection of the applicants' right to respect for their private and family life as guaranteed by A 8. The Ministry for the Environment and the Ministry of Health had jointly adopted conclusions on the safety report submitted by the factory. Those conclusions provided the prefect with instructions as to the emergency plan, which he had drawn up in 1992, and the measures required for informing the local population. However, by 7 December 1995, documents concerning the conclusions had still not been received. Severe environmental pollution might affect individuals' well being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely. In the present case the applicants waited, right up until the production of fertilisers ceased in 1994, for essential information that would have enabled them to assess the risks they and their families might run if they continued to live at Manfredonia, a town particularly exposed to danger in the event of an accident at the factory. The respondent State did not therefore fulfil its obligation to secure the applicants' right to respect for their private and family life, in breach of A 8.

Having regard to the conclusion that there had been a violation of A 8, the Court found it unnecessary to consider the case under A 2 also.

Non-pecuniary damage (ITL 10,000,000 to each of the applicants).

Cited: Airey v IRL (9.10.1979), Demicoli v Malta (27.8.1991), Leander v S (26.3.1987), López Ostra v E (9.12.1994), Observer and Guardian v UK (26.11.1991), Philis v GR (27.8.1991), Powell and Rayner v UK (21.2.1990), Thorgeir Thorgeirson v Iceland (25.6.1992), Yagci and Sargin v TR (8.6.1995), Zanghì v I (19.2.1991).

Guichon v France 00/96

[Application lodged 17.12.1997; Court Judgment 21.3.2000]

Mr Philippe Guichon complained of the length of proceedings in respect of an employment dispute.

Court found by majority (4–3) NV 6(1).

Judges: Sir Nicolas Bratza, President (d), Mr J-P Costa, Mr L Loucaides (d), Mr P Kûris, Mr W Fuhrmann (d), Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 4 September 1992 and ended on 17 December 1997. It had lasted five years, three months, 13 days. There was no significant period of inactivity attributable to the national authorities. Having regard to the global length of the proceedings, the authorities had shown the necessary diligence.

Cited: Doustaly v F (23.4.1998), Proszak v PL (16.12.1997), Richard v F (22.4.1998).

Guillemin v France (1998) 25 EHRR 435 97/5

[Application lodged 28.11.1991; Commission report 18.10.1995; Court Judgment 21.2.1997 (merits), 2.9.1998 (A 50)]

Mrs Adrienne Guillemin owned land on which, in a decision of 7 October 1982, the Prefect of the département of Essonne made a declaration that it was in the public interest to acquire by compulsory purchase for the development of a residential area in the town of Saint-Michel-sur-Orge. She appealed against the expropriation order and sought damages. On 4 January 1990, the Court of Cassation set aside the expropriation order. She sought restoration of her rights or compensation. The property had been developed and sold to individual purchasers who were occupying the properties. The claim for compensation was still pending before the Evry tribunal de grande instance. The applicant complained of the length of the proceedings to challenge the expropriation, the subsequent failure to enforce the judicial decisions in her favour and the loss of her property.

Comm found unanimously V 6(1), V P1A1.

Court found unanimously V 6(1), dismissed the Government's preliminary objections concerning P1A1, found V P1A1.

Judges (merits): Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Mr J De Meyer, Mr AN Loizou, Mr MA Lopes Rocha, Mr B Repik, Mr P Kûris, Mr E Levits.

Judges (A 50): Mr F Matscher, President, Mr L-E Pettiti, Mr J De Meyer, Mr R Pekkanen, Mr AN Loizou, Mr MA Lopes Rocha, Mr B Repik, Mr P Kûris, Mr E Levits.

The decision whereby the Prefect declared the acquisition of land including the applicant's to be in the public interest was taken on 7 October 1982. On 19 November 1982, she applied to the administrative court to have that decision set aside. In civil cases, the 'reasonable time' for the purposes of A 6(1) usually began to run when the application was made to the court. In the present case, the period to be taken into consideration began on 19 November 1982 at the latest. In relation to the application of A 6(1), the period whose reasonableness fell to be reviewed took in the entirety of the proceedings, right up to the decision which disposed of the dispute. In the present case, resolving the dispute entailed bringing two sets of proceedings, one of which was still pending. The length of time to be considered accordingly exceeded 14 years. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case, and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. Expropriation proceedings were relatively complex, in particular as they came under the jurisdiction of two sets of courts. There were delays due to organisational difficulties and the applicant could not be held responsible for other delays. There were delays in the courts and delay on the part of the town

council. The total delay already exceeded what could be regarded as reasonable. There had accordingly been a violation of A 6(1).

The judgment in which the Evry tribunal de grande instance held that the applicant was entitled to compensation from the expropriating town council was delivered after the end of the proceedings before the Commission. The domestic courts' acknowledgment of the applicant's right to compensation did not mean that she ceased to be a victim. She remained dispossessed of her property without any compensation after its unlawful expropriation by the administrative authorities and she had consequently not ceased to be a 'victim' within the meaning of A 25. As the proceedings to which she was a party had been so slow, it was unnecessary at that time for her to institute further proceedings in order to comply with the requirements of A 26. Nor could she be criticised for not awaiting the outcome of the proceedings pending in the Evry tribunal de grande instance. She had satisfied requirement of A 26 regarding exhaustion of domestic remedies. The Government's objections were therefore dismissed.

In 1982 the French authorities unlawfully expropriated the applicant's property to develop an extensive residential area. By erecting new buildings, later sold individually, she had been permanently deprived of the chance of regaining possession of her land. Her only course was to seek compensation. Compensation for the loss sustained by the applicant could only constitute adequate reparation where it also took into account the damage arising from the length of the deprivation. It also had to be paid within a reasonable time. The court proceedings for compensation had already lasted five years and were continuing. Compensation had not to date begun to be paid, although it could have been agreed on even after the expropriation order had been issued. The potentially large sum that might be awarded at the end of the pending proceedings did not offset the previously noted failure to pay compensation and could not be decisive in view of the length of all the proceedings already instituted by the applicant. There had therefore been a violation of P1A1.

Pecuniary damages (FF 60,000), non-pecuniary damages (FF 250,000), costs and expenses (FF 60,000), lawyer's fees (FF 30,000).

Cited: Eckle v D (15.7.1982), Erkner and Hofauer v A (23.4.1987), Guincho v P (10.7.1984), Inze v A (28.10.1987), Katikaridis and Others v GR (15.11.1996), Stran Greek Refineries and Stratis Andreadis v GR (9.12.1994), Zubani v I (7.8.1996).

Guillot v France 96/44

[Application lodged 28.3.1987; Commission report 12.4.1995; Court Judgment 24.10.1996]

Mr Gérard Guillot and his wife, Marie-Patrice, chose to give their daughter, born on 7 April 1983, the forenames 'Fleur de Marie, Armine, Angèle'. The registrar of births, deaths and marriages for Neuilly-sur-Seine, refused to register the first of these names on the ground that it did not appear in any calendar of saints' days. Nanterre tribunal de grande instance dismissed the applicants' main application for an order that the forename 'Fleur de Marie' be added as their daughter's first forename, but granted their application made in the alternative for the addition of 'Fleur-Marie'. Their appeals to the Versailles Court of Appeal and the Court of Cassation were dismissed. They complained that the refusal by the authorities to enter the forename they had chosen for their child on her birth certificate constituted a violation of the right to respect for their private and family life.

Comm found by majority (13–11) NV 8.

Court unanimously found A 8 applicable, by majority (7–2) NV 8.

Judges: Mr R Ryssdal, President, Mr L-E Pettiti, Mr R Macdonald (jd), Mr A Spielmann, Mr J De Meyer (jd), Mr R Pekkanen, Mr JM Morenilla, Mr AB Baka, Mr P Jambrek.

A 8 did not contain any explicit provisions on forenames. However, since they constituted a means of identifying persons within their families and the community, forenames, like surnames, concerned private and family life. Furthermore, the choice of a child's forename by its parents was

a personal, emotional matter and therefore came within their private sphere. The subject matter of the complaint thus fell within the ambit of A 8.

The applicants were understandably upset by the refusal to register the forename they had chosen for their daughter. That forename consequently could not appear on official documents and deeds and the difference between the forename in law and the forename she actually used could entail certain complications for the applicants when acting as her statutory representatives. However, the child regularly used the forename in issue (Fleur de Marie) without hindrance and the French courts, which considered the child's interest, allowed the application made in the alternative by the applicants for registration of the forename 'Fleur-Marie'. The Court did not find that the inconvenience complained of by the applicants was sufficient to raise an issue of failure to respect their private and family life under A 8(1). Consequently, there had not been a violation of A 8.

Cited: Burghartz v CH (22.2.1994), Stjerna v SF (25.11.1994).

Guincho v Portugal (1985) 7 EHRR 223 84/9

[Application lodged 20.5.1980; Commission report 10.3.1983; Court Judgment 10.7.1984]

Mr Manuel dos Santos Guincho worked as an electrician. On 18 August 1976, the car in which he was travelling was involved in a collision as a consequence of which he was injured, losing the use of his left eye. Criminal proceedings were instituted against the drivers of both vehicles for causing unintentional bodily harm. Those proceedings were subsequently closed as a result of an amnesty granted under a Legislative Decree. On 7 December 1978, the applicant commenced a civil action in the Vila Franca de Xira Regional Court against the drivers. Judgment was given on 25 October 1982 with a finding in favour of the applicant. On 22 September 1983, the applicant sought execution of the judgment in the Regional Court. The applicant complained of the length of the civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr G Wiarda, President, Mr J Cremona, Mr W Ganshof van der Meersch, Mr F Gölcüklü, Mr J Pinheiro Farinha, Mr E García de Enterría, Mr J Gersing.

The relevant period started on 7 December 1978, the date proceedings were instituted before the Vila Franca de Xira Regional Court. The action fell into two phases, the first one lasting until 25 October 1982 and the second one, as yet uncompleted, being the 'execution' procedure. The latter procedure, which was entirely dependent upon the initiative being taken by the applicant, was not commenced until 23 September 1983. The Court consequently confined its examination to the first phase, which ran from 7 December 1978 until 25 October 1982, a period of three years, 10 months and 18 days. The reasonableness of the length of proceedings had to be assessed in each case according to the particular circumstances and having regard to the criteria laid down in the Court's case-law. The principle of determination in Portuguese civil litigation whereby the initiative in proceedings rested with the parties did not dispense the courts from ensuring the expeditious trial of the action as required by A 6. The proceedings did not entail any particular difficulty. The dilatory nature of the proceedings could not be attributed to the applicant. There were two occasions of almost total inactivity related to the performance of procedural acts of a purely routine character, such as the service of the writ on the defendants and the transmission of the defence pleadings to the plaintiffs. Those periods could be justified only by very exceptional circumstances. The Court took into account that the restoration of democracy as from April 1974 led Portugal to carry out an overhaul of its judicial system in troubled circumstances which were without equivalent in most of the other European countries and which were rendered more difficult by the process of decolonisation as well as by the economic situation. The Court did not underestimate the efforts taken to improve the citizen's access to justice and the administration of the courts, in particular after the promulgation of the Constitution in 1976. Nonetheless, in ratifying the Convention, Portugal gave the guarantee in A 1 and undertook the obligation of organising its legal system so as to ensure compliance with the requirements of A 6(1), including

that of trial within a 'reasonable time'. That requirement was very important for the proper administration of justice. A temporary backlog of court business did not engage the international responsibility of the State concerned under the Convention provided that the State took effective remedial action with the requisite promptness. In the present case, the growth in the burden of work was spread over several years. However, in the face of a state of affairs that had developed into one of structural organisation, the steps taken by the State were insufficient and belated. Although reflecting the will to tackle the problem, they were, by their very nature, incapable of achieving satisfactory results. The exceptional difficulties encountered in Portugal were not such as to deprive the applicant of his entitlement to a judicial determination within a reasonable time. There had accordingly been a breach of A 6(1).

Damages (PTE 150,000).

Cited: Buchholz v D (6.5.1981), Zimmermann and Steiner v CH (13.7.1983).

Gül v Switzerland (1996) 22 EHRR 93 96/5

[Application lodged 31.12.1993; Commission report 4.4.1995; Court Judgment 19.2.1996]

Mr Riza Gül was a Turkish national. Until 1983, he lived with his wife and their two sons, Tuncay (born on 12 October 1971) and Ersin (born on 20 January 1983), in Turkey. On 25 April 1983, he travelled to Switzerland, where he applied for political asylum as a Kurd and former member of the Turkish Social Democratic Party. In 1987, the applicant's wife, who had suffered serious burns during a fit brought on by her epilepsy, joined her husband in Switzerland, where she was taken into hospital as an emergency case. On 19 September 1988, in Switzerland, Mrs Gül gave birth to her third child, Nursal, a daughter. As she still suffered from epilepsy, she could not take care of the baby, who was placed in a home. On 9 February 1989, the Minister for Refugees rejected Mr Gül's application for political asylum and ordered him to leave Switzerland by 30 April 1989, failing which he would be deported. The applicant appealed. The Basle Rural Cantonal Aliens Police supported his request for a residence permit, which was granted, and he withdrew his political asylum claim. On 14 May 1990, he sought permission to bring his two sons from Turkey to Switzerland. In a decision of 19 September 1990, the Aliens Police rejected his request. The applicant's appeal to the Basle Rural cantonal government was dismissed. His appeal to the Federal Court was rejected. He complained that the Swiss authorities' refusal to allow his two sons to join him in Switzerland constituted a violation of A 8.

Comm found by majority (14–10) V 8.

Court found by majority (7–2) NV 8.

Judges: Mr R Bernhardt, President, Mr F Matscher, Mr C Russo (d), Mr N Valticos, Mr SK Martens (d), Mrs E Palm, Mr MA Lopes Rocha, Mr L Wildhaber, Mr K Jungwiert.

A child born of a marital union was *ipso jure* part of that relationship; hence, from the moment of the child's birth and by the very fact of it, there existed between him and his parents a bond amounting to family life which subsequent events could not break save in exceptional circumstances. Although the applicant had left Turkey in 1983, when his son Ersin was only three months old, and his wife left in 1987 because of her accident, since 1990 the applicant had asked the Swiss authorities for permission to bring the boy, who was then six years old, to Switzerland, and he had made a number of visits to Turkey. It could not therefore be claimed that the bond of 'family life' between them had been broken. The essential object of A 8 was to protect the individual against arbitrary action by the public authorities. There might in addition be positive obligations inherent in effective 'respect' for family life. In both contexts, regard had to be had to the fair balance that had to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoyed a certain margin of appreciation. The present case concerned not only family life but also immigration, and the extent of a State's obligation to admit to its territory relatives of settled immigrants would vary according to the particular circumstances of the persons involved and the general interest. A State had the right to control the entry of non-nationals into its territory. Moreover, where immigration was concerned,

A 8 could not be considered to impose on a State a general obligation to respect the choice by married couples of the country of their matrimonial residence and to authorise family reunion in its territory. It had to be determined to what extent Ersin's move to Switzerland would be the only way for the applicant to develop family life with his son. By leaving Turkey in 1983, Mr Gül caused the separation from his son; he had not been granted political refugee status, he had returned to Turkey to visit his son. His wife had been given a residence permit on humanitarian grounds in view of her health. However, it had not been proved that she could not later have received appropriate medical treatment in specialist hospitals in Turkey. She had visited Turkey with her husband in 1995. Although they were lawfully resident in Switzerland, they did not have a permanent right of abode, as they did not have a settlement permit but merely a residence permit on humanitarian grounds, which could be withdrawn, and which under Swiss law did not give them a right to family reunion. In view of the length of time the applicant and his wife had lived in Switzerland, it would not be easy for them to return to Turkey, but there were, strictly speaking, no obstacles preventing them from developing family life in Turkey. That possibility was all the more real because Ersin has always lived there and had therefore grown up in the cultural and linguistic environment of his country. Switzerland had not failed to fulfil the obligations arising under A 8 and there had, therefore, been no interference in the applicant's family life within the meaning of A 8.

Cited: Abdulaziz, Cabales and Balkandali v UK (28.5.1985), Berrehab v NL (21.6.1988), Cruz Varas and Others v S (20.3.1991), Hokkanen v SF (23.9.1994), Keegan v IRL (26.5.1994), Kroon and Others v NL (27.10.1994).

Güleç v Turkey (1999) 28 EHRR 121 98/52

[Application lodged 16 March 1993; Commission report 17.4.1997; Court Judgment 27 July 1998]

On 4 March 1991, there were a number of incidents such as spontaneous unauthorised demonstrations, shop closures and attacks on public buildings during which two people were killed, one of whom was Ahmet Güleç, aged 15, the son Mr Hüseyin Güleç, the applicant. According to the Government, Ahmet Güleç was hit by a bullet fired by armed demonstrators at the gendarmes. According to the applicant, his son was killed by the security forces, who fired on the unarmed demonstrators to make them disperse. On 5 April 1991, the applicant filed a criminal complaint against the commander of the security forces. The Provincial Administrative Council halted the proceedings by means of a discontinuation order, which was never served on the applicant's lawyer. It found that the victim had died of bullet wounds received in the course of a confrontation between the demonstrators and the security forces. However, it found that it was impossible to identify those responsible. The Supreme Administrative Court upheld that decision. The applicant complained that his son's death had been caused by bullets fired by the security forces during a demonstration and complained that he had not been able to lodge a complaint with the criminal courts because of the administrative authorities' decision to discontinue proceedings against members of the gendarmerie.

Comm found by majority (31–1) V 2.

Court unanimously dismissed the Government's preliminary objection, found V 2.

Judges: Mr R Bernhardt, President, Mr F Gölcüklü (jpd), Mr F Matscher (jpd), Mr C Russo, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr U Lôhmus, Mr M Voicu, Mr V Toumanov.

As the argument concerning non-exhaustion had been put forward for the first time before the Court, the Government were estopped from relying on it.

The establishment and verification of the facts were primarily a matter for the Commission. While the Court was not bound by the Commission's findings of fact and remained free to make its own appreciation in the light of all the material before it, it was only in exceptional circumstances that it would exercise its own powers in that area. The file on the present case has not revealed any reason to cast doubt on the establishment of the facts as set out in the Commission's report. The

demonstration was far from peaceful. Confronted with acts of violence which were, admittedly, serious, the security forces, who were not present in sufficient strength, called for reinforcements, and at least two armoured vehicles were deployed. The allegation that shots were fired at the crowd was corroborated by the fact that nearly all the wounded demonstrators were hit in the legs; that would be perfectly consistent with ricochet wounds from bullets with a downward trajectory which could have been fired from the turret of an armoured vehicle. The use of force might have been justified in the present case under para 2(c) of A 2, but a balance had to be struck between the aim pursued and the means employed to achieve it. The gendarmes used a very powerful weapon because they apparently did not have truncheons, riot shields, water cannon, rubber bullets or tear gas. The lack of such equipment was all the more incomprehensible and unacceptable because the province was in a region in which a state of emergency has been declared, where at the material time disorder could have been expected. The Government produced no evidence to support the assertion that there were armed terrorists among the demonstrators. The force used to disperse the demonstrators, which caused the death of Ahmet Güleç, was not absolutely necessary within the meaning of A 2.

The general legal prohibition of arbitrary killing by the agents of the State laid down in A 2 would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities. The Convention required by implication that there should be some form of effective official investigation when individuals had been killed as a result of the use of force by, *inter alia*, agents of the State. The procedural protection for the right to life inherent in A 2 meant that agents of the State had to be accountable for their use of lethal force; their actions had to be subjected to some form of independent and public scrutiny capable of determining whether the force used was or was not justified in a particular set of circumstances. The authorities responsible for the investigation were convinced that the victim's death was caused by a shot fired by PKK terrorists, but did not verify whether this was so. Loss of life was unfortunately a frequent occurrence in south-east Turkey in view of the security situation there. However, neither the prevalence of violent armed clashes nor the high incidence of fatalities could displace the obligation under A 2 to ensure that an effective, independent investigation was conducted into deaths arising out of clashes involving the security forces, or, as in the present case, a demonstration, however illegal it might have been. The investigation was not thorough, nor was it conducted by independent authorities. It was conducted without the participation of the complainant, who did not receive notice of the court order or decision. Consequently, there had been a breach of A 2 on account of the use of disproportionate force and the lack of a thorough investigation into the circumstances of the applicant's son's death.

Non-pecuniary damage (by majority (7–2) FF 50,000), costs and expenses (unanimously FF 10,000).

Cited: Aksoy v TR (18.12.1996), Aydin v TR (25.9.1997), Kaya v TR (19.2.1998), McCann and Others v UK (27.9.1995), Mentes and Others v TR (28.11.1997).

Gündem v Turkey 98/38

[Application lodged 7.7.1993; Commission report 3.9.1996; Court Judgment 25.5.1998]

Mr Ismet Gündem lived in the south-east of Turkey where there had been serious disturbances between the security forces and the members of the PKK. The facts of the case were in dispute between the parties. The applicant complained that his home and possessions had been severely damaged in the course of attacks conducted by State security forces and village guards on 7 January and 13 February 1993, as a result of which he had to leave his home. The Government denied the applicant's claim. The Commission did not find the applicant's claims to be established.

Comm found by majority (28–1) NV 3, 5 (1), 8, 18, P1A1, (26–3) V 6(1), (26–3) no separate issue under 13.

Court unanimously dismissed the Government's preliminary objection as to the validity of the application and its alleged discontinuance, by majority (14–6) joined the preliminary objection concerning exhaustion of domestic remedies to the merits, found unanimously NV 3, 5(1), 8, 18, P1A1,

not necessary to examine 6(1), by majority (13–7) NV 13 and not necessary to decide the Government's preliminary objection concerning the exhaustion of domestic remedies.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti (pd), Mr J De Meyer (pd), Mr N Valticos (jpd), Mr R Pekkanen (pd), Mr AN Loizou (pd), Sir John Freeland, Mr AB Baka, Mr MA Lopes Rocha, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr D Gotchev, Mr B Repik (pd), Mr P Jambrek, Mr U Lôhmus (pd), Mr E Levits, Mr J Casadevall (jpd).

Nothing had prevented the Government from raising at the admissibility stage their doubts as to the authenticity of the applicant's application and certain documents. Nor did they at that stage suggest that it could be inferred from the applicant's absence from the hearing that he wished to withdraw or discontinue the proceedings. The Government were estopped from making a preliminary objection before the Court both as to the validity of the application and the alleged withdrawal of the applicant's complaints. The Court recalled its previous case-law on non-exhaustion. The central question in the case was whether the applicant had demonstrated the existence of special circumstances dispensing him from the obligation under A 26 to exhaust domestic remedies. The Court had regard to the security situation which existed in south-east Turkey at the time of the applicant's complaint and which continued to exist. Despite the extent of the problem of village destruction, there appeared to be no example of compensation having been awarded in respect of allegations that property had been purposely destroyed by members of the security forces or of prosecutions having been brought against them as a result of such allegations. Furthermore, there seemed to be a general reluctance on the part of the authorities to admit that this type of practice by members of the security forces had occurred. On the other hand, the applicant had not himself raised his Convention grievances before a domestic authority before complaining to Strasbourg. The Court attached particular significance for the purposes of exhaustion in the present case to the manner in which the authorities conducted their investigation into the applicant's allegations, following the communication of his application by the Commission to the respondent Government. In this regard, the Court noted that despite the seriousness of the applicant's complaints, the investigations carried out by the prosecution authorities were not only protracted, but also of a limited nature. On the other hand, the Government sought to demonstrate that the authorities had made sustained efforts to find the applicant in order to be able to take evidence from him. The evidence did not disclose any shortcomings on the part of the authorities in that respect. Nor did it seem to exclude that the protracted and limited character of the investigations was to some extent caused by the applicant's failure to co-operate with the authorities. Furthermore, during the investigations, the mayor and four villagers from the applicant's neighbourhood had been interviewed, and had all denied that the alleged events had taken place. There were doubts as to whether it could be said that there existed such special circumstances in the present case as could dispense the applicant at the time of the events complained of from the obligation to exhaust domestic remedies. However, that preliminary objection raised issues which were closely linked to those raised by the applicant's complaint under A 13 and therefore, that plea was joined to the merits.

The Commission did not find, on the basis of the written and oral evidence before it, that it could be said to have been established beyond reasonable doubt that the events as alleged by the applicant had occurred. The establishment and verification of the facts were primarily a matter for the Commission and it was only in exceptional circumstances that the Court would exercise its powers in that area. There was no reason to depart from the Commission's findings and accordingly there had been no violation of A 3, 5(1), 8, 18, P1A1.

A 6(1): The applicant did not attempt to make an application before the courts and thus it was not possible for the Court to determine whether the Turkish courts would have been able to adjudicate on his claims had he initiated proceedings. In any event, the applicant complained essentially of the lack of a proper investigation into his allegation that the security forces had purposely destroyed his house and possessions. Therefore, it was appropriate to examine this complaint in relation to the more general obligation on States under A13.

A 13 guaranteed the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they happened to be secured in the domestic legal order. A 13 only applied in respect of grievances which were arguable. Whether that was so in the applicant's case had to be decided in the light of the particular facts and the nature of the legal issues raised. The Commission found that it was only the oral testimony of the applicant's father which provided support for the applicant's account of events. However, that testimony had been rather unclear as to details and timing and had differed from the applicant's own account as to the reasons for the alleged damage to his house and property. Several witnesses had denied that any houses in the area had been destroyed by security forces and village guards. Some witnesses agreed that some houses belonging to the applicant's family had burned down following a subsequent clash in 1993, but none of those witnesses suggested that this had occurred as a result of a deliberate action by security forces or village guards. Furthermore, the applicant failed to appear before the Commission's delegates to give evidence. The Commission felt concern about his explanation, that he feared adverse consequences, but was unable to determine whether or to what extent such fear might have been justified. Whatever reason there may have been for the applicant's absence, the Commission found that his failure to give evidence made it difficult to establish the facts. The evidence gave rise to serious doubts as to whether the applicant had made out a factual basis for his allegation that his house and property had been purposely destroyed by the security forces. In the circumstances of the case, including the absence of an opportunity for the Commission to test directly with him his written statements, the Court was not satisfied that he had an arguable claim that the Convention provisions invoked by him had been violated. Accordingly, no violation of A 13. In the light of that conclusion, it was not necessary to pursue the examination of the Government's preliminary objection concerning the exhaustion of domestic remedies.

Cited: Akdivar and Others v TR (16.9.1996), Aksoy v TR (18.12.1996), Anne-Marie Andersson v S (27.8.1997), Aydin v TR (25.9.1997), Boyle and Rice v UK (27.4.1988), Halford v UK (25.6.1997), Kaya v TR (19.2.1998), Mentes and Others v TR (28.11.1997), Plattform 'Ärzte für das Leben' v A (21.6.1988), Stran Greek Refineries and Stratis Andreadis v GR (9.12.1994).

Gustafson v Sweden (1998) 25 EHRR 623 97/36

[Application lodged 5.11.1993; Commission report 18.10.1995; Court Judgment 1.7.1997]

Mr Rolf Gustafson had been imprisoned for the commission of serious economic offences and a serious forgery offence. He claimed that on two occasions in 1991 he was the victim of kidnapping and extortion perpetrated by three persons including a Mr L, who had wanted to be paid for the part he played with him in the commission of certain economic crimes. On 25 March 1993, L was charged with kidnapping and aggravated extortion. In the criminal proceedings before the Stockholm District Court, the applicant requested the court to order L to pay him compensation. On 28 April 1993, the Stockholm District Court convicted L, sentenced him to imprisonment and ordered him to pay damages to the applicant. On 2 July 1993, the Svea Court of Appeal reversed the District Court's decision on the ground that the charges against L had not been proven, acquitted L and rejected the applicant's claim for compensation. The applicant did not seek leave to appeal to the Supreme Court. On 26 August 1993, the Board rejected the applicant's compensation claim. He complained that he did not have the possibility of having his claim for compensation determined by a court.

Comm found unanimously NV 6(1).

Court found by majority (7–2) 6(1) applicable, unanimously NV 6(1).

Judges: Mr R Ryssdal (pc/pd), President, Mr F Matscher, Mr B Walsh (c), Mr C Russo, Mr J De Meyer (c), Mrs E Palm (pc/pd), Mr JM Morenilla, Mr B Repik, Mr P Jambrek.

The applicability of A 6(1) under its civil head required the existence of a dispute over a right which could be said, at least on arguable grounds, to be recognised under domestic law. That dispute had to be genuine and serious; it could relate not only to the existence of a right, but also to

its scope and to the manner of its exercise. Furthermore, the outcome of the proceedings had to be directly decisive for the right in question. There was a dispute over the applicant's alleged right to compensation under the 1978 Act. His claim to the Board was rejected; his eligibility under the Act was accordingly in dispute. The dispute over his entitlement to compensation was a genuine and serious one. The right asserted by the applicant could be categorised as a 'civil' right within the meaning of A 6(1). The right invoked by the applicant was intended to confer on him a pecuniary benefit in the form of compensation. A 6(1) was therefore applicable in the instant case.

For the purposes of A 6(1), a tribunal need not be a court of law integrated within the standard judicial machinery. It may, like the Board at issue, be set up to deal with a specific subject matter which could be appropriately administered outside the ordinary court system. What was important to ensure compliance with A 6(1) were the guarantees, both substantive and procedural, which were in place. The Board in its composition and operation satisfied the requirements of independence and impartiality and had jurisdiction to examine and decide with binding effect on all questions of fact and law relevant to the applicant's claim for criminal injuries compensation. The applicant did not request an oral hearing before the Board. It could thus reasonably be considered that he waived his right to one. Furthermore, it did not appear that there were any reasons of expediency which would have required the Board itself to convene the applicant since it had before it his complete case file. The reasons given by the Board were sufficient in the circumstances to justify its rejection of the applicant's claim and its subsequent confirmation of that rejection. Although the decisions reached by the Board were final and not subject to appeal either to a higher administrative authority or to a court of law, the Board complied for the purposes at hand with the requirements which A 6(1) prescribed in respect of a tribunal. That in itself was sufficient in the particular circumstances of this case for the Court to conclude that A 6(1) was complied with; A 6(1) did not guarantee a right of appeal. Therefore, the applicant had access to a tribunal for the determination of his civil right to compensation under the legislation. Accordingly there has been no breach of A 6(1).

Cited: Acquaviva v F (21.11.1995), Belilos v CH (29.4.1988), Håkansson and Sturesson v S (21.2.1990), Lithgow and Others v UK (8.7.1986), Masson and Van Zon v NL (28.9.1995), Schuler-Zgraggen v CH (24.6.1993), Tolstoy Miloslavsky v UK (13.7.1995).

Gustafsson v Sweden (1996) 22 EHRR 409 96/19

[Application lodged 1.7.1989; Commission report 10.1.1995; Court Judgment 25.4.1996 (merits), 13.10.1997 (Screening Panel), 30.7.1998 (revision)]

Mr Torgny Gustafsson owned a summer restaurant and youth hostel on the island of Gotland. The restaurant's employees numbered less than 10 and were engaged on a seasonal basis, but had the option of being re-employed the following year. As the applicant was not a member of either of the two associations of restaurant employers, he was not bound by any collective labour agreement, nor was he obliged to subscribe to the various labour-market insurance schemes. He refused to sign an agreement with a union referring to his objections of principle regarding the system of collective bargaining. In July 1987, the union placed his restaurant under a blockade and declared a boycott against it. Sympathy industrial action was taken by other unions resulting in deliveries to the restaurant being stopped. The applicant requested the Government to prohibit the unions from continuing the blockade and sympathy action and to order the unions to pay compensation for damages. In the alternative, he requested that compensation be paid by the State. The Ministry of Justice dismissed the applicant's request. His appeal to the Supreme Administrative Court was dismissed. In September 1989, the Swedish Touring Club terminated the membership of the applicant's youth hostel. The applicant's proceedings in the District Court and appeal to the Svea Court of Appeal were dismissed. He complained that the lack of State protection against the industrial action taken against his restaurant gave rise to a violation of his right to freedom of association as guaranteed by A 11 and also of his right to peaceful enjoyment of possessions. He also complained of ineffective remedies under Swedish law.

Comm found by majority (13–4) V 11, (11–6) not necessary to examine P1A1+17, (16–1) NV 6(1), (14–3) NV 13.

Court found by majority (11–8) 11 applicable, (12–7) NV 11, (13–6) NV P1A1, (14–5) NV 6(1), (18–1) 13 NV 13.

Judges (merits): Mr R Ryssdal (pd), President, Mr R Bernhardt, Mr F Matscher (jd), Mr L-E Pettiti, Mr B Walsh (d), Mr A Spielmann (pd), Mr SK Martens (d), Mrs E Palm (pd), Mr I Foighel (d), Mr R Pekkanen (pd), Mr AN Loizou (pd), Mr JM Morenilla (d), Mr F Bigi, Mr MA Lopes Rocha, Mr G Mifsud Bonnici (d), Mr J Makarczyk (pd), Mr B Repik (pd), Mr P Jambrek (pd), Mr E Levits.

Judges (revision): Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr A Spielmann, Mr SK Martens, Mrs E Palm, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla, Mr MA Lopes Rocha, Mr G Mifsud Bonnici (d), Mr J Makarczyk, Mr B Repik, Mr P Jambrek, Mr E Levits.

Although the extent of the inconvenience or damage caused by the union action to the applicant's business might be open to question, the measures must have entailed considerable pressure on the applicant to meet the union's demand that he be bound by a collective agreement. The enjoyment of his freedom of association was affected. A 11 was therefore applicable in the present case.

The matters complained of by the applicant, although they were made possible by national law, did not involve a direct intervention by the State. The responsibility of Sweden would nevertheless be engaged if those matters resulted from a failure on its part to secure to him under domestic law the rights set forth in A 11. Although the essential object of A 11 was to protect the individual against arbitrary interferences by the public authorities with his or her exercise of the rights protected, there might in addition be positive obligations to secure the effective enjoyment of these rights. A 11 encompassed not only a positive right to form and join an association, but also the negative aspect of that freedom, namely the right not to join or to withdraw from an association. Although compulsion to join a particular trade union may not always be contrary to the Convention, a form of such compulsion which, in the circumstances of the case, struck at the very substance of the freedom of association guaranteed by A 11 would constitute an interference with that freedom. It followed that national authorities might, in certain circumstances, be obliged to intervene in the relationships between private individuals by taking reasonable and appropriate measures to secure the effective enjoyment of the negative right to freedom of association. Although A 11 did not secure any particular treatment of the trade unions, or their members, by the State, the words 'for the protection of their interests' in A 11 showed that the Convention safeguarded freedom to protect the occupational interests of trade union members by trade union action. In that respect, the State had a choice as to the means to be used and the Court had recognised that the concluding of collective agreements may be one of these. In view of the sensitive character of the social and political issues involved in achieving a proper balance between the competing interests and, in particular, in assessing the appropriateness of State intervention to restrict union action aimed at extending a system of collective bargaining, and the wide degree of divergence between the domestic systems in the particular area under consideration, the Contracting States enjoyed a wide margin of appreciation in their choice of the means to be employed. In reality, the applicant's principal objection was his disagreement with the collective-bargaining system in Sweden. However, A 11 did not as such guarantee a right not to enter into a collective agreement. The positive obligation incumbent on the State under A 11, including the aspect of protection of personal opinion, might well extend to treatment connected with the operation of a collective-bargaining system, but only where such treatment impinged on freedom of association. Compulsion which, as here, did not significantly affect the enjoyment of that freedom, even if it caused economic damage, could not give rise to any positive obligation under A 11. The applicant had not substantiated his submission to the effect that the terms of employment which he offered were more favourable than those required under a collective agreement. Bearing in mind the special role and importance of collective agreements in the regulation of labour relations in Sweden, the Court saw no reason to doubt that the union action pursued legitimate interests consistent with A 11. Having regard to the margin of appreciation to be accorded to the respondent State in the area under consideration, Sweden had not failed to secure the applicant's rights under A 11.

The State could be responsible under P1A1 for interferences with peaceful enjoyment of possessions resulting from transactions between private individuals. In the present case, however, not only were the facts complained of not the product of an exercise of governmental authority, but they concerned exclusively relationships of a contractual nature between private individuals, namely the applicant and his suppliers or deliverers. Such repercussions as the stop in deliveries had on the applicant's restaurant were not such as to bring P1A1 into play.

To ascertain the applicability of A 6(1), the Court had to determine whether there was a dispute over a right which could be said, at least on arguable grounds, to be recognised under domestic law. The dispute had to be genuine and serious: it could relate not only to the actual existence of a right, but also to its scope and the manner of its exercise. Finally, the result of the proceedings had to be directly decisive for the right in question. The applicant's complaint under A 6 was not that he was denied an effective remedy enabling him to submit to a court a claim alleging a failure to comply with domestic law, rather his complaint was essentially directed against the fact that the union action was lawful under Swedish law. However, A 6(1) did not in itself guarantee any particular content for civil rights and obligations in the Contracting States. In the present case, there was no right recognised under Swedish law to attract the application of A 6 (1).

A 13 required that, where an individual had an arguable claim to be the victim of a violation of Convention rights, he or she should have a remedy before a national authority in order both to have the claim decided and, if appropriate, to obtain redress. However, A 13 did not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority. The applicant's complaint under the Convention being essentially directed against the fact that the union action was lawful under Swedish law, A 13 was not applicable.

Having regard to its conclusions on the merits, the Court did not consider it necessary to determine the objections made by the Government as to the procedure followed by the Screening Panel in declaring the revision request admissible.

Revision: The Court recalled its case-law and examined whether evidence adduced by applicant in revision proceedings would actually have had a decisive influence on its original judgment. The Court had particular regard to whether its reasoning and conclusions in the original judgment had taken into account certain additional information submitted by the Government in the main case. Although the judgment referred to the additional information in question, that only disposed of a point of procedure in reply to applicant's contention that the Government was estopped from changing the stance they had adopted before the Commission and adducing the evidence before the Court. The Court's decision that it was not prevented from taking information into account if it considered it relevant could not of its own be taken to mean that Court actually did have regard to information. The reasons stated in the ensuing part of original judgment were sufficient to support, and were decisive for, the Court's conclusion that there had been no violation of A 11 of the Convention. There was no mention of the additional evidence and the arguments submitted by Government, nor was there anything to indicate that evidence relied on, nor did other parts of the judgment mention the first set of facts in dispute, only the second set of disputed facts was alluded to, but the reasons in the relevant part of the judgment were merely accessory to those mentioned above and did not suggest that the Court regarded the additional facts submitted by Government as established facts. It followed that the evidence adduced by the applicant would not have had a decisive influence on the Court's finding with respect to A 11, nor would it have had any bearing on its conclusions with regard to his other complaints.

Cited: Barthold v D (25.3.1985), Kerojärvi v SF (19.7.1995), McMichael v UK (24.2.1995), James and Others v UK (21.2.1986), Plattform 'Ärzte für das Leben' v A (21.6.1988), Powell and Rayner v UK (21.2.1990), Pressos Compania Naviera SA and Others v B (20.11.1995), Schmidt and Dahlström v S (6.2.1976), Sibson v UK (20.4.1993), Sigurdur A Sigurjónsson v ISL (30.6.1993), Sporrong and Lönnroth v S (23.9.1982), Swedish Engine Drivers' Union v S (6.2.1976).

Cited (revision): Pardo v France (revision – admissibility) (10.7.1996), Pardo v France (revision – merits) (29.4.1997).

Guzzardi v Italy (1981) 3 EHRR 333 80/3

[Application lodged 17.11.1975; Commission report 7.12.1978; Court Judgment 6.11.1980]

Mr Michele Guzzardi was sentenced to imprisonment for criminal offences. On 8 February 1975, he was removed from Milan gaol to the hamlet of Cala Reale on the island of Asinara, which lies off Sardinia. He was subject to special supervision. His appeals were dismissed. He complained of the arbitrary action of the Italian authorities who were compelling him to reside not within a district, but rather on a 'scrap of land' where he was unable to work, keep his family permanently with him, practise the Catholic religion or ensure his son's education; he described his situation as 'the most barbarous imprisonment, the most degrading and pernicious incarceration'.

Comm found unanimously V 5(1), NV 3, by majority (11–0 with one abstention) NV 8, unanimously NV 9, unanimously proceedings fell outside 6.

Court dismissed by majority (16–2) the plea based by the Government on the ex-officio examination of the case under 5 and 6, (10–8) the Government's objection that domestic remedies had not been exhausted, (15–3) the Government's plea as to the disappearance of the object of the proceedings, found by majority (11–7) V 5, deprivation of liberty not justified under, unanimously 5(1)(e), 5(1)(b), by majority (16–2) 5(1)(a) or (12–6) 5(1)(c), V (10–8) V 5(1), unanimously NV 3, 6, 9 , (17–1) NV 8.

Judges: Mr G Wiarda, President, Mr G Balladore Pallieri (d), Mr M Zekia (d), Mr J Cremona (d), Mr Thór Vilhjálmsson, Mr R Ryssdal, Mr W Ganshof van der Meersch, Sir Gerald Fitzmaurice (d), Mrs D Bindschedler-Robert (d), Mr D. Evrigenis, Mr P-H Teitgen (d), Mr G Lagergren, Mr L Liesch, Mr F Gölcüklü, Mr F Matscher (d), Mr J Pinheiro Farinha (d), Mr E Garcia de Enterria (d), Mr B Wals.

The Government objected to the Commission having on its own initiative taken into consideration A 5 and 6. However, A 25 required that individual applicants should claim to be the victim 'of a violation of the rights set forth in the Convention'; it did not oblige them to specify which Article, paragraph or sub-paragraph or even which right they were praying in aid. Any greater strictness would lead to unjust consequences; for the vast majority of 'individual' petitions were received from laymen applying to the Commission without the assistance of a lawyer. Seen in an overall context, the applicant's application and material submitted to the Commission and the Court clearly showed that the present case raised an issue under A 5. The plea concerning the ex officio examination of the case was therefore dismissed. The preliminary objection of non-exhaustion based on the claims that the applicant had not invoked A 5 in the domestic proceedings and the transfer request had not been substantiated. Regarding the plea as to the disappearance of the object of the proceedings, the applicant had left for Force on July 1976, before the Commission had drawn up its report, and since November 1977, Asinara had no longer been used as a place for compulsory residence. The Court recalled its previous case-law in which it had dealt with numerous alleged breaches – isolated or continuing – which related entirely to a period prior to the institution of proceedings (the *Delcourt*, *Tyrer*, *Schiesser*, *Deweer* cases, etc) or had ceased whilst the proceedings were in progress (the *Lawless*, *Wemhoff, Neumeister, Stögmüller, Matznetter, Ringeisen, De Wilde, Ooms and Versyp, Golder, Sunday Times* cases, etc); the Court had nonetheless ruled on those alleged breaches. There remained a conflict of opinion between the interested parties which a judgment by the Court would serve the purpose of resolving. In addition, the applicant claimed to be entitled to just satisfaction under A 50 and if the Court found that the Convention's requirements had not been observed, it would have to decide that claim. The 'matter' had therefore received no solution. The Court's judgments also served to elucidate, safeguard and develop the rules instituted by the Convention thereby contributed to the observance of the engagements undertaken by the Contracting States. The present case raised issues of interpretation sufficiently important to call for decision. Therefore, the proceedings had not become devoid of object.

In proclaiming the 'right to liberty', A 5(1) was contemplating the physical liberty of the person; its aim was to ensure that no one should be dispossessed of this liberty in an arbitrary fashion. The paragraph was not concerned with mere restrictions on liberty of movement; such restrictions

were governed by P4A2. The difference between deprivation of and restriction upon liberty was nonetheless merely one of degree or intensity, and not one of nature or substance. Whilst the area around which the applicant could move far exceeded the dimensions of a cell and was not bounded by any physical barrier, it covered no more than a tiny fraction of an island to which access was difficult and about nine-tenths of which was occupied by a prison. The applicant was housed in part of the hamlet of Cala Reale with other persons subjected to the same measures and policemen. There were few opportunities for social contacts other than with his near family, his fellow residents and the supervisory staff. Supervision was carried out strictly and on an almost constant basis, including curfew and reporting restrictions. He was liable to punishment by 'arrest' if he failed to comply with any of his obligations. More than 16 months elapsed between his arrival at Cala Reale and his departure for Force. It was not possible to speak of 'deprivation of liberty' on the strength of any one of those factors taken individually, but cumulatively and in combination they raised an issue of categorisation from the viewpoint of A 5. The present case was therefore to be regarded as one involving deprivation of liberty. The order for the applicant's compulsory residence was not a punishment for a specific offence, but a preventive measure taken on the strength of indications of a propensity to crime. The deprivation of liberty complained of was not covered by A 5(1)(b) and the applicant was not in one of the situations dealt with by A 5(1)(c). Sub-paras (d) and (f) of A 5(1) were not relevant. From 8 February 1975 to 22 July 1976 the applicant was the victim of a breach of A 5(1).

Regarding the applicants complaints under A 3, 6, 8 and 9 which had been found by the Commission to be without foundation, the compass of the case was delimited not by the Commission's report, but by the admissibility decision. The Court could take cognisance of all questions of fact or of law arising in the course of the proceedings instituted before it; the only matter falling outside its jurisdiction was the examination of complaints held by the Commission to be inadmissible. The Court had on occasion found violations in circumstances where the report either perceived none or expressed no opinion. In addition, there were many cases in which the Commission concluded that there had been no violation at all referred to the Court (the *Lawless, Delcourt, National Union of Belgian Police, Swedish Engine Drivers' Union, Schmidt and Dahlström, Kjeldsen, Busk Madsen and Pedersen, Handyside, Klass and Others* and *Schiesser* cases).

Certain aspects of the situation complained of on Asinara were undoubtedly unpleasant or even irksome; however, having regard to all the circumstances, it did not attain the level of severity above which treatment fell within the scope of A 3.

The proceedings which ended in the Court of Cassation did not involve the determination of a criminal charge. Whether the right to liberty which was at stake was to be qualified as a civil right was a matter of controversy; in any event, the evidence did not reveal any infringement of A 6(1).

The applicant's wife and son lived with him for about 14 of the 16 months he spent at Cala Reale. The reason why they had to leave the island was that he had not applied for renewal of their residence permits. The reasons given by the applicant to explain his failure to apply disclosed nothing contrary to A 8 which could be attributed to the Italian State and, in the circumstances, the necessity for such permits proved to be compatible with that provision.

The applicant did not claim either that he had requested that services be held in the chapel at Cala Reale or that he had sought authorisation to go to the church at Cala d'Oliva, accordingly, his complaint under A 9 did not bear examination.

Damages (by majority (12–6) ITL 1,000,000).

Cited: Airey v IRL (9.10.1979), Artico v I (13.5.1980), Deweer v B (27.2.1980), De Wilde, Ooms and Versyp v B (18.11.1970, 18.6.1971, 10.3.1972), Engel and Others v NL (8.6.1976), Golder v UK (21.2.1975), Ireland v UK (18.1.1978, König v D (10.3.1980), Lawless v IRL (1.7.1961), Luedicke, Belkacem and Koç v D (28.11.19780, Matznetter v A (10.11.1969), Ringeisen v A (16.7.1971), Schiesser v CH (4.12.1979), Stögmüller v A (10.11.1969), Tyrer v UK (25.4.1978).

H

H v Belgium (1988) 10 EHRR 339 87/25

[Application lodged 20.3.1980; Commission report 8.10.1985; Court Judgment 30.11.1987]

The applicant, who had a doctorate in law, completed his prescribed period as a pupil avocat in Antwerp in 1957, was entered on the roll and took chambers. In May 1963, the Council of the Ordre des avocats of Antwerp commenced disciplinary action against him for having deliberately given false information to clients. He was struck off the roll on 10 June 1963. The Brussels Court of Appeal affirmed the decision to strike him off and his further appeal to the Court of Cassation was dismissed. He was subsequently prosecuted for fraud and unlawfully holding himself out as an *avocat*, but was acquitted by the Antwerp Criminal Court on 19 January 1968 and made an unsuccessful claim for compensation. A further prosecution in 1978 for forgery and fraudulent conversion ended in an acquittal on 18 October 1979. He had no criminal convictions. On 3 December 1979, he requested the Council of the Ordre des avocats of Antwerp to restore his name to the roll. The Council dismissed his application, finding that there were no exceptional circumstances to justify restoring his name to the roll. On 9 February 1981, the applicant renewed his application. The Council again dismissed the application, holding that the applicant had not established that there were exceptional circumstances. The decision was served on the applicant on 16 June 1981. The applicant complained that the procedure followed by the Council of the Ordre des avocats of Antwerp when considering his applications for restoration to the roll had infringed A 6.

Comm found by majority (10–2) V 6(1).

Court found by majority (12–6) 6 applicable, (12–6) V 6(1).

Judges: Mr R Ryssdal (c), President, Mr J Cremona, Mr Thór Vilhjálmsson (c), Mr G Lagergren (jc), Mr F Gölcüklü (jd), Mr F Matscher (declaration, jd), Mr J Pinheiro Farinha (d), Mr L-E Pettiti (jc), Mr B Walsh, Sir Vincent Evans (jd), Mr R Macdonald (jc), Mr C Russo, Mr R Bernhardt (jd/so), Mr J Gersing (jd/so), Mr A Spielmann, Mr J De Meyer (so), Mr JA Carrillo Salcedo, Mr N Valticos.

Regarding the applicability of A 6, the Court noted its previous case-law. In seeking to be restored to the roll, the applicant raised a matter relating to the determination of a right, restoration to the roll being a prerequisite of resuming practice as an avocat. A 6(1) extended only to disputes over civil 'rights and obligations' which could be said, at least on arguable grounds, to be recognised under domestic law; it did not in itself guarantee any particular content for civil rights and obligations in the substantive law of the Contracting States. The profession of avocat had traditionally been treated as one of the independent professions in Belgium. The chambers and clientèle of an avocat constituted property interests and came within the ambit of the right of property, which was a civil right within the meaning of A 6(1). While avocats enjoyed an exclusive right of audience in the courts, they performed numerous important duties out of court, acting as advisers, conciliators and even arbitrators: the work of members of the Bar could not be said to consist solely in contributing to the functioning of the country's courts. After examining the various aspects of the profession of avocat in Belgium, the Court found that they conferred the character of a civil right within the meaning of A 6(1) which was therefore applicable.

According to the Court's case-law, a 'tribunal' was characterised by its judicial function, that is to say determining matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner. The Council of the Ordre des avocats performed many functions – administrative, regulatory, adjudicative, advisory and disciplinary functions, but the plurality of powers did not in itself preclude an institution from being a 'tribunal' in respect of some of them. There was no question of the independence of the members of the Council of the Ordre des avocats. They are elected by their peers and were not subject to any authority, being answerable only to their own consciences. There was no evidence to doubt their personal impartiality. Regarding the fairness of the proceedings, the applicant was able to have the assistance of a lawyer to represent him and was able to appear in person. However, it was very difficult for him to adduce appropriate evidence of the 'exceptional circumstances' which might, in law, have brought about his restoration to the roll and, more generally, to argue his case with the

requisite effectiveness as neither the applicable provisions nor the previous decisions of the councils of the Ordre gave any indication of what could amount to 'exceptional circumstances'. He had cause to fear a risk of arbitrariness, especially as there was no provision allowing him a right of challenge and as the Antwerp Bar did not have any internal rules of procedure. His applications were not heard in public, nor were the decisions of the Council of the Ordre pronounced in public. Unless cured at a later stage of the procedure, such a defect could deprive the person concerned of one of the safeguards set forth in the first sentence of A 6(1). There was no evidence to indicate that the circumstances warranted hearings not being held in public. There was no evidence he intended to waive his right to a public hearing. The fact that he wished to remain anonymous in the proceedings before the Convention institutions, was not decisive in that context, as those proceedings were quite different both in their purpose and in their nature and scope. Accordingly, the Council of the Ordre did not in the present case satisfy the requirements of A 6(1), and there was therefore a breach of that provision.

Non-pecuniary damage (by majority (16–2) BEF 250,000), costs and expenses (unanimously BEF 100,000).

Cited: Albert and Le Compte v B (10.2.1983), Benthem v NL (23.10.1985) Bönisch v A (2.6.1968), Campbell and Fell v UK (28.6.1984), De Wilde, Ooms and Versyp v B (18.6.1971), Golder v UK (21.2.1975), König v D (28.6.1978), Le Compte, Van Leuven and De Meyere v B (18.101982), Sramek v A (22.10.1984), Van der Mussele v B (23.11.1983), Van Marle and Others v NL (26.6.1986), W v UK (8.7.1987).

H v France (1990) 12 EHRR 74 89/16

[Application lodged 21.6.1982; Commission report 4.3.1988; Court Judgment 24.10.1989]

Mr H was a primary school supply teacher. He attended the Strasbourg Hospital in May 1961 with a letter of introduction from his general practitioner. The applicant was given an intravenous injection which caused 'amphetamine shock'. On 14 June 1974, he took out a writ against the hospital, returnable at the Strasbourg Administrative Court, with a view to having the hospital declared liable for the harmful consequences of the intravenous amphetamine injection. The Administrative Court dismissed the action on 9 May 1978. He appealed to the Conseil d'Etat, which dismissed his appeal on 18 November 1981, judgment being served on 19 January 1982. The applicant complained that the administrative courts had not heard his case within a reasonable time and, by failing to order an expert opinion and a proper investigation, had not given him a fair trial.

Comm found unanimously V 6(1) regarding length of proceedings, by majority (9–2) NV 6 in respect of failure to order an expert opinion.

Court found unanimously V 6(1) regarding length of proceedings, by majority (5–2) no other violation of 6(1) regarding fairness of the proceedings.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr L-E Pettiti, Mr R Macdonald (pd), Mr JA Carrillo Salcedo (pd), Mr N Valticos.

The concept of 'civil rights and obligations' was not to be interpreted solely by reference to the respondent State's domestic law. A 6(1) applied irrespective of the parties' status, whether public or private, and of the nature of the legislation which governed the manner in which the dispute was to be determined; it was sufficient that the outcome of the proceedings should be decisive for private rights and obligations. The Court considered the period to be reviewed from 14 June 1974 to 19 January 1982, a period of just over seven years, seven months. The reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case and having regard, *inter alia*, to the complexity of the case, the behaviour of the applicant and the conduct of the relevant authorities. The case was not complex. In civil proceedings, the parties had to show 'due diligence' and only delays attributable to the State could justify a finding of a failure to comply with the reasonable time requirement. The proceedings before the administrative court took four years, although some of the delay was due to the inactivity of the applicant's lawyer. There was a further two years' delay before a hearing took place. There was no evidence provided that the backlog of cases before the administrative court was temporary and that remedial action

had been taken. Accordingly, the length of proceedings was excessive in this case. However the proceedings before the supreme court, the Conseil d'Etat, which took three years, had not been excessive. The Court was not unaware of the difficulties which sometimes delayed hearings in national courts, but in providing that cases should be heard 'within a reasonable time', the Convention underlined the importance of rendering justice without delays which might jeopardise its effectiveness and credibility. A reasonable time was exceeded by the Strasbourg Administrative Court, and there had therefore been a breach of A 6(1).

The Court had to ascertain whether the proceedings as a whole were fair. Although the Conseil d'Etat did not order an expert's report, it had sufficient other evidence in the form of pleadings and documents before it to enable it to give judgment. The refusal to order an expert's report did not, therefore, infringe the applicant's right to a fair trial.

Damages (FF 50,000), costs and expenses (FF 40,000).

Cited: Barberà, Messegué and Jabardo v E (6.12.1988), Barthold v D (25.3.1985), Guincho v P (10.7.1984), H v UK (8.7.1987), Pretto v I (8.12.1983), Tre Traktörer Aktiebolag (7.7.1989), Union Alimentaria Sanders SA (7.7.1989).

H v United Kingdom (1988) 10 EHRR 95 87/13

[Application lodged 3.9.1981; Commission report 18.10.1985; Court Judgment 8.7.1987 (merits), 9.6.1988 (A50)]

The applicant had spent several periods in mental hospitals after drug overdoses and bouts of violence. In March 1973, whilst in hospital, she married X, a compulsorily detained patient. On 23 December 1975, she gave birth to A. X was violent towards the applicant. The local County Council applied to a juvenile court for a place of safety order in respect of A and the child subsequently became a ward of court. There was some access between the applicant and A. Eventually the Council placed A for adoption. In 1977, the applicant married H and thereafter, her mental and physical position stabilised. She sought to re-establish contact between herself and A, who had remained in a residential nursery. The Council refused her access and she therefore instituted proceedings on 13 November 1978. On 22 October 1980, a High Court judge made an adoption order in respect of A, dispensed with the applicant's consent to the adoption and refused her access to A. An appeal by the applicant from this decision was dismissed on 14 January 1981 by the Court of Appeal, which also refused leave to appeal to the House of Lords. The applicant sought leave from the Appeal Committee to appeal to the House of Lords, but that was refused on 10 June 1981. The applicant complained to the Local Ombudsman who, in his report of 18 August 1983, concluded that the applicant's complaints revealed no maladministration except in respect of the Council's delay in filing evidence. The applicant complained, *inter alia*, that she was denied a hearing within a reasonable time of her application of 13 November 1978 for access to A.

Comm found unanimously V 6(1), by majority (12–2 with one abstention) V 8.

Court found unanimously V 6(1), by majority (16–1) V 8.

Judges (merits and just satisfaction (unanimous)): Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr G Lagergren, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr J Gersing (d), Mr A Spielmann, Mr J De Meyer (so), Mr N Valticos.

The judgment was not concerned with the merits of the judicial and local authority decisions regarding the applicant's child. Although that was raised by the applicant before the Commission, it was declared inadmissible. The Commission's admissibility decision delimited the compass of the case before the Court which was not therefore, in the circumstances, competent to examine or comment on the justification for such matters as the taking into public care or the adoption of the child or the restriction or termination of the applicant's access to her.

The proceedings related to the applicant's access to A and to A's adoption. Their outcome was thus decisive for the future relations between mother and child, in that they could, and did, lead to the total dissolution of their natural ties. Since those ties constituted the very substance of family life,

there was no doubt that the proceedings involved the determination of a 'civil right' of the applicant. A 6(1) was therefore applicable.

The period to be taken into consideration started on 13 November 1978, when the applicant instituted the proceedings, and ended on 10 June 1981, when the Appeal Committee refused leave to appeal to the House of Lords – a period of two years and seven months. The reasonableness of the length of proceedings had to be assessed according to the particular circumstances and having regard to the complexity of the case, the conduct of the parties and to what was at stake in the litigation for the applicant. In addition, only delays attributable to the State could justify a finding of a failure to comply with the 'reasonable time' requirement. The proceedings were somewhat complex. In the present case where what was at stake for the applicant was not only decisive for her future relations with her own child, but had a particular quality of irreversibility, the authorities were under a duty to exercise exceptional diligence since there was always the danger that any procedural delay would result in the de facto determination of the issue submitted to the court before it had held its hearing. Having weighed together all the relevant factors, the Court concluded that the proceedings complained of were not concluded within a reasonable time. There had therefore been a violation of A 6(1).

The proceedings which were the subject of the applicant's complaint related to adoption as well as access. The proceedings, in addition to their particular quality of irreversibility, lay within an area in which procedural delay might lead to a *de facto* determination of the matter at issue. That was so in the present case. The duration of the proceedings was a factor that could therefore properly be taken into account under A 8. The proceedings related to a fundamental element of family life, concerning the applicant's future relations with her child. Irrespective of their final outcome, an effective respect for the applicant's family life required that that question be determined solely in the light of all relevant considerations and not by the mere effluxion of time. Since it was not, there had been a violation of A 8.

Non-pecuniary damage (GBP 12,000). Claim for costs and expenses struck out of list following friendly settlement between Government and applicant (GBP 5,229.05, less amounts received from Council of Europe for legal aid).

Cited: Buchholz v D (6.5.1981), Johnston and Others v IRL (18.12.1986), Zimmermann and Steiner v CH (13.7.1983).

HLR v France (1998) 26 EHRR 29 97/23

[Application lodged 4.7.1994; Commission report 7.12.1995; Court Judgment 29.4.1997]

HLR was a Colombian national. On 14 May 1989, as he was travelling from Colombia to Italy, he was arrested while in transit at Roissy Airport in possession of 580 grams of cocaine. He gave information to the police on the instigators of the traffic and on the person who had recruited him. That information subsequently enabled Interpol to find the recruiter and, following his conviction, deport him to Colombia. In the meantime, the applicant was convicted of drugs offences and sentenced to five years' imprisonment. The court also made an order permanently excluding him from French territory. The Paris Court of Appeal upheld the judgment. The applicant's petition to the President of the Republic to have the exclusion order rescinded was dismissed. The order for the applicant's deportation was made on 26 April 1994 on the ground that his presence on French territory represented a serious threat to public order. The applicant complained that if he were deported to Colombia he would run a serious risk of being treated in a manner contrary to A 3.

Comm found by majority (19–10) V 3 if the applicant deported to Colombia.

Court found by majority (15–6) NV 3 if the order for deportation executed.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr Thór Vilhjálmsson (jd), Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr A Spielmann, Mr J De Meyer (d), Mrs E Palm, Mr I Foighel, Mr R Pekkanen (jd), Mr AN Loizou, Mr AB Baka, Mr MA Lopes Rocha (jd), Mr L Wildhaber, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr D Gotchev, Mr P Jambrek (d), Mr K Jungwiert, Mr U Lôhmus (jd).

Contracting States had the right to control the entry, residence and expulsion of aliens. However, the expulsion of aliens by a Contracting State could give rise to issues under A 3 and thus engage the responsibility of that State under the Convention, where substantial grounds had been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to A 3 in the receiving country. In those circumstances, A 3 implied the obligation not to deport the person in question to that country. A 3, which enshrined one of the fundamental values of democratic societies, prohibited in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct. Under the Convention system, the establishment of the facts was primarily a matter for the Commission and it was only in exceptional circumstances that the Court would use its powers in that area. However, the Court was not bound by the findings in the Commission's report and remained free to verify and to assess the facts itself. As the risk was assessed as at the date the Court considered the case, it was necessary to take into account information that had come to light since the case was examined by the Commission. The source of the risk on which the applicant relied was not the public authorities. According to the applicant, it consisted in the threat of reprisals by drug traffickers, who might seek revenge because of statements he made to the French police, coupled with the fact that the Colombian State was, he claimed, incapable of protecting him from attacks by such persons. As well as applying to State authorities, A 3 could also apply where the danger emanated from persons or groups of persons who were not public officials. However, it had to be shown that the risk was real and that the authorities of the receiving State were not able to obviate the risk by providing appropriate protection. The general situation of violence existing in the country of destination would not in itself entail, in the event of deportation, a violation of A 3. The documents submitted by the applicant showed the tense atmosphere in Colombia; although drug traffickers sometimes took revenge on informers, there was no relevant evidence to show in the applicant's case that the alleged risk was real. His aunt's letters could not, by themselves, show that the threat was real. Moreover, there were no documents to support the claim that the applicant's personal situation would be worse than that of other Colombians, were he to be deported. The Amnesty International report was of limited assistance in the present case. The Court was aware of the difficulties the Colombian authorities faced in containing violence. The applicant had not shown that they were incapable of affording him appropriate protection. No substantial grounds had been established for believing that the applicant, if deported, would be exposed to a real risk of being subjected to inhuman or degrading treatment within the meaning of A 3. There would therefore be no violation of A 3 if the order for the applicant's deportation were to be executed.

Cited: Ahmed v A (17.12.1996), Cruz Varas and Others v S (20.3.1991), Chahal v UK (15.11.1996), Ireland v UK (18.1.1978), Soering v UK (7.7.1989), Vilvarajah and Others v UK (30.10.1991).

Hadjianastassiou v Greece (1993) 16 EHRR 219 92/77

[Application lodged 17.12.1986; Commission report 6.6.1991; Court Judgment 16.12.1992]

Mr Hadjianastassiou was an aeronautical engineer and at the material time a captain in the air force. On 4 July 1984, the Permanent Air Force Court of Athens charged him with disclosing military secrets. He was found guilty of having transmitted to a private company information and technical and theoretical data from an Air Force Technological Research Centre report. He was sentenced to two years, six months' imprisonment. He appealed. The Courts-Martial Appeal Court deliberated in private and considered questions formulated by its President who read out the judgment without referring to the questions put to the members of the court. The applicant was sentenced for disclosure of military secrets of minor importance. The applicant asked, on 23 November 1985, to see the record of the hearing but was told that he would have to wait for the 'finalised version' of the judgment. On 26 November 1985, within the five days prescribed in the Military Criminal Code, he appealed to the Court of Cassation. He received a full, detailed copy of the appeal document containing the President's questions on 10 January 1986. On 18 June 1986, the Court of Cassation declared the appeal inadmissible. The applicant complained that the lack of reasons in the judgment of the Courts-Martial Appeal Court and the shortness of the time-limit for

appealing had prevented him from further substantiating his appeal to the Court of Cassation. He also maintained in addition that his conviction for the disclosure of military secrets of secondary importance had infringed his right to freedom of expression guaranteed under A 10.

Comm found unanimously V 6(1)+6(3)(b), NV 10.

Court found unanimously V 6(1)+6(3)(b), NV 10.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr J De Meyer (c), Mr N Valticos, Mr SK Martens, Mrs E Palm, Mr I Foighel, Mr R Pekkanen, Sir John Freeland.

The Contracting States enjoyed considerable freedom in the choice of the appropriate means to ensure that their judicial systems complied with the requirements of A 6. The national courts had, however, to indicate with sufficient clarity the grounds on which they based their decision. It was that, *inter alia*, which made it possible for the accused to exercise usefully the rights of appeal available to him. In his appeal on points of law, filed within the five day time limit laid down in the Military Criminal Code, the applicant could only rely on what he had been able to hear or gather during the hearing and could do no more than refer generally the legislation. When the applicant received the record of the hearing, on 10 January 1986, he was barred from expanding upon his appeal on points of law. The rights of the defence were subject to such restrictions that the applicant did not have the benefit of a fair trial. There had therefore been a violation A 6(1)+6(3)(b).

Freedom of expression guaranteed by A 10 applied to servicemen just as it did to other persons within the jurisdiction of the Contracting States. Moreover, information of the type in question did not fall outside the scope of A 10, which was not restricted to certain categories of information, ideas or forms of expression. Accordingly, the sentence imposed by the Permanent Air Force Court, later reduced by the Courts-Martial Appeal Court, constituted an interference with the exercise of the applicant's right to the freedom of expression. Such interference infringed A 10 unless it was prescribed by law, pursued one or more of the legitimate aims set out in A 10(2), and was necessary in a democratic society in order to attain the aforesaid aims. The interference was prescribed by law, the sentence was intended to punish the disclosure of information on an arms project classified as secret, and therefore to protect national security, a legitimate aim for the purposes of A 10(2). The disclosure of the State's interest in a given weapon and that of the corresponding technical knowledge, which may give some indication of the state of progress in its manufacture, were capable of causing considerable damage to national security. Account had to be taken of the special conditions attaching to military life and the specific duties and responsibilities incumbent on the members of the armed forces. The applicant, as the officer in charge of an experimental missile programme, was bound by an obligation of discretion in relation to anything concerning the performance of his duties. In the light of those considerations, the Greek military courts could not be said to have overstepped the limits of the margin of appreciation which was to be left to the domestic authorities in matters of national security. Nor did the evidence disclose the lack of a reasonable relationship of proportionality between the means employed and the legitimate aim pursued. There had therefore been no violation of A 10 established.

Costs and expenses (FF 29,260 and GRD 520,000).

Cited: Engel and Others v NL (8.6.1976), Granger v UK (28.3.1990), Kruslin v F (24.4.1990), Markt Intern Verlag GmbH and Klaus Beermann v D (20.11.1989).

Håkansson and Sturesson v Sweden (1991) 13 EHRR 1 90/2

[Application lodged 3.4.1984; Commission report 13.10.1988; Court Judgment 21.2.1990]

The applicants, Mr Gösta Håkansson, a police officer, and Mr Sune Sturesson, a farmer, bought an agricultural estate at a compulsory sale by auction in December 1979. The property had been seized to secure payment of the previous owners' debts to banks. Under the Land Acquisition Act 1979, such purchasers had to resell the property within two years unless they obtained a requisite permit. The applicants' request for a permit was refused on the ground that the estate was a 'rationalisation unit'. Their appeal to the government was dismissed. The land was subsequently

sold in June 1985 at auction to the County Agricultural Board who were the only bidders, at a price lower than that paid by the applicants. The applicants appeal to the Court of Appeal for the compulsory sale to be annulled was dismissed without a public hearing. They complained of infringements of their rights under A 6 and P1A1.

Commission found by majority (10–2) NV P1A1, unanimously NV P1A1+14, unanimously V 6(1) regarding absence of procedure, by majority (7–5) V 6(1) regarding absence of public hearing, unanimously not necessary to examine 13.

Court unanimously found NV P1A1, NV P1A1+14, unanimously V 6(1) regarding absence of remedy to challenge decision refusing permit, by majority (6–1) NV 6(1) regarding absence of public hearing, unanimously not necessary to examine 13.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr L-E Pettiti, Mr B Walsh (pd), Mr C Russo, Mr R Bernhardt, Mrs E Palm.

The impugned measures constituted an interference with the applicants' rights to peaceful enjoyment and deprivation of property. The aim of the interference, to promote rationalisation of agriculture, was one of legitimate public interest. The Court's role was not to review the 1979 Land Acquisition Act, but to determine whether the manner of its application or its effect on applicants gave rise to any violations. The Court's power to review compliance with domestic law was limited. The impugned measures were in accordance with Swedish law (the 1979 Act). There had to be proportionality between the means employed and the aims sought to be realised. Proportionality would not be found if a person had to bear an individual and excessive burden. Prospective buyers were aware of the resale conditions in the 1979 Act and no binding declaration regarding the likelihood of obtaining the permit could be obtained before the auction. The lesser sum received by the applicants for the property was assessed by specially appointed valuers whose decision had been in accordance with the Act. Having regard to the margin of appreciation enjoyed by the State, the price received by the applicants could be considered to be reasonably related to the value of the estate. In view of the risks deliberately taken by the applicants, they had not been made to carry an individual and excessive burden. There was no supporting evidence of discrimination.

Civil rights and obligations were at stake in the dispute concerning the permit. In addition, the applicants had not waived their right to a court. The dispute concerning the permit could only be determined by the government whose decision were not open to review on lawfulness by any court or tribunal, therefore V 6(1) on this point. The Court of Appeal were the first and only tribunal to deal with all aspects of the applicants' complaints and so the applicants were entitled to a public hearing before that court in the absence of any of the exceptions in A 6(1). The public character of court hearings was a fundamental principle and any waiver by an applicant had to be unequivocal and not against any important public interest. There had been no express waiver in the present case, but as such proceedings in Sweden usually took place without a public hearing and the applicants had not asked for one, they could be considered to have unequivocally waived their right to a public hearing. They had only raised the complaint of absence of public hearing before the Convention organs and in addition no questions of public interest were involved in the case to make a public hearing necessary.

Not necessary to examine A 13, as its requirements were less strict and absorbed by A 6 in this case.

Costs and expenses (SEK 60,000). No award for damages (no causal link between the violation of A 6(1) and any of the alleged prejudice. The refusal to grant the necessary permit to retain the property may have caused the applicants some economic loss, but the Court could not speculate as to what result they would have achieved had they been able to bring their complaints before a court).

Cited: Albert and le Compte v B (10.2.1983), Eriksson v S (22.6.1989), Ettl and Others v A (23.4.1987), H v B (30.11.1988), Allan Jacobsson v S (25.10.1989), James and Others v UK (21.2.1986), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Lithgow and Others v UK (8.7.1986), Sramek v A (2.10.1984).

Halford v United Kingdom (1997) 24 EHRR 523 97/31

[Application lodged 22.4.1992; Commission report 18.4.1996; Court Judgment 25.6.1997]

Ms Alison Halford, the applicant, was appointed to the rank of Assistant Chief Constable with the Merseyside police in May 1983 and became the most senior-ranking female police officer in the UK. On eight occasions during the following seven years, she applied unsuccessfully to be appointed to the rank of Deputy Chief Constable. In 1990, she commenced proceedings in the Industrial Tribunal against, *inter alia*, the Chief Constable of Merseyside and the Home Secretary, claiming that she had been discriminated against on grounds of sex. The applicant alleged that certain members of the Merseyside Police Authority launched a 'campaign' against her in response to her complaint to the Industrial Tribunal. This took the form, *inter alia*, of leaks to the press, interception of her telephone calls and the decision to bring disciplinary proceedings against her. She complained that the interception of calls made from her office and home telephones amounted to unjustifiable interferences with her rights to respect for her private life and freedom of expression, that she had no effective domestic remedy in relation to the interceptions and that she was discriminated against on grounds of sex.

Comm found by majority (26–1) V 8, 13 in relation to office telephones, unanimously, NV 8, 10 or 13 in relation to home telephone, not necessary to consider the complaint under 10 in relation to office telephones, and no violation of 14+8 or 14+10.

Court found unanimously V 8 in relation to calls made on the applicant's office telephones, NV 8 in relation to calls made on the applicant's home telephone, V 13 in relation to the applicant's complaint concerning her office telephones, by majority (8–1) NV 13 in relation to the applicant's complaint concerning her home telephone, unanimously that it is not necessary to consider 10, 14.

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr C Russo (d), Mr A Spielmann, Mr I Foighel, Mr J M Morenilla, Sir John Freeland, Mr MA Lopes Rocha, Mr P Kûris.

Telephone calls made from business premises as well as from the home could be covered by the notions of 'private life' and 'correspondence' under A 8(1). There was no evidence of any warning having been given to the applicant that calls made on the internal telecommunications system would be liable to interception. She would have had a reasonable expectation of privacy for such calls. In addition, as Assistant Chief Constable, she had sole use of her office where one of her two telephones was specifically designated for her private use. She had also been given the assurance, in response to a memorandum, that she could use her office telephones for the purposes of her sex-discrimination case. Her conversations on her office telephones therefore fell within the scope of the notions of 'private life' and 'correspondence' and A 8 was therefore applicable to that part of the complaint. The calls made by the applicant from her office were intercepted by the Merseyside police with the primary aim of gathering material to assist in the defence of the sex-discrimination proceedings brought against them. That interception constituted an 'interference by a public authority', within the meaning of A 8(2). In the context of secret measures of surveillance or interception of communications by public authorities, because of the lack of public scrutiny and the risk of misuse of power, the domestic law had to provide some protection to the individual against arbitrary interference with A 8 rights. The domestic law had to be sufficiently clear in its terms to give citizens an adequate indication as to the circumstances and conditions on which public authorities were empowered to resort to any such secret measures. Domestic law did not provide any regulation of interceptions of calls made on telecommunications systems outside the public network. Therefore, the interference was not in accordance with the law for the purposes of A 8(2) as the domestic law did not provide adequate protection to the applicant against interferences by the police with her right to respect for her private life and correspondence. There had therefore been a violation of A 8 in relation to the interception of calls made on the applicant's office telephones. The telephone conversations made from the home were covered by the notions of 'private life' and 'correspondence' under A 8. The applicant complained that measures of surveillance were actually applied to her. The Commission was the organ primarily charged with

the establishment and verification of the facts and had considered that the evidence presented to it did not indicate a reasonable likelihood that calls made on the applicant's home telephone were being intercepted. Before the Court, the applicant provided further evidence which the Court did not accept. Having considered all the evidence, the Court did not find it established that there was an interference with the applicant's rights to respect for her private life and correspondence in relation to her home telephone and therefore no violation of A 8 in that regard.

The effect of A 13 was to require the provision of a remedy at national level allowing the competent domestic authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States were afforded some discretion as to the manner in which they conformed to their obligations under the provision. However, such a remedy was only required in respect of grievances which could be regarded as 'arguable' in terms of the Convention. The applicant had an 'arguable' claim that calls made from her office telephones were intercepted and that that amounted to a violation of A 8. She was, therefore, entitled to an effective domestic remedy within the meaning of A 13. There was no provision in domestic law to regulate interceptions of telephone calls made on internal communications systems operated by public authorities. The applicant was therefore unable to seek relief at national level in relation to her complaint concerning her office telephones. There had therefore been a violation of A 13 in relation to the applicant's office telephones. In order to find an 'interference' under A 8 in relation to the home telephone, there had to be a reasonable likelihood of some measure of surveillance having been applied to the applicant. The Court had found that the evidence submitted was not sufficient to found an 'arguable' claim within the meaning of A 13 and therefore there had been no violation of A 13 in relation to the home telephone.

The allegations in relation to A 10 and 14 were tantamount to restatements of the complaints under A 8 and therefore it was not necessary to examine them separately.

Pecuniary and non-pecuniary damage (GBP 10,600), costs and expenses (GBP 25,000).

Cited: A v F (23.11.1993), Aksoy v TR (18.12.1996), Chahal v UK (15.11.1996), Huvig v F (24.4.1990), Klass and Others v D (6.9.1978), Leander v S (26.3.1987), Malone v UK (2.8.1984), Niemietz v D (16.12.1992).

Hamer v France (1997) 23 EHRR 1 96/29

[Application lodged 10.3.1992; Commission report 21.2.1995; Court Judgment 7.8.1996]

In the night of 17 to 18 August 1978, Prince Victor-Emmanuel of Savoy, returning from a restaurant, noticed his rubber dinghy moored unusually. He shot at a person he confronted, but one of the bullets fatally wounded a 19 year old German youth, Mr Dirk Hamer, who had been asleep on the deck of another boat. Prince Victor-Emmanuel was charged with assault occasioning actual bodily harm and possessing and carrying a category 1 weapon. He admitted civil liability for the accident in which Mr Hamer had been injured and on 5 September 1978 paid FF 500,000 to the victim's family. On 26 November 1979 Ms Birgit Hamer, the sister of the deceased and other family members joined the proceedings as civil parties by applying to the investigating judge. On 18 November 1991, the Paris Assize Court sentenced Prince Victor-Emmanuel to six months' imprisonment, suspended, for unauthorised possession and carrying of a rifle and acquitted him of fatal wounding and unintentional homicide. No hearing was held on the civil issues. The applicant complained that her case had not been heard within a reasonable time as required by A 6(1).

Comm found by majority (13–10) V 6(1).

Court found by majority (6–3) 6 not applicable to the proceedings and was accordingly not breached.

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr A Spielmann (jd), Mr N Valticos, Mr S K Martens (d), Mr AB Baka, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr B Repik (jd).

The Court recalled its case-law, noting that it had to be ascertained whether there was a dispute over a 'civil right' which could be said, at least on arguable grounds, to be recognised under domestic law. The dispute had to be genuine and serious; it could relate not only to the existence of

a right but also to its scope and the manner of its exercise; and finally, the outcome of the proceedings had to be directly decisive for the right in question. At no stage in the proceedings did the applicant, who had joined by lodging a civil party application with the investigating judge on 26 November 1979, claim damages or make known any intention of so doing. Nor did she ever object to the settlement reached between her family and Prince Victor-Emmanuel, who had acknowledged his civil liability and paid them compensation on 5 September 1978. Nor did she express any reservations on that subject. The applicant could have claimed damages at various stages in the proceedings or lodged her claim for damages with the civil courts at a later date. The present case had to be distinguished from other similar cases the Court had had to deal with in which the outcome of the proceedings was decisive for the 'civil right' in question. Other cases had ended with judgments in which it was held that there was no case to answer, whereas in the present case the accused was committed for trial. In the present case, the outcome of the proceedings was not decisive, for the purposes of A 6(1), for the establishment of the applicant's right to compensation. As the applicant never asserted that right, there was no dispute over a 'civil right'. Accordingly, A 6(1) was not applicable.

Cited: Acquaviva v F (21.11.1995), Tomasi v F (27.8.1992).

Handyside v United Kingdom (1979–80) 1 EHRR 737 76/5

[Application lodged 13.4.1972; Commission report 30.9.1975; Court Judgment 7.12.1976]

Mr Richard Handyside, the proprietor of a publishing firm, published *The Little Red Schoolbook*, written by Søren Hansen and Jesper Jensen, two Danish authors. The book, priced at thirty pence, claimed to be a reference book and contained chapters on education, learning, teachers, pupils and The System including sections on, *inter alia*, masturbation, orgasm, intercourse and petting, contraceptives, wet dreams, menstruation, child-molesters or 'dirty old men', pornography, impotence, homosexuality, venereal diseases and abortion. The British rights had been purchased by the applicant in September 1970. The book had first been published in Denmark in 1969 and subsequently, after translation and with certain adaptations, in other European and non-European countries. After receipt of a number of complaints, the applicant's premises were searched and copies of the book with other advertising material, correspondence and the matrix with which the book was printed were seized. The applicant was summonsed under the Obscene Publications Act 1964. Following trial he was found guilty fined GBP 25 on each of two summonses and ordered to pay GBP 110 costs. The court also made a forfeiture order for the destruction of the books by the police. His appeal to the Inner London Quarter Sessions was dismissed on 29 October 1971. The applicant was ordered to pay further costs and the material seized was then destroyed. The applicant did not appeal. *The Schoolbook* was not the subject of proceedings in Northern Ireland, the Channel Islands or the Isle of Man. In Scotland, a Glasgow bookseller charged under a local Act was acquitted by a stipendiary magistrate who considered that the book was not indecent or obscene within the meaning of that Act. The applicant complained, *inter alia*, that the action against him was in breach of his right to freedom of expression, and his right to the peaceful enjoyment of possessions, and discriminatory.

Comm found by majority (8–5 with one abstention) NV 10, NV P1A1 (11) with regard to the provisional seizure, (9–4 with one abstention) with regard to the forfeiture and destruction of *The Schoolbook*, (12 with two abstentions) further discussion under 17 unnecessary, unanimously NV 18.

Court found by majority (13–1) NV 10, unanimously NV P1A1, 14+10, 14+P1A1, 18.

Judges: Mr G Balladore Pallieri, President, Mr H Mosler (so), Mr M Zekia (so), Mr G Wiarda, Mrs H Pedersen, Mr Thór Vilhjálmsson Mr S Petrén, Mr R Ryssdal, Mr A Bozer, Mr W Ganshof Van Der Meersch, Sir Gerald Fitzmaurice, Mrs D Bindschedler-Robert, Mr D Evrigenis, Mr H Delvaux.

The applicant's criminal conviction, the seizure and subsequent forfeiture and destruction of the matrix and of hundreds of copies of the *Schoolbook* were 'interferences by public authority' in the exercise of his freedom of expression guaranteed by A 10(1). Such interferences entailed a 'violation' of A 10 if they did not fall within one of the exceptions provided for in A 10(2). The restrictions and penalties complained of by the applicant were prescribed by law, the 1959 and

1964 Obscene Publications Acts. They had a legitimate aim under A 10(2), namely, the protection of morals in a democratic society. The machinery of protection established by the Convention was subsidiary to the national systems safeguarding human rights. The Convention left to each Contracting State, in the first place, the task of securing the rights and liberties it enshrined. By reason of their direct and continuous contact with the vital forces of their countries, State authorities were in principle in a better position than the international judge to give an opinion on the exact content of those requirements as well as on the necessity of a restriction or penalty intended to meet them. A 10(2) left to the Contracting States a margin of appreciation. That margin was given both to the domestic legislator and to the bodies, judicial amongst others, that were called upon to interpret and apply the laws in force. Nevertheless, A 10(2) did not give the Contracting States an unlimited power of appreciation. The domestic margin of appreciation went hand in hand with a European supervision. The Court noted the intended readership of the *Schoolbook* (12–18 years) and concluded that the English judges were entitled, in the exercise of their discretion, to think at the relevant time that the *Schoolbook* would have pernicious effects on the morals of many of the children and adolescents who would read it. The fundamental aim of the judgment of 29 October 1971 was the protection of the morals of the young, a legitimate purpose under A 10(2), consequently, the seizures effected pending the outcome of the proceedings that were about to open, also had that aim. The lack of proceedings in other parts of the UK and the circulation of copies without impediment did not prove that the judgment of 29 October 1971 was not a response to a real necessity, bearing in mind the national authorities' margin of appreciation. The absence of proceedings against the revised edition suggested that the authorities wished to limit themselves to what was strictly necessary, an attitude in conformity with A 10. Regarding hard core pornography openly on sale and rarely prosecuted, it was not the Court's function to compare different decisions taken, even in apparently similar circumstances, by prosecuting authorities and courts. In addition, the situations were not analogous. With regard to the circulation of the book in other Member States, the Court noted the national margin of appreciation in each State. The State had not been shown to have violated the principle of proportionality in its measures. On the evidence before it, no breach of A 10 had been established in the circumstances of the present case.

The seizure of the matrix and of hundreds of copies of the *Schoolbook* and their forfeiture and subsequent destruction were both measures which interfered with the applicant's right to the peaceful enjoyment of his possessions. The seizure complained of was provisional. It did no more than prevent the applicant, for a period, from enjoying and using as he pleased possessions of which he remained the owner and which he would have recovered had the proceedings against him resulted in an acquittal. The second sentence of the first paragraph of P1A1 did not therefore come into play in the case. The structure of P1A1 showed that that sentence applied only to someone who was 'deprived of ownership'. However, the seizure related to 'the use of property' and thus fell within the second paragraph, which paragraph set the Contracting States up as sole judges of the necessity for an interference. Consequently, the Court had to restrict itself to supervising the lawfulness and the purpose of the restriction in question. The measure was in accordance with the law and had the aim of the protection of morals. The forfeiture and destruction of the *Schoolbook* permanently deprived the applicant of the ownership of certain possessions. However, those measures were authorised by the second paragraph P1A1, interpreted in the light of the principle of law, common to the Contracting States, under which items whose use had been lawfully adjudged illicit and dangerous to the general interest were forfeited with a view to destruction.

The complaint under A 18 did not support examination, since the Court had already concluded that the restrictions concerned aims that were legitimate under A 10 and P1A1).

The evidence before the Court did not show that the applicant suffered discrimination in the enjoyment of his freedom of expression (14+10) and his property rights (14+P1A1).

Cited: 'Belgian Linguistic' case (23.7.1968), De Wilde, Ooms and Versyp v B (18.6.1971), Engel and Others v NL (8.6.1976), Golder v UK (21.2.1975), Matznetter v A (10.11.1969), Neumeister v A (27.6.1968), Ringeisen v A (16.7.1971), Stögmüller v A (10.11.1969), Wemhoff v D (27.6.1968).

Hashman and Harrup v United Kingdom 99/90

[Application lodged 19.8.1994; Commission report 6.7.1998; Court Judgment 25.11.1999]

On 3 March 1993, Mr Joseph Hashman and Ms Wanda Harrup, the applicants, blew a hunting horn and engaged in hallooing with the intention of disrupting the activities of the Portman Hunt. A complaint was made to the Gillingham magistrates that the applicants should be required to enter into a recognizance with or without sureties to keep the peace and be of good behaviour pursuant to the Justices of the Peace Act 1361. They were bound over to keep the peace and be of good behaviour in the sum of GBP 100 for 12 months on 7 September 1993. They appealed to the Crown Court, which found that the applicants had not committed any breach of the peace, and that their conduct had not been likely to occasion a breach of the peace but had been *contra bonos mores*. They complained that the finding infringed, *inter alia*, their rights under A 10.

Comm found by majority (25–4) V 10.

Court found unanimously not necessary to examine A 11, by majority (16–1) V 10.

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr A Pastor Ridruejo, Mr G Bonello, Mr P Kûris, Mr R Türmen, Mr J-P Costa, Mrs F Tulkens, Mrs V Stráznická, Mr P Lorenzen, Mr M Fischbach, Mr V Butkevych, Mr J Casadevall, Mr AB Baka (d), Mr R Maruste, Mrs S Botoucharova, Lord Reed, ad hoc judge.

The complaint under A 11, raised before the Commission, was not pursued before the Court, which saw no reason to consider it of its own motion.

The protest of the applicants, which took the form of impeding the activities of which they disapproved, constituted an expression of opinion within the meaning of A 10. The measures taken against the applicants were, therefore, an interference with their right to freedom of expression. One of the requirements flowing from the expression 'prescribed by law' was forseeability. A norm could not be regarded as a 'law' unless it was formulated with sufficient precision to enable the citizen to regulate his conduct. At the same time, whilst certainty in the law was highly desirable, it may bring in its train excessive rigidity and the law had to be able to keep pace with changing circumstances. The level of precision required of domestic legislation, which could not in any case provide for every eventuality, depended to a considerable degree on the content of the instrument in question, the field it was designed to cover and the number and status of those to whom it was addressed. The present case concerned an interference with freedom of expression which was not expressed to be a 'sanction', or punishment, for behaviour of a certain type, but rather an order, imposed on the applicants, not to breach the peace or behave *contra bonos mores* in the future. The binding-over order in the present case had purely prospective effect. It did not require a finding that there had been a breach of the peace. The Court recalled its previous case-law, noting that the expression 'to be of good behaviour' 'was particularly imprecise and offered little guidance to the person bound over as to the type of conduct which would amount to a breach of the order'. Conduct *contra bonos mores* was defined as behaviour which was 'wrong rather than right in the judgment of the majority of contemporary fellow citizens'; conduct which was not described at all, but merely expressed to be 'wrong' in the opinion of a majority of citizens. In the present case it was not necessarily evident to the applicants what they were being ordered not to do for the period of their binding over. The present applicants did not breach the peace, and given the lack of precision referred to above, it could not be said that what they were being bound over not to do must have been apparent to them. Therefore, the order by which the applicants were bound over to keep the peace and not to behave *contra bonos mores* did not comply with the requirement of A 10(2) that it be 'prescribed by law'. There had therefore been a violation of A 10.

Costs and expenses (GBP 6,000).

Cited: Chorherr v A (25.8.1993), Rekvényi v H (20.5.1999), Stallinger and Kuso v A (23.4.1997), Steel and Others v UK (23.9.1998), The Sunday Times (No 2) v UK (26.11.1991).

Hatami v Sweden 98/87

[Application lodged 22.7.1996; Commission report 23.4.1998; Court Judgment 9.10.1998]

Mr Korosh Hatami, an Iranian national, arrived in Sweden on 13 June 1993. He asked for asylum upon arrival. The basis of his claim was his sympathies for the Mujahedin Khalgh organisation which had led to his arrest, imprisonment for 2 years and torture. After his release, he continued his activities, but following the arrest of another member of his group, who had revealed the applicant's involvement, the latter fled to Kurdistan and then to Bandar Abbas and thereafter with assistance to Stockholm. The National Immigration Board rejected the applicant's asylum claim on the grounds that it doubted its credibility. The applicant appealed to the Aliens Appeals Board which rejected his appeal on 1 July 1996 and ordered his expulsion. The applicant complained that his expulsion from Sweden and deportation to Iran would expose him to ill-treatment and give rise to a violation of A 3.

Commission found unanimously V 3 if applicant deported to Iran.

Court noted the friendly settlement and struck case out of the list.

Judges: Mr R Bernhardt, President, Mrs E Palm, Mr I Foighel, Mr JM Morenilla, Sir John Freeland, Mr MA Lopes Rocha, Mr L Wildhaber, Mr P Jambrek, Mr V Butkevych.

Court noted the friendly settlement reached between the Government and the applicant and discerned no reason of public policy against striking the case out of the list.

FS (Aliens Appeals Board granted the applicant a permit to reside permanently in Sweden and repealed the expulsion order, Government to pay, ex gratia, SEK 100,000).

Hauschildt v Denmark (1990) 12 EHRR 266 89/7

[Application lodged 26.8.1980; Commission report 16.7.1987; Court Judgment 24.5.1989]

Mr Mogens Hauschildt, the applicant, established a company, Scandinavian Capital Exchange plc, which traded as a bullion dealer and also provided financial services. In January 1980, he was charged with fraud and tax evasion. He was found guilty and sentenced to seven years' imprisonment. He appealed to the High Court, which confirmed his conviction on 2 March 1984. Leave to appeal to the Supreme Court was refused. He complained that he did not receive a fair trial by an impartial tribunal within a reasonable time as the presiding judge of the City Court and the High Court judges, who had respectively convicted him and examined his appeal, had taken before and during his trials numerous decisions regarding his detention on remand and other procedural matters.

Comm found by a majority (9–7) NV 6(1).

Court rejected by majority (14–3) Government's preliminary objection of non-exhaustion of domestic remedies, found (12–5) V 6(1).

Judges: Mr R Ryssdal, President (c), Mr J Cremona, Mr Thór Vilhjálmsson (jd), Mr F Gölcüklü (jd), Mr F Matscher (jd), Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer (c), Mr N Valticos, Mr SK Martens, Mrs E Palm (jd), Mr B Gomard (jd), ad hoc judge.

Preliminary objection dismissed, the government had not shown that there was an effective remedy under Danish law to which the applicant could have resorted. The existence of impartiality for the purpose of A 6(1) had to be determined according to both a subjective test, that is, on the basis of the personal conviction of a particular judge in a particular case, and an objective test, that is, ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect. As to the subjective test, the personal impartiality of a judge had to be presumed until there was proof to the contrary and in the present case, there was no such proof. Under the objective test, it had to be determined whether there were ascertainable facts which may raise doubts as to the impartiality of the judge. Appearances may be important; what was at stake was the confidence which the courts inspired in the public and in the accused. Accordingly, any

judge in respect of whom there was a legitimate reason to fear a lack of impartiality had to withdraw. The standpoint of the accused was important, but not decisive; what was decisive was whether the fear of lack of impartiality could be held to be objectively justified. The questions which a judge had to answer when taking pre-trial decisions were not the same as those which were decisive for his final judgment. The mere fact that a trial or appeal judge, in a system like the Danish one, had also made pre-trial decisions in the case, including those concerning detention on remand, could not be held as in itself justifying fears as to his impartiality. In the present case, in prolonging the applicant's detention, the judges specifically relied on s 762(2) of the Administration of Justice Act, which required, *inter alia*, a 'particularly confirmed suspicion' that the accused had committed the crime (interpreted as meaning that the judge had to be convinced there was very high degree of clarity as to guilt). Thus, the difference between the issue the judge had to settle when applying that section and the issue he would have to settle when giving judgment at the trial became tenuous. In the circumstances of the case, the impartiality of the courts appeared capable of being open to doubt and the applicant's fears could be considered objectively justified. Therefore, there had been a violation of A 6(1).

Costs and expenses (GBP 20,000).

Cited: Ben Yaacoub v B (27.11.1987), Campbell and Fell v UK (28.6.1984), De Cubber v B (26.10.1984), Gillow v UK (14.9.1987), Lutz v D (25.8.1987), Piersack v B (1.10.1982).

Helle v Finland (1998) 26 EHRR 159 97/99

[Application lodged 28.9.1992; Commission report 15.10.1996; Court Judgment 19.12.1997]

Mr Pekka Helle was a retired verger of the Evangelical-Lutheran Church. A new salary system was applied in 1977 to the Church employees. On 9 January 1989, the applicant appealed against the 1977 decision to the Parish Council claiming arrears of salary owed to him as a full-time parish verger and other lost benefits. He lodged an appeal with the Cathedral Chapter which acted as a court of first instance in cases concerning salary claims of parish officials. He subsequently appealed against the Cathedral Chapter's decision to the Supreme Administrative Court. In a decision of 8 March 1991, the Supreme Administrative Court, without having held an oral hearing, upheld the Cathedral Chapter's decision as regards the effects of the 1977 decision, finding no reason to alter it. On the other hand, the Supreme Administrative Court considered that the Cathedral Chapter did have jurisdiction to examine the dispute regarding his compensation claim and therefore referred the case back for fresh examination. The applicant complained that he had never received an oral hearing before an independent and impartial tribunal at any stage of the domestic proceedings, nor obtained adequate reasons from the Cathedral Chapter or the Supreme Administrative Court for their rejection of his claims.

Comm found unanimously NV 6(1) with regard to the absence of an oral hearing before an independent and impartial tribunal, by majority (25–5) NV 6(1) with regard to the fairness of the domestic proceedings.

Court found unanimously NV 6(1) with respect to the absence of an oral hearing before an independent and impartial tribunal and fairness of the proceedings.

Judges: Mr R Ryssdal, President, Mr N Valticos, Mr I Foighel (c), Mr R Pekkanen, Mr AN Loizou, Mr L Wildhaber, Mr D Gotchev, Mr B Repik (c), Mr P Van Dijk (c).

The rights invoked by the applicant were pecuniary in nature and fell within the category of 'civil' rights, irrespective of the administrative nature of the proceedings in issue. A 6(1) was therefore applicable.

The Supreme Administrative Court was independent and impartial. Although the Cathedral Chapter had not held an oral hearing when adjudicating on the applicant's grievances, the organisation of an oral procedure before the Supreme Administrative Court would have fully met the requirements of A 6(1) in that respect and compensated for the deficiencies in the proceedings before the Cathedral Chapter. This was all that was required under A 6(1). The application of Finland's reservation to the proceedings before the Supreme Administrative Court was central to

the Government's argument that the absence of an oral hearing before that court could not be impugned under A 6(1). The reservation satisfied the substantive and procedural requirements of A 64. The reservation was valid and Finland was not under a Convention obligation to ensure that an oral hearing took place before the Supreme Administrative Court. While the effect of the reservation was to deny the applicant a right to an oral hearing before an independent and impartial tribunal, that result had to be considered to be compatible with the Convention and a consequence of the operation of a valid reservation. The aim of the reservation was to relieve the Supreme Administrative Court from the Convention requirement to hold an oral hearing during a transitional period and that requirement could not be re-imposed during the subsistence of the reservation's validity in order to compensate for the absence of such a hearing downstream in the domestic legal order. Accordingly, there had been no breach of A 6(1) in respect of an oral hearing.

The Court's task was to assess whether or not the proceedings taken as a whole were fair within the meaning of A 6(1) having regard to all the relevant circumstances, including the nature of the dispute and the character of the proceedings in issue, the way in which the evidence was dealt with and whether the proceedings afforded the applicant an opportunity to state his case under conditions which did not place him at a substantial disadvantage vis-à-vis his employer. The applicant was given a real and genuine opportunity by the Supreme Administrative Court to submit his own comments on the content of the Cathedral Chapter's opinions and he availed himself of that opportunity on two occasions. In the circumstances, he could not maintain that there was a breach of the requirement of 'equality of arms' inherent in the concept of a fair procedure.

While A 6(1) obliged the courts to give reasons for their judgments, it did not require a detailed answer to every argument adduced by a litigant. The extent to which the duty to give reasons applied varied according to the nature of the decision at issue. It was moreover necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. Having regard to the requirements of A 6(1), the Court found no fault with the way in which the Cathedral Chapter dealt with the evidence before it, nor with the adequacy of the reasons which it adduced to ground its rejection of the applicant's appeal. The reasons given by the Cathedral Chapter were adopted twice on appeal by the Supreme Administrative Court by process of incorporation, thus clearly indicating that the latter court had no reasons of its own to depart from the conclusions reached by the Cathedral Chapter and that the applicant had not presented any new submissions which would have had a bearing on the appeal. Nor could it be maintained that the Supreme Administrative Court did not address the essence of the points submitted by the applicant for its consideration; its remittal of the issue of compensation back to the Cathedral Chapter confirmed that it had taken a fresh and considered approach to the submissions before it. The notion of a fair procedure required that a national court which had given sparse reasons for its decisions, whether by incorporating the reasons of a lower court or otherwise, addressed the essential issues which were submitted to its jurisdiction and did not merely endorse without further ado the findings reached by a lower court. That requirement was all the more important where a litigant had not been able to present his case orally in the domestic proceedings. However, in the present case, that requirement was satisfied. Accordingly, there had been no violation of A 6(1) under this head of complaint either.

Cited: Ankerl v CH (23.10.1996), British-American Tobacco Company Ltd v NL (20.11.1995), De Haan v NL (26.8.1997), Dombo Beheer BV v NL (27.10.1993), Editions Périscope v F (26.3.1992), Nideröst-Huber v CH (18.2.1997), Ruiz Torija v E (9.12.1994).

Helmers v Sweden (1993) 15 EHRR 285 91/41

[Application lodged 6.2.1985; Commission report 6.2.1990; Court Judgment 29.10.1991]

Mr Reinhard Helmers, a German citizen, was a university lecturer resident in Sweden. In 1979, he was not selected for appointment to an academic post at the University of Lund. As he considered

that the decision was discriminatory and that the recruitment board had been biased, he appealed to the National Board of Universities and Colleges. The University committee which investigated the complaint stated that the applicant had accused the person eventually selected for the post of having obtained it by means of secret pressure as a reward for another's assistance in a campaign led by a professor against the applicant. The applicant, who considered that the university committee's statement amounted to defamation, reported the matter to the police, who chose not to investigate. The applicant brought a private prosecution for defamation, an action for damages and sought compensation from each of the accused. The Lund District Court held a public hearing on 9 September 1981, at which the applicant and the defendants had the opportunity to address the court. The District Court dismissed the applicant's private prosecution and rejected the claim for compensation. His appeal to the Court of Appeal and his request to it to hold an oral hearing was rejected. He was refused leave to appeal to the Supreme Court. He complained of infringements of A 6.

Comm found unanimously V 6(1) regarding lack of public hearing.

Court found by majority (11–9) V 6(1) with regard to Court of Appeal's refusal to grant an oral hearing.

Judges: Mr J Cremona, President, Mr Thór Vilhjálmsson (jd), Mrs D Bindschedler-Robert (jd), Mr F Gölcüklü (jd), Mr F Matscher (jd), Mr L-E Pettiti, Mr B Walsh (c), Sir Vincent Evans, Mr R Macdonald, Mr C Russo (c), Mr R Bernhardt (jd), Mr A Spielmann (c), Mr J De Meyer (c), Mr SK Martens (jd), Mrs E Palm (jd), Mr I Foighel, Mr R Pekkanen (jd), Mr AN Loizou (c), Mr JM Morenilla (d), Mr F Bigi (c).

The scope of the case before the Court was delimited by the Commission's decision on admissibility. The applicant's additional complaints before the Court had not been declared admissible by, or raised before, the Commission in the present case. Consequently, the Court did not have jurisdiction to deal with them. Furthermore, a decision by the Commission that an application was inadmissible was final and not open to appeal.

The 'civil' character of the right to enjoy a good reputation was not disputed and followed from established case-law. Accordingly, A 6(1) was applicable. The manner of application of A 6 to proceedings before courts of appeal depended on the special features of the proceedings involved; account had to be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court. A public hearing had been held at first instance. Even where a court of appeal had jurisdiction to review the case both as to facts and as to law, the Court could not find that A 6 always required a right to a public hearing irrespective of the nature of the issues to be decided. The publicity requirement was one of the means whereby confidence in the courts was maintained. However, there were other considerations, including the right to trial within a reasonable time and the related need for expeditious handling of the courts' case-load, which had to be taken into account in determining the necessity of a public hearing at stages in the proceedings subsequent to the trial at first instance. Provided a public hearing had been held at first instance, the absence of such a hearing before a second or third instance could be justified by the special features of the proceedings at issue. Leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, might comply with the requirements of A 6, although the appellant was not given an opportunity of being heard in person by the appeal court. Taking into account the seriousness of what was at stake for the applicant, namely his professional reputation and career, the question of the defendants' guilt could not, as a matter of fair trial, have been properly determined by the Court of Appeal without a direct assessment of the evidence given in person by the applicant and by the defendants, who claimed that they were innocent of the accusations brought against them. There were no special features to justify the Court of Appeal's denial of a public hearing and of the applicant's right to be heard in person. Accordingly, there had been a violation of A 6(1).

Non-pecuniary damage (SEK 25,000). No claim for costs and expenses.

Cited: Axen v D (8.12.1983), Ekbatani v S (26.5.1988), Golder v UK (21.2.1975), Moreira de Azevedo v P (23.10.1990), Powell and Rayner v UK (21.2.1990).

Hennings v Germany (1993) 15 EHRR 83 92/75

[Application lodged 16.4.1986; Commission report 30.5.1991; Court Judgment 16.12.1992]

Mr Hans-Dieter Hennings had an altercation with a ticket collector on 15 April 1984. The Railway Police questioned the applicant about the incident. In a standard-form letter of 9 August 1984, the public prosecutor's office informed the applicant of the offence and in accordance with the Criminal Code stated that proceedings would not be brought against him if he paid a fine of DM 300 by 1 October 1984. A form to be returned by 20 September 1984 was enclosed for the purpose of consenting to this method of settlement which would result in the termination of the proceedings without further notice. As the applicant did not return the consent form or pay the fine, he was issued with a penal order by the District Court on 7 November 1984 in accordance with a summary procedure. He was sentenced to a fine of DM 40 per day for 25 days for coercion and for the further offence of dangerous assault, which was not mentioned in the letter of 9 August 1984. As no objection had been lodged by the applicant within the one week time limit then prescribed by law and explicitly mentioned in the penal order, it acquired legal force as the final judgment in the matter on 20 November 1984. An application for the reinstatement of the proceedings against the penal order was submitted by the applicant's lawyer and received by the Rosenheim District Court on 27 November 1984 out of time. The applicant's request for reinstatement was dismissed by the District Court and the applicant was ordered to pay the costs. The Regional Court dismissed the applicant's appeal on 24 January 1985 and ordered him to pay the costs. On 17 October 1985, due to its lack of prospects of success, the Federal Constitutional Court rejected the applicant's appeal against the refusal of reinstatement. The applicant complained about the short time limit for filing an objection against the penal order and that it was not served on him personally.

Comm found by majority (9–4) NV 6(1), (12–1) NV 14+6,

Court found by majority (8–1) NV 6(1), unanimously not necessary to examine A14+6.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr L-E Pettiti, Mr B Walsh (d), Mr J De Meyer, Mr N Valticos, Mr R Pekkanen, Mr AN Loizou, Mr F Bigi.

The guarantees contained in A 6(3) were constituent elements of the general notion of a fair trial. In the circumstances of the case, the complaint should be examined under 6(1). The applicant could reasonably have been expected to obtain a key to his letter-box in order to have ready access to any mail addressed to him, particularly since he must have foreseen that proceedings would be brought against him as a result of his failure to reply to the letter of 9 August 1984 from the public prosecutor's office. The authorities could not be held responsible for barring his access to a court because he failed to take the necessary steps to ensure receipt of his mail and was thereby unable to comply with the requisite time limits laid down under German law. Whilst the time limit of one week for lodging an objection following service of the penal order was short, especially where a new offence had been alleged, it had to be borne in mind that the applicant still had the possibility of seeking reinstatement of the proceedings. Such a request had to be granted if there has been no fault on the part of the person concerned. However, the applicant failed to lodge even this request in time. It could not be said that the applicant was denied his right of access to a court. Accordingly, there had been no violation of A 6(1).

The applicant did not pursue his claim of violation of A 14 and 6 before the Court. The Court did not have jurisdiction to examine it and considered that it was subsumed in the general complaint that he was denied access to court.

Cited: Artner v A (28.8.1992).

Henra v France 98/32

[Application lodged 21.5.1997; Commission report 28.10.1997; Court Judgment 29.4.1998]

Mr Mathieu Henra, a minor, was represented by his testamentary guardian and was acting on his own behalf and as his parents' sole heir. His father was a haemophiliac and received numerous

blood transfusions. An antenatal test carried out on the applicant's mother in August 1986 revealed that she was HIV-positive. A test subsequently carried out on the applicant's father showed that he too was HIV-positive. When the applicant was born, it was found that he was also HIV-positive. On 6 December 1990, the applicant's parents lodged three applications with the Paris Administrative Court seeking compensation for the damage sustained as a result of the State's failure to take appropriate measures to prevent their infection with HIV. On 22 April 1992, the Administrative Court gave an interlocutory judgment, holding the State liable. The applicant's father died on 8 April 1993 and his mother died on 24 August 1993. The applicant appealed the compensation award to the Administrative Court and there was a further appeal to the Conseil d'Etat. On 9 December 1994, the applicant lodged an application with the European Commission of Human Rights. On 13 September 1995, the Commission adopted a report noting that the parties had reached agreement on a friendly settlement of the case. On 31 January 1996, the Conseil d'Etat quashed the Administrative Court of Appeal's judgment and remitted the case back to that court. On 21 May 1997, the proceedings still outstanding, the applicant lodged a further application with the Commission complaining about the length of proceedings.

Comm found unanimously V 6(1).

Court dismissed Government's preliminary objection, found unanimously V 6(1).

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr N Valticos, Mr AN Loizou, Mr L Wildhaber, Mr P Jambrek, Mr E Levits, Mr T Pantiru, Mr V Toumanov.

The Government's preliminary objection, that the application was inadmissible on account of the friendly settlement reached before the Commission, had not been raised before the Commission and they were therefore estopped from raising it before the Court.

The present case concerned the proceedings subsequent to the friendly settlement being reached. The starting-point was therefore 14 September 1995, namely, the day after the Commission adopted its report taking notice of the settlement reached. The proceedings before the domestic courts were not yet over, as the applicant appealed on 26 July 1994 to the Conseil d'Etat, which on 27 February 1996 remitted the case to the Paris Administrative Court of Appeal, before which it was still pending. The proceedings had therefore already lasted more than two years, seven months to date. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. What was at stake for the applicant in the litigation also had to be taken into account. The case was of some complexity. The applicant had not been responsible for any delay. What was at stake in the proceedings was of crucial importance to the applicant, who had been HIV-positive from birth. Exceptional diligence was called for in this instance, notwithstanding the number of cases to be dealt with, in particular as the facts of the controversy had been known to the Government for several years and its seriousness must have been obvious to them. There were delays on the part of the authorities. The proceedings had already lasted five years and two months by the time the Commission adopted its report noting that a friendly settlement had been reached and that they were still pending in the Paris Administrative Court of Appeal. Having regard to all the circumstances of the case and in particular to the applicant's situation, the time taken in the present case was not reasonable. There had therefore been a violation of A 6(1).

Damages (FF 200,000), costs and expenses (FF 42,210).

Cited: Karakaya v F (26.8.1994), Pailot v F (22.4.1998), Richard v F (22.4.1998), Vallée v F (26.4.1994), X v F (31.3.1992).

Hentrich v France (1994) 18 EHRR 440, (1996) 21 EHRR 199 94/28

[Application lodged 14.12.1987; Commission report 4.5.1993; Court Judgment 22.9.1994 (merits), 3.7.1995 (A 50), 3.7.1997 (interpretation)]

Mrs Liliane Hentrich and her husband, Mr Wolfgang Peukert, bought land in Strasbourg on 11 May 1979. On 5 February 1980, They were notified by a bailiff that the Commissioner of Revenue

considered the sale price to be too low and he was therefore exercising the right of pre-emption provided for in the General Tax Code. On 31 March 1980, the applicant and her husband instituted proceedings in the Strasbourg tribunal de grande instance against the Commissioner of Revenue to have the pre-emption set aside. The tribunal de grande instance gave judgment against them on 16 December 1980. Their appeals to the Colmar Court of Appeal and Court of Cassation were dismissed. Mrs Hentrich complained that the exercise of the right of pre-emption had been an unjustified interference with her right of property, that it had raised a presumption that she was guilty of tax evasion, that she had been denied the benefit of the right of access to a court that would give her a fair trial within a reasonable time.

Following the judgment of the Court of Human Rights on just satisfaction, Mrs Hentrich wrote to the Committee of Ministers of the Council of Europe, to complain of the delay in paying the just satisfaction and to claim default interest on the sums awarded.

Comm found by majority (12–1) V P1A1, V 6(1) as regards fairness and length of proceedings, NV 6(2) and 14, unanimously not necessary to examine 13.

Court unanimously dismissed Government's preliminary objections, found by majority (5–4) V P1A1, unanimously, V 6(1) as regards fair trial and length of proceedings, NV 6(2), not necessary to consider 13, 14.

Court rejected by majority (8–1) request for interpretation of judgment on just satisfaction.

Judges (merits): Mr R Ryssdal (pd), President, Mr F Gölcüklü, Mr L-E Pettiti (pd), Mr J De Meyer, Mr N Valticos (pd), Mr SK Martens, Mr AB Baka (pd), Mr L Wildhaber, Mr J Makarczyk.

Judges (A 50): Mr R Ryssdal (joint declaration), President, Mr F Gölcüklü, Mr L-E Pettiti (joint declaration), Mr J De Meyer, Mr N Valticos (joint declaration), Mr SK Martens (d), Mr AB Baka (joint declaration), Mr L Wildhaber, Mr J Makarczyk.

Judges: (interpretation) Mr R Ryssdal, President, Mr R Bernhardt, Mr Thór Vilhjálmsson, Mr L-E Pettiti, Mr J De Meyer (d), Mr AB Baka, Mr L Wildhaber, Mr J Makarczyk, Mr D Gotchev.

A 26 had to be applied with some degree of flexibility and without excessive formalism. At all stages of the national proceedings, the applicant expressly relied on the relevant provisions of the Convention and indicated to the domestic courts the complaints now made at Strasbourg. She had therefore given the national courts the opportunity of preventing or putting right the violations alleged against them. Accordingly, Government's preliminary objection regarding non-exhaustion of remedies was dismissed.

P1A1: As the right of pre-emption was exercised, the applicant was deprived of her property within the meaning of the second sentence of the first sub-paragraph of P1A1. The right of pre-emption was not designed to punish tax evasion, its purpose was to prevent non-payment of higher registration fees. The notion of 'public interest' was necessarily extensive and States had a certain margin of appreciation to frame and organise their fiscal policies and make arrangements, such as the right of pre-emption, to ensure that taxes were paid. The prevention of tax evasion was a legitimate objective which was in the public interest. In the present case, the pre-emption operated arbitrarily and selectively, it was not foreseeable and it was not attended by the basic procedural safeguards. A pre-emption decision could not be legitimate in the absence of adversarial proceedings that complied with the principle of equality of arms, enabling argument to be presented on the issue of the underestimation of the price and, consequently, on the Revenue's position. The State had other suitable methods at its disposal which would have been adequate for discouraging tax evasion. As a selected victim of the exercise of the right of pre-emption, the applicant bore an individual and excessive burden which could have been rendered legitimate only if she had had the possibility of effectively challenging the measure taken against her. The fair balance which had to be struck between the protection of the right of property and the requirements of the general interest was therefore upset. Accordingly there had been a breach of P1A1.

A 6: One of the requirements of a fair trial was 'equality of arms', which implied that each party had to be afforded a reasonable opportunity to present his case under conditions that did not place him at a substantial disadvantage vis à vis his opponent. In the present case, the proceedings on the merits did not afford the applicant such an opportunity. The tribunals of fact allowed the Revenue to give reasons that were too summary and general to enable the applicant to mount a reasoned challenge to the assessment. The tribunals of fact had also declined to allow the applicant to establish that the price agreed between the parties corresponded to the real market value of the property. There had therefore been a breach of A 6(1) with regard to the fairness of the proceedings.

The period to be taken into consideration began on 31 March 1980, when proceedings were instituted in the Strasbourg tribunal de grande instance, and ended on 16 June 1987, with the delivery of the Court of Cassation's judgment: 7 years and nearly 3 months. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. There were delays in the proceedings, especially on appeal (4 years), and to a lesser extent in the Court of Cassation (2 years). The backlog of cases in the Court of Appeal was a factor which could not excuse it. The length of proceedings in the Court of Cassation was attributable primarily to that court's wish to hear together four cases that raised similar issues. Whilst that approach was understandable, it could not under A 6 justify substantial delay. Having regard to what was at stake for the applicant, the lapse of time in the present case could not be regarded as reasonable.

A 6(2): The implementation of the pre-emption measure was not tantamount to a declaration of guilt. Therefore no violation of A 6(2).

A 13: In view of the decision in respect of A 6(1) it was not necessary to consider the case under A 13 as the requirements of that provision were less strict than, and were here absorbed by, those of A 6(1).

A 14: The findings also made it unnecessary for the Court to consider the complaint that the applicant had suffered discrimination contrary to A 14 in respect of her P1A1, A 6 and A 13 rights.

Interpretation: Under the terms of the judgment of 3 July 1995 and in accordance with A 53 of the Convention, the respondent State was required to pay the applicant the sums awarded within three months. However, those sums were not paid until 1 December 1995, that is, nearly two months after expiry of the time limit. It was for the Committee of Ministers to supervise execution of the judgment. The judgment did not stipulate that default interest was to be paid in the event of delayed settlement. The Court had directed the respondent State to pay interest on the costs and expenses it was required to reimburse pursuant to the judgment of 22 September 1994. The practice of awarding default interest for delayed settlement was not introduced by the Court until January 1996. Accordingly, to allow the application for interpretation would not be to clarify the meaning and scope of that judgment but rather to modify it in respect of an issue which the Court decided with binding force. Accordingly, there was no matter for interpretation.

Judgment constituted just satisfaction for non-pecuniary damage. Pecuniary damage (by majority (8–1) FF 800,000), costs and expenses (unanimously FF 20,000).

Cited: AGOSI v UK (24.10.1986), Castells v E (23.4.1992), Dombo Beheer BV v NL (27.10.1993), Guzzardi v I (6.11.1980), Pudas v S (27.10.1987), Sporrong and Lönnroth v S (23.9.1982). Interpretation: Allenet de Ribemont v F (7.8.1996).

Herczegfalvy v Austria (1993) 15 EHRR 437 92/58

[Application lodged 27.11.1978; Commission report 1.3.1991; Court Judgment 24.9.1992]

Mr Istvan Herczegfalvy, a Hungarian citizen resident in Austria, served two prison sentences in succession, following convictions, *inter alia*, for assaults on his wife, clients of his television repair business and public officials. Further prosecutions were brought against the applicant for assaults on warders and fellow prisoners and for serious threats against judges. He was sentenced and detained. He was found to be suffering from psychiatric illness and detained in a mental

institution. He complained about the lawfulness, length and conditions of his detention and the medical treatment carried out during it.

Comm found unanimously V 3, V 5(1)(e) for the periods from 11.12.1981 to 8.2.1982 and from 8.2.1983 to 16.2.1984, V 5(4), V 8, V 10, by majority (18–2) V 13, (11–9) NV 5(1)(c), (11–9) NV 5(1)(e) for the other periods, unanimously 5(3).

Court found unanimously NV 5(1), NV 5(3), V 5(4), NV 3, V 8 with respect to the applicant's correspondence, NV 8 with respect to the medical treatment, V 10, not necessary to examine 13.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr SK Martens, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla.

From 27 May 1978 to 10 January 1979 the detention in issue, based on the Code of Criminal Procedure, had as its purpose to ensure that the applicant would appear before the Regional Court. It therefore came under A 5(1)(c). From 10 January to 3 October 1979, the detention came under A 5(1)(e) as the Regional Court had not convicted or sentenced the applicant in view of his lack of criminal responsibility. The Austrian courts had not failed to comply with the relevant national law, in particular the Code of Criminal Procedure, which continued to serve as a basis for the detention in question. Nor did the detention appear to have been tainted by arbitrariness, the Regional Court having considered three expert reports before coming to its conclusions. No violation of A 5(1)(e) had been shown to exist at that stage. During the period from 3 October 1979, following the Supreme Court's judgment quashing the detention order until the Regional Court's decision of 9 April 1980, the detention remained based on the Code of Criminal Procedure. The risk of repetition of offences was still capable of justifying the applicant's detention, having regard in particular to the further verbal attacks made by him. Accordingly, there was no violation of A 5(1)(c). The period from the judgment of 9 April 1980 until his release on 28 November 1984 came under A 5(1)(e) as the court had not found the applicant guilty. The Regional Court had consulted several experts before extending the detention. The measures complained of had not been shown to be arbitrary. In conclusion, no violation of A 5(1) had been established.

A 5(3): The first period lasted for 7 months and 15 days although at its commencement on 27 May 1978 the applicant had already been deprived of his liberty for over a year. There had not been any negligence on the part of the authorities between 27 May 1978 and 10 January 1979 such as to delay the proceedings; however, the applicant had contributed to the prolongation of the proceedings. The second period from 3 October 1979 to 9 April 1980 did not appear excessive. Accordingly there was no violation of A 5(3).

A 5(4): Regarding the scope of A 5(1) and 5(4), any review had to comply with both the substantive and procedural rules of the national legislation and be conducted in conformity with the aim of A 5, namely to protect the individual against arbitrariness. The latter condition implied not only that the competent courts had to decide 'speedily', but also that their decisions had to follow at reasonable intervals. The three decisions taken under the Criminal Code were taken at intervals of 15 months, two years, nine months respectively. The first two decisions could not be regarded as having been taken at reasonable intervals, especially as the numerous requests for release submitted at that time by the applicant brought no response. The conclusions meant that there was no need for the Court to examine whether the decisions in issue complied with national law. There was, therefore, a violation of A 5(4).

A 3: The position of inferiority and powerlessness which was typical of patients confined in psychiatric hospitals called for increased vigilance in reviewing whether the Convention had been complied with. While it was for the medical authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used to preserve the physical and mental health of patients who were entirely incapable of deciding for themselves and for whom they were therefore responsible, such patients nevertheless remained under the protection of A 3, whose requirements permitted no derogation. As a general rule, a measure which was a therapeutic necessity could not be regarded as inhuman or degrading. The Court nevertheless had to satisfy itself that the medical necessity had been convincingly shown to exist in this case and on

the evidence, the medical necessity justified forcible administration of food and medication, isolation and the use of handcuffs and security bed. Accordingly, no violation of A 3 had been shown.

A 8: The complaint regarding force feeding and the treatment he received had been considered under A 3. There was lack of specific information capable of disproving the Government's opinion that the hospital authorities were entitled to regard the applicant's psychiatric illness as rendering him entirely incapable of taking decisions for himself. Consequently, no violation of A 8 in this respect. The practice of sending all the applicant's letters to the curator for him to select which ones to pass on amounted to an interference with the exercise of the applicant's right to respect for his correspondence. With regard to whether the interference was in accordance with the law, the provisions of the Hospital Law and Civil Code did not specify the scope or conditions of exercise of the discretionary power which was at the origin of the measures complained about. Such specifications were all the more necessary in the field of detention in psychiatric institutions in that the persons concerned were frequently at the mercy of the medical authorities, so that their correspondence was their only contact with the outside world. In the absence of any detail as to the kind of restrictions permitted or their purpose, duration and extent or the arrangements for their review, the provisions under consideration did not offer the minimum degree of protection against arbitrariness required by the rule of law in a democratic society. Nor had there been any case-law to remedy this state of affairs. There had therefore been a violation of A 8 and it was not necessary to examine whether the other requirements of para 2 of A 8 were complied with.

A 10: As the Court had been unable to regard the relevant provisions of the Hospital Law as 'law' within the meaning of A 8(2), there had also been a violation of A 10. Consequently, it was not necessary to examine the other requirements of para 2 of A 10.

A 13: In view of the decision under A 8 and 10 it was not necessary to rule on A 13.

Damages and costs awarded (ATS 112,000 and DM 8,000 less FF 22,971).

Cited: B v A (28.3.1990), Koendjbiharie v NL (25.10.1990), Kruslin and Huvig v F (24.4.1990), Malone v UK (2.8.1984), Silver and Others v UK (25.3.1983), Tomasi v F (27.8.1992), Van der Leer v NL (21.2.1990), Wassink v NL (27.9.1990), Winterwerp v NL (24.10.1979), X v UK (5.11.1981).

Hertel v Switzerland 98/69

[Application lodged 13.9.1994; Commission report 9.4.1997; Court Judgment 25.8.1998]

Mr Hertel, a technical sciences graduate, in collaboration with Mr Blanc, a professor at the University of Lausanne and a technical adviser at the Lausanne Federal Institute of Technology, carried out a study of the effects on human beings of the consumption of food prepared in microwave ovens. A research paper was written dated June 1991 and the quarterly *Journal Franz Weber* devoted part of its 19th issue to the effects on human health of using microwave ovens. On the cover was a picture of the Reaper holding out one hand towards a microwave oven, together with the following title 'The danger of microwaves: scientific proof'. The Swiss Association of Manufacturers and Suppliers of Household Electrical Appliances ('MHEA') asked Mr Hertel to publish a statement to the effect that he would no longer make unfair comments on microwave ovens. He did not reply. On 7 August 1992, the association lodged an application under the Federal Unfair Competition Act (UCA) with the Commercial Court, seeking to have Mr Hertel prohibited from stating that food prepared in microwave ovens was a danger to health and from using, in publications and public speeches on microwave ovens, the image of death, whether represented by a hooded skeleton carrying a scythe or by some similar symbol. On 19 March 1993, the Commercial Court allowed the application. The applicant's application to the Federal Court was dismissed. He complained that the ban imposed on him by the Swiss Courts infringed his right of freedom of expression.

Comm found by majority (10–5) V 10, unanimously no separate issue under 6(1) or 8.

Court found by majority (6–3) V 10, unanimously not necessary to consider 6(1) or 8.

Judges: Mr R Bernhardt (d), President, Mr F Matscher (d), Mr A Spielmann, Mr N Valticos, Mrs E Palm, Mr L Wildhaber, Mr K Jungwiert, Mr J Casadevall, Mr V Toumanov (d).

The prohibition on the applicant, on pain of penalties, amounted to an interference by a public authority in the exercise of the right guaranteed by A 10. Such an interference would infringe the Convention if it did not meet the requirements of A 10(2). A norm could not be regarded as a 'law' within the meaning of A 10(2) unless it was formulated with sufficient precision to enable the citizen to regulate his conduct; he had to be able, if necessary with appropriate advice, to foresee, to a degree that was reasonable in the circumstances, the consequences which a given action might entail. The UCA contained a general provision in it which was defined as 'unfair and illegal' not only any commercial practice, but also any conduct that was deceptive or in any other way offended the principle of good faith and affected relations between competitors or between suppliers and customers. In addition, the act listed certain unfair acts, providing in particular that a person acted unfairly if he denigrated others or the goods, work, services, prices or business of others by making inaccurate, misleading or unnecessarily wounding statements. The UCA was not therefore confined in scope solely to economic agents: people, such as the applicant, who were not market players were also concerned. It was foreseeable that the communication to the *Journal Franz Weber* of the research paper and its subsequent publication were liable to amount to an act of competition within the meaning of the UCA. That being so, the interference was prescribed by law, namely the UCA. The aim of the measure was the protection of the rights of others. With regard to the question of necessary in a democratic society, the Court recalled its case-law. Freedom of expression constituted one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. It was applicable not only to 'information' or 'ideas' that were favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offended, shocked or disturbed. The freedom was subject to exceptions which had to be construed strictly, and the need for any restrictions had to be established convincingly. The word 'necessary' in A 10(2) implied the existence of a pressing social need. The Contracting States had a certain margin of appreciation in assessing whether such a need existed. Such a margin of appreciation was particularly essential in commercial matters, especially in an area as complex and fluctuating as that of unfair competition. It was, however, necessary to reduce the extent of the margin of appreciation when what was at stake was not a given individual's purely 'commercial' statements, but his participation in a debate affecting the general interest, for example, over public health. The applicant had played no part in the choice of the illustration for issue No 19 of the *Journal Franz Weber*, the statements that were attributable to him were on the whole qualified and there was nothing to suggest that they had any substantial impact on the interests of the members of the MHEA. There was a disparity between that measure and the behaviour it was intended to rectify. Although the injunction applied only to specific statements, nonetheless those statements related to the very substance of the applicant's views. The effect of the injunction was partly to censor the applicant's work and substantially to reduce his ability to put forward in public views which had their place in a public debate whose existence could not be denied. It mattered little that his opinion was a minority one and might appear to be devoid of merit since, in a sphere in which it was unlikely that any certainty existed, it would be particularly unreasonable to restrict freedom of expression only to generally accepted ideas. With regard to presenting the results outside the 'economic sphere', it was not transparently obvious from the courts' decisions that the applicant was given such a possibility. If he failed to comply with the injunction he ran the risk of a penalty, which could include imprisonment. For all those reasons, the measure in issue could not be considered as necessary in a democratic society. Consequently, there had been a violation of A 10.

Having regard to the finding of a violation of A 10, no separate question arose under A 6(1) or A 8.

Costs and expenses (by majority (8–1) CHF 40,000).

Cited: Grigoriades v GR (25.11.1997), Handyside v UK (7.12.1976), Jacubowski v D (23.6.1994), Jersild v DK (23.9.1994), Lingens v A (8.7.1986), Markt intern Verlag GmbH and Klaus Beermann v D (20.11.1989), Sunday Times v UK (No 1) (26.4.1979), Sunday Times v UK (No 2) (26.11.1991), Zana v TR (25.11.1997), Zimmermann and Steiner v CH (13.7.1983).

Higgins and Others v France (1999) 27 EHRR 703 98/2

[Application lodged 1.6.1992; Commission report 4.9.1996; Court Judgment 19.2.1998]

The case concerned a dispute over the succession to the estates of Mary-Ann Higgins, who died on 22 February 1961, and her husband Charles Brown-Petersen, who died on 13 March 1962. The 23 applicants were entitled to a share in the estates of the deceased either by will or on intestacy and were all French citizens. The applicants were parties to three sets of proceedings. Those proceedings were an action for payment of a legacy, a third party application to reopen proceedings and an application to have set aside as fraudulent a transfer of a property development to the Brown Building Corporation ('BBC'). In the last set of proceedings the Papeete (French Polynesia) Civil Court of First Instance found in favour of the applicants. The BBC appealed and while that appeal was pending, the applicants applied for transfer of the case to another court on grounds of bias. On 22 March 1990, the Court of Cassation ordered the transfer of the two other related proceedings to the Paris Court of Appeal on the grounds of doubt as to impartiality of the Papeete Court of Appeal. The Court of Cassation did not mention the proceedings against BBC in its judgment and the applicants, believing that to be a mistake, made an application for rectification of a clerical error to the court. That application was dismissed on 23 October 1991. In the meantime, the Papeete Court of Appeal ruled on 7 December 1989 that there were no grounds for deferring judgment and dismissed the application for an order setting aside the transfer to BBC. The applicants complained that the Papeete Court of Appeal had not been impartial in the proceedings against BBC and that the proceedings before the Court of Cassation had been unfair, as that court had perpetuated the violation committed by the Papeete Court of Appeal by not setting aside the judgment of 7 December 1989.

Comm found unanimously V 6(1).

Court dismissed unanimously Government's preliminary objections, found by majority (8–1) V 6(1).

Judges: Mr R Bernhardt, President, Mr L-E Pettiti (d), Mr J De Meyer, Mr JM Morenilla, Mr G Mifsud Bonnici, Mr D Gotchev, Mr K Jungwiert, Mr E Levits, Mr T Pantiru.

The complaint of lack of impartiality was considered in the Papeete Court of Appeal's judgment and by the Court of Cassation in its decision. It was the Court of Cassation decision that was to be taken into account for the purposes of calculating when the six month time limit expired. The preliminary objection that the application was made out of time was therefore dismissed. In view of the overlapping of the various sets of proceedings, in determining the issue of exhaustion of domestic remedies, regard had to be had to the proceedings as a whole. Although in the grounds in support of the appeal no reference was made either to A 6(1) or to a lack of impartiality, the applicants had drawn attention to the issue submitted to the Convention institutions by filing submissions to the effect that it was unnecessary to decide their appeal and by seeking a stay from the Papeete Court of Appeal because they had filed an application for transfer of proceedings to another court on grounds of bias. The applicants had provided the French courts with the opportunity of preventing or putting right the violations alleged against them. Consequently, the objection of failure to exhaust domestic remedies had to be dismissed.

A 6(1) obliged courts to give reasons for their decisions, but could not be understood as requiring a detailed answer to every argument. The extent to which the duty to give reasons applied varied according to the nature of the decision and had to be determined in the light of the circumstances of the case. In its judgment of 22 March 1990, the Second Civil Division acknowledged that the impartiality of the Papeete Court of Appeal was open to doubt. After joining the two applications before it and declaring them admissible, the Second Civil Division ordered a transfer from the Papeete Court of Appeal to the Paris Court of Appeal only of the proceedings concerning the action for payment of a legacy and the third party application to reopen proceedings; it made no mention of the third set of proceedings in the operative provisions, even though those proceedings were expressly referred to at the beginning of the judgment. The third set of proceedings was closely connected to the other two as it formed part of a complex succession dispute which, for

practical purposes, concerned the same group of people and the same property. Furthermore, the composition of the Court of Appeal was very similar since, with one exception, all three cases were heard by the same judges. There was nothing in the Court of Cassation's judgment of 22 March 1990 to indicate why the outcome in respect of the proceedings against BBC was different. Neither the proceedings concerning the application for rectification of a clerical error nor the appeal on points of law against the Court of Appeal's judgment of 7 December 1989 provided the applicants with an explanation that was express and specific of the consequences to be drawn from the judgment of 22 March 1990. As a result, it was impossible to know whether the Court of Cassation simply neglected to make an order in respect of the third set of proceedings or whether it decided not to order transfer and, if so, why. There had therefore been a violation of A 6(1).

No causal link established between breach of Convention and alleged pecuniary damage. Costs and expenses (FF 75,000).

Cited: Cardot v F (19.3.1991), Van de Hurk v NL (19.4.1994), Ruiz Torija v E (9.12.1994), Hiro Balani v E (9.12.1994), Vacher v F (17.12.1996).

Hiro Balani v Spain (1995) 19 EHRR 565 94/46

[Application lodged 30.1.1991; Commission report 15.10.1993; Court Judgment 9.12.1994]

Mrs Rita Hiro Balani was an Indian national resident in Spain. In 1985, the Japanese company Orient Watch Co Ltd filed an application in the Madrid First Instance Court for the removal of the Spanish trade mark 'Orient HW Balani Málaga' from the industrial property register. The trade mark had been registered by the applicant's husband in 1970 and later transferred to her name. The applicant adduced several submissions to contest the application. In its judgment of 9 May 1988, the Madrid *Audiencia Territorial* accepted the claim that the applicant's mark was 'established' and dismissed the plaintiff's application. It did not rule on the merits of the applicant's other submissions. The plaintiff company appealed on points of law. In a judgment of 30 April 1990 the Supreme Court held that the contested trade mark was not 'established' because its registration was void and quashed the decision of the *Audiencia Territorial*. Giving a ruling on the merits of the dispute, the Supreme Court expressly rejected the submissions based on the allegedly non-genuine character of the trading name and the general time bar and allowed the application. However, it made no reference to the applicant's submission that the trade mark 'Creacions Orient', registered in Spain in 1934, should have priority over the trading name 'Orient' registered in Japan in 1951. The applicant's appeal to the Constitutional Court was declared inadmissible on 29 October 1990. The applicant complained that she had not had a fair hearing as the Supreme Court had not addressed in its judgment all the submissions made by her in the first instance proceedings.

Comm found unanimously V 6(1).

Court found by majority (8–1) V 6(1).

Judges: Mr R Ryssdal, President, Mr R Bernhardt (d), Mr F Gölcüklü, Mr R Macdonald, Mr C Russo, Mr SK Martens, Mr JM Morenilla, Mr F Bigi, Mr MA Lopes Rocha.

A 6(1) obliged courts to give reasons for their judgments, but it could not be understood as requiring a detailed answer to every argument. The extent to which this duty to give reasons applied varied according to the nature of the decision. The applicant had contested the action for the removal of her trade mark from the register, *inter alia*, by a submission based on the priority of another mark that she owned. That submission was made in writing before the first instance court and was formulated in a sufficiently clear and precise manner. An official certificate was submitted with it as evidence. The Supreme Court, which quashed the first instance decision and gave a new ruling on the merits, was bound, under the applicable procedural law, to review all the submissions made during the proceedings, at least in so far as they had been 'the subject of argument', and even if they were not expressly repeated in the appeal on points of law. The applicant's submission was relevant. If the national court had held the submission to be well founded, it would, of necessity, have had to dismiss the plaintiff's action. From its silence, it was

impossible to ascertain whether the Supreme Court simply neglected to deal with the submission based on the prior right or whether it intended to dismiss it and, if that were its intention, what its reasons were for so deciding. There had, therefore, been a violation of A 6(1).

Judgment sufficient satisfaction for non-pecuniary damage. Costs and expenses (ESP 997,050).

Cited: Van de Hurk v NL (19.4.1994).

Hoffmann v Austria ((1994) 17 EHRR 293 93/24

[Application lodged 20.2.1987; Commission report 16.1.1992; Court Judgment 23.6.1993]

Mrs Ingrid Hoffmann, a housewife, married Mr S, a telephone technician, in 1980. At that time, they were both Roman Catholics. They had two children, both baptised as Roman Catholics. The applicant left the Roman Catholic Church to become a Jehovah's Witness. On 17 October 1983, the applicant instituted divorce proceedings against Mr S. She left him in August or September 1984 while the proceedings were still pending, taking the children with her. The divorce was pronounced on 12 June 1986. Both parents applied to the Innsbruck District Court to be granted parental rights over the children. By decision of 8 January 1986, the District Court granted parental rights to the applicant and denied them to Mr S. Mr S appealed unsuccessfully to the Innsbruck Regional Court. He appealed to the Supreme Court which, in its decision of 3 September 1986, overturned the judgment of the Innsbruck Regional Court and granted parental rights to him. The applicant complained of the denial of custody to her.

Comm found by majority (8–6) V 14+8, (12–2) no separate issue under 9 or 14+9, unanimously NV P1A2.

Court found by majority (5–4) V 14+8, unanimously not necessary to rule on 8, no separate issue arises under 9, 14+9, not necessary to rule on P1A2.

Judges: Mr R Bernhardt, President, Mr F Matscher (d), Mr L-E Pettiti, Mr B Walsh (pd), Mr C Russo, Mr N Valticos (d), Mr I Foighel, Mr MA Lopes Rocha, Mr G Mifsud Bonnici (d).

The children had lived with the applicant for two years after she had left with them before the judgment of the Supreme Court of 3 September 1986 ordering her to give them up to their father. The Supreme Court's decision therefore constituted an interference with her right to respect for her family life and the case therefore fell within A 8. A 14 afforded protection against different treatment, without an objective and reasonable justification, of persons in similar situations. In assessing the interests of the children, the Supreme Court considered the possible effects on the children's social life of being associated with a particular religious minority, the hazards attaching to the applicant's total rejection of blood transfusions for herself and her children, against the possibility that transferring the children to the care of their father might cause them psychological stress. Those factors could be capable of tipping the scales in favour of one parent rather than the other. However, the Supreme Court also introduced a new element which was decisive for it, namely, the Federal Act on the Religious Education of Children. There had, therefore, been a difference in treatment on the ground of religion. Such a difference in treatment was discriminatory in the absence of an objective and reasonable justification, that is, if it was not justified by a legitimate aim and if there was no reasonable relationship of proportionality between the means employed and the aim sought to be realised. The aim pursued by the judgment of the Supreme Court was a legitimate one, namely, the protection of the health and rights of the children. In so far as the Austrian Supreme Court did not rely solely on the Federal Act on the Religious Education of Children, it weighed the facts differently from the courts below, whose reasoning was supported by psychological expert opinion. A distinction based essentially on a difference in religion alone was not acceptable. There was not a reasonable relationship of proportionality between the means employed and the aim pursued and accordingly, there had been a violation of A 8 taken in conjunction with A 14.

In view of the conclusion with regard to 14 and 8, it was not necessary to rule on the allegation of a violation of A 8 taken alone, the arguments in any case being the same as those examined in respect of 14 and 8.

No separate issue arose under A 9 or 14 and 9, as the factual circumstances relied on as the basis of that complaint were the same as those which were at the root of the complaint under 14 and 8, of which a violation has been found.

The complaint P1A2 was not pursued before the Court, which found no reason to examine it of its own motion.

No claim for non-pecuniary damages. Costs and expenses (by majority (8–1) ATS 75,000).

Cited: Darby v S (23.10.1990), Sunday Times v UK (No 2) (26.11.1991).

Hokkanen v Finland (1995) 19 EHRR 139 94/32

[Application lodged 10.4.1992; Commission report 22.10.1993; Court Judgment 23.9.1994]

The applicant, Teuvo Hokkanen and his wife Tuula, had a daughter, Sini, born in September 1983. Following the death in April 1985 of Mrs Tuula Hokkanen, Sini was looked after by her maternal grandparents, with the agreement of the applicant. In late 1985, the grandparents informed the applicant that they did not intend to restore Sini to him. Following a hearing on 16 July 1986, the District Court ordered provisionally that Sini should remain with her grandparents and granted the applicant access rights. The grandparents refused to comply with the order giving the applicant access rights. After many proceedings, in a judgment of 25 September 1991, the Court of Appeal, by a majority, held that the applicant should remain Sini's guardian, but transferred custody to the grandparents. He complained, *inter alia*, that the public authorities had failed to take appropriate measures to facilitate the speedy reunion with his daughter, that they had allowed the grandparents to keep Sini in their care and prevented his access to her in defiance of court decisions and had transferred custody to them.

Comm found by majority (19–2) V 8, unanimously no separate issue under P7A5, by majority (16–5) NV 6(1), (20–1) not necessary to examine 13.

Court found unanimously V 8 with regard to the non-enforcement of the applicant's right of access from 10 May 1990 until 21 October 1993, by majority (6–3) NV 8 thereafter, (6–3) NV 8 with regard to non-enforcement after 10 May 1990 of his right of custody and the subsequent transfer of custody to the grandparents, unanimously not necessary to examine P7A5, unanimously NV 6(1) regarding length of the second set of custody proceedings, unanimously not necessary to examine 13.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr C Russo (pd), Mr J De Meyer (pd), Mr I Foighel, Mr R Pekkanen, Mr JM Morenilla, Mr J Makarczyk, Mr K Jungwiert (pd).

The Convention entered into force with respect to Finland on 10 May 1990 and accordingly the examination of the issues was limited to whether the facts occurring after that date disclosed a breach of the Convention.

Sini was the child of a marriage and was thus *ipso jure* part of that family unit from the moment of birth and by the very fact of it. The applicant had maintained links with her which were sufficient to establish family life within the meaning of A 8, which was therefore applicable. In previous cases, the Court had consistently held that A 8 included a right for the parent to have measures taken with a view to his or her being reunited with the child and an obligation for the national authorities to take such action. That principle applied equally to cases where the origin of the provisional transfer of care was a private agreement. The obligation of the national authorities to take measures to facilitate reunion was not absolute, the national authorities had to take all necessary steps to facilitate reunion as could reasonably be demanded in the special circumstances of each case. On the evidence, the competent authorities, prior to the Court of Appeal's judgment of 21 October 1993, did not make reasonable efforts to facilitate reunion. On the contrary, the inaction of the authorities placed the burden on the applicant to have constant recourse to a succession of time-consuming and ultimately ineffectual remedies to enforce his rights. In its judgment of 21 October 1993, which could not be called into question, the Court of Appeal concluded that the child had become sufficiently mature for her views to be taken into account and that access should therefore not be accorded against her own wishes. Although the competent authorities enjoyed a margin of appreciation, the non-enforcement of the applicant's right of access

from 10 May 1990 until 21 October 1993 constituted a breach of his right to respect for his family life under A 8.

However, there had been no such violation in respect of the period thereafter. The child had been living with her grandparents and had very few contacts with her father. There were sufficient grounds to justify non-enforcement of the applicant's custody right pending the outcome of the custody proceedings. The transfer of custody constituted an interference with the applicant's right to respect for family life, the interference was in accordance with the law and pursued the legitimate aim of protecting the rights of the child. The transfer of custody was necessary in a democratic society. The Court of Appeal's judgment was based on expert opinion and had regard to the length of the child's stay with the grandparents, her strong attachment to them and her feeling that their home was her own. Those reasons were relevant and sufficient for the purposes of A 8(2). The competent national authorities, which were in principle better placed than the international judge in evaluating the evidence before them, did not overstep their margin of appreciation in arriving at their decisions. Even taking into account the failure of the authorities to secure the applicant access to his child, the measure could not be regarded as disproportionate to the legitimate aim of protecting her interests.

The applicant did not pursue the complaint under P7A5 before the Court, which did not find it necessary to deal with the matter of its own motion.

The reasonableness of the length of proceedings had to be considered in the light of the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the parties and the importance of what was at stake for the applicant in the litigation. The relevant period to be taken into consideration started on 13 August 1990, when the Social Welfare Board made a request to the District Court for transfer of custody, and ended on 21 January 1992, when the Supreme Court refused leave to appeal. Although it was essential that custody cases be dealt with speedily, no criticism could attach to the District Court for having suspended the proceedings twice in order to obtain expert opinions on the issue before it. Although the hearing had been suspended for 6 months, the overall length of the proceedings was approximately 18 months, which was excessive for proceedings comprising three judicial levels. Accordingly, the length of the second custody proceedings did not exceed a reasonable time and therefore there had been no violation of A 6(1).

The complaint under A13 was, in substance, the same as that made under A 6 and A 8 and having regard to the findings it was not necessary to examine that complaint.

Non-pecuniary damage (FIM 100,000) legal fees and expenses (FIM 135,000 less FF 8,070).

Cited: Margareta and Roger Andersson v S (25.2.1992), Eriksson v S (22.6.1989), Handyside v UK (7.12.1976), Helmers v S (29.10.1991), Keegan v IRL (26.5.1994), Moreira de Azevedo v P (23.10.1990), Olsson v S (No 2) (27.11.1992), Stamoulakatos v GR (26.10.1993), Vallée v F (26.4.1994).

Holm v Sweden (1994) 18 EHRR 79 93/53

[Application lodged 24.1.1987; Commission report 13.10.1992; Court Judgment 25.11.1993]

Mr Carl G Holm was an economist employed by the Swedish Federation of Industries. In 1974, he formed together with others a foundation named Contra to scrutinise governments of communist regimes in Eastern Europe and the Swedish Social Democratic Workers Party (SAP). On 15 April 1986, the applicant brought a private prosecution for libel in the District Court against the author and publisher of a book allegedly implying that he belonged to certain Nazi and fascist groups and thus calculated to cast doubt on his honour and to expose him to contempt. The defendants asked for jury trial in the District Court. Although the jury was properly constituted, five of its nine members were activists in the SAP. The prosecution was dismissed and the applicant had no right of appeal against the jury's verdict. The applicant complained that he had not had his case determined by an independent and impartial tribunal.

Comm found by majority (14–1) V 6(1).

Court found by majority (7–2) V 6(1).

Judges: Mr R Ryssdal (d), President, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr F Matscher, Mr A Spielmann, Mrs E Palm, Mr AN Loizou, Mr JM Morenilla, Mr L Wildhaber (d).

The independence and impartiality of a tribunal applied to jurors as well as to professional judges and lay judges. It was only the independence and the objective impartiality of the five jurors who were affiliated to the SAP which was in issue; the applicant did not contest their subjective impartiality, finding it impracticable to do so in view of the secrecy of each juror's vote. The jurors were elected in the prescribed manner by the competent elective body, in conformity with the legal conditions for eligibility. They were drawn by lots after each party to the proceedings had had an opportunity to express its views on the question of disqualification of any juror. Each juror had to take an oath before the trial to the effect that he or she would carry out the tasks to the best of his or her abilities and in a judicial manner. There existed safeguards to ensure the independence and impartiality of the jurors in question. The defence had safeguards that were not applicable to the applicant: they could opt for a trial by jury, despite the fact that the applicant did not wish to have one, benefit of a special majority verdict, absence of an appeal in the event of an acquittal. The applicant as a private prosecutor was placed in a less favourable position than the defence. However, those features did not constitute a legitimate reason to fear a lack of independence and impartiality on the part of the jurors. There were links between the defendants and the five jurors who had been challenged by the applicant which could give rise to misgivings as to the jurors' independence and impartiality. The jurors were active members of the SAP who held or had held offices in or on behalf of the SAP. In those circumstances, the independence and impartiality of the District Court were open to doubt and the applicant's fears in that respect were objectively justified. Since the Court of Appeal's jurisdiction was limited by the terms of the jury's verdict, the defect could not have been cured by an appeal to the Court of Appeal. Accordingly, there had been a violation of A 6(1).

Finding of violation constituted sufficient just satisfaction for non-pecuniary damage. Costs (SEK 125,000 less FF 5,650).

Cited: Fey v A (24.2.1993), Langborger v S (22.6.1989).

The Holy Monasteries v Greece (1995) 20 EHRR 1, (1998) 25 EHRR 640 94/43

[Applications lodged 16.7.1987, 15.5.1988; Commission report 14.1.1993; Court Judgment 9.12.1994 (merits), 1.9.1997 (A 50)]

The eight applicant monasteries, which were founded between the 9th and 13th centuries, complained of the transfer of part of their real property to the State and of the management of it by the Office for the Management of Church Property (ODEP) and thereafter by the Greek Church Acts 1700/1987 and 1911/1988. Three of the monasteries signed an agreement on 11 May 1988 transferring their agricultural and forest property to the State.

Comm found unanimously NV P1A1 with regard to all the monasteries regarding transfer of ownership provided for in Law No 1700/1987, NV P1A1 regarding the provisions of Law No 1700/1987, as amended by Law No 1811/1988, NV 9, 11, 13, 6(1), 14+6, 14+9, 14+11, 14+P1A1, by majority (11–2) NV 6(1) regarding access to court with regard to the monasteries of Ano Xenia, Agia Lavra Kalavriton, Metamorphosis Sotiros, Chryssoleontissa Eginis and Mega Spileo Kalavriton, NV 6(1) regarding access to court with regard to the monasteries of Asomaton Petraki, Phlamourion Volou and Ossios Loukas.

Court dismissed the Government's preliminary objections, found unanimously V P1A1 in respect of the applicant monasteries not parties to the agreement of 11 May 1988, NV P1A1 in respect of the applicant monasteries parties to the agreement of 11 May 1988, V 6(1) in relation to the first complaint of the applicant monasteries not parties to the agreement of 11 May 1988, not necessary to examine the second 6(1) complaint of the applicant monasteries not parties to the agreement of 11 May 1988, NV 9, 11 and 13, NV 14+6, 14+9, 14+11, 14+P1A1 in respect of the distinction between the applicant monasteries that came under the Greek Church and the monasteries that came under the patriarchates, not necessary to rule on

14+6, 14+9, 14+11, 14+P1A1 in respect of the distinction between the applicant monasteries that were parties to the agreement of 11 May 1988 and those that were not.

Judges (merits and A 50): Mr R Ryssdal, President, Mr B Walsh, Mr A Spielmann, Mr N Valticos, Mrs E Palm, Mr I Foighel, Mr AN Loizou, Mr AB Baka, Mr L Wildhaber.

The applicant monasteries did not exercise governmental powers. They were ascetic religious institutions whose objectives were not such as to enable them to be classed with governmental organisations established for public administration purposes. From their classification as public law entities it could be inferred only that the legislature wished to afford them the same legal protection vis à vis third parties as was accorded to other public law entities. The monasteries were distinct from and independent of the State; they came under the spiritual supervision of the local archbishop. They were therefore to be regarded as non-governmental organisations within the meaning of A 25. The Supreme Administrative Court had considered the lawfulness of the membership of the ODEP's governing body as well as the relevant provisions of Law No 1700/1987 and compatibility with the Constitution and the European Convention. The statements were by judges of one of the highest courts in the land and a large part of the reasoning of the judgment was taken up with them. The statements, even though they were obiter, substantially limited the prospects of success of any other appeal the applicant monasteries might bring. The preliminary objections were therefore dismissed.

P1A1 comprised three distinct rules. The first, which was expressed in the first sentence of the first paragraph and was of a general nature, laid down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covered deprivation of possessions and subjected it to certain conditions. The third, contained in the second paragraph, recognised that the Contracting States were entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules, which were concerned with particular instances of interference with the right to peaceful enjoyment of property, were to be construed in the light of the general principle laid down in the first rule. By creating a presumption of State ownership, s 3(1)(A) of the national legislation shifted the burden of proof so that it fell on the applicant monasteries, which could only assert their ownership of the land in issue if it derived from a duly registered title deed, from a statutory provision or from a final court decision against the State. Section 3(1)(A) taken together with s 1(1) thus deprived them of the possibility of relying, in order to adduce proof to the contrary, on all the means of acquiring property provided for in Greek law and by which the applicant monasteries possibly accumulated their property, including adverse possession and even a final court decision against a private individual. It was not feasible for the Court to undertake to determine for itself which of the disputed tracts of land could be said under Greek law to belong in reality to the State. However, the applicant monasteries were primordial constituent parts of the Greek Church and were established long before the creation of the Greek State and had accumulated substantial immovable property over the centuries. The period of possession required in order that adverse possession might be relied upon both against the State and against third parties had certainly been completed by the time Law No 1700/1987 came into force. Particular importance was attached to the acquisition of property by adverse possession because there was no land survey in Greece and it was impossible to have title deeds registered before 1856 and legacies and inheritances registered before 1946. The State, deemed to be the owner of such agricultural and forest property under sub-s (1)(A) of s 3, was automatically given the use and the possession of it, a provision whose effect was to transfer full ownership of the land in question to the State. Five monasteries did not become a party to the agreement of 11 May 1988 in the year following its ratification by Parliament and consequently, the provisions of Law No 1700/1987 remained applicable to them. The fact that no administrative eviction order had yet been issued was no guarantee that none would be issued in the future. There had therefore been an interference with the applicant monasteries' right to the peaceful enjoyment of their possessions which amounted to a deprivation of possessions within the meaning of the second sentence of the first paragraph of P1A1. The optional nature of the transfer of the use of the land to farmers or agricultural co-operatives and the inclusion of public bodies among the beneficiaries of

such transfers might inspire some doubt as to the reasons for the measures, but they could not suffice to deprive the overall objective of Law No 1700/1987 of its legitimacy as being in the public interest. An interference with peaceful enjoyment of possessions had to strike a fair balance between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights. There had to be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions. The taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference and a total lack of compensation could be considered justifiable under P1A1 only in exceptional circumstances. P1A1 did not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of public interest could call for less than reimbursement of the full market value. By awarding no compensation and imposing a considerable burden on the applicant monasteries deprived of their property, Law No 1700/1987 did not preserve a fair balance between the various interests in question as required by P1A1. There had therefore been a breach of P1A1 in the case of the five applicant monasteries which did not sign the agreement of 11 May 1988. On the evidence before the Court, it was not possible to conclude that the three monasteries which had been parties to the agreement of 11 May 1988 acted under duress. Consequently, there had been no interference with their right of property.

A 6(1) embodied the right to a court of which the right of access, that is, the right to institute proceedings before courts in civil matters, constituted one aspect. It could be relied on by anyone who considered that an interference with the exercise of one of his (civil) rights was unlawful and complained that he had not had the possibility of submitting that claim to a tribunal meeting the requirements of A 6(1). The right of property was a civil right. However, the right to a court under A 6(1) extended only to disputes over rights and obligations which could be said, at least on arguable grounds, to be recognised under domestic law. The monasteries that signed the agreement had capacity to take legal proceedings relating to the property they retained; the complaint could only be made by monasteries not parties to the agreement. By depriving the applicant monasteries of any further possibility of bringing before the appropriate courts any complaint they might make against the Greek State, third parties or the Greek Church itself in relation to their rights of property, or even of intervening in such proceedings, s 1(1) of Law 1700/1987 impaired the very essence of their right to a court. There was therefore a breach of A 6(1) in relation to the first complaint of the applicant monasteries not parties to the agreement of 11 May 1988. A 6(1) guaranteed a right of access to the courts for the determination of claims under domestic law concerning compensation payable for expropriation of property. In view of the previous finding under P1A1 in respect of the absence of compensation under Law No 1700/1987 and the finding that the applicant's first complaint under A 6(1) had been established, it was not necessary to examine further this second complaint under A 6(1).

A 9: The provisions held to be contrary to P1A1 did not concern the objects intended for the celebration of divine worship and consequently did not interfere with the exercise of the right to freedom of religion under A 9.

The complaint under A 11 that Law 1700/1987 would prevent an increase in the number of monks and would deter the faithful from making gifts, was hypothetical. Consequently, no breach of A 11.

A 13 did not go so far as to require a remedy by which the laws of a Contracting State might be impugned before a national authority as being in themselves contrary to the Convention.

A 14 did not prohibit all differences in treatment in the exercise of the rights and freedoms under the Convention. Given the close links between the Greek Church and the applicant monasteries, the distinction made between the latter and the monasteries coming under the Ecumenical Patriarchate of Constantinople or the patriarchates of Alexandria, Antioch and Jerusalem or under the Holy Sepulchre and the Holy Monastery of Sinai or under the churches of other denominations and religions did not lack an objective and reasonable justification. Consequently, there was no breach of A 14 taken together with A 6, 9, 11 P1A1. In view of its other findings, it was not necessary to rule on the complaint based on the distinction created by Act 1811/1988 between the monasteries which signed the agreement of 11 May 1988 and those which did not.

Costs and expenses (8,400,000 GRD to the applicant monasteries not parties to the agreement). Court took note of friendly settlement on damage and struck the case out of the list.

Cited: Airey v IRL (9.10.1979), Fayed v UK (21.9.1994), Golder v UK (21.2.1975), Hoffmann v A (23.6.1993), James and Others v UK (21.2.1986), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Lithgow and Others v UK (8.7.1986), Padovani v I (26.2.1993), Philis v GR (27.8.1991), Sporrong and Lönnroth v S (23.9.1982).

Hood v United Kingdom (2000) 29 EHRR 365 99/10

[Application lodged 18.4.1995; Commission report 28.5.1998; Court Judgment 18.2.1999]

David Hood was a soldier in the British Army. On 11 May 1994, he did not return after two weeks' leave (his fourth absence without leave). On 27 November 1994, he was arrested at his home by the civilian police and on 28 November 1994, he was taken by army escort to Brompton Barracks. He remained in close arrest until his court-martial, detained in a cell in a guardroom under the supervision of a guard, apart from certain occasions when he was taken to hospital for psychiatric care. On the 72nd day of the applicant's detention, 7 February 1995, an authorisation from the Commander-in-Chief directed the applicant's continued detention to prevent him absconding before trial. On 17 February 1995, the applicant's solicitor issued a writ for habeas corpus which was rejected by the High Court on 21 February 1995. The court martial took place in April 1995; the assistant prosecuting officer was the unit adjutant. The applicant, who was legally represented, was convicted on the two charges of absence without leave and on one of the charges of desertion, and the remaining charge of desertion was reduced to one of absent without leave. He was sentenced to be imprisoned for eight months and to be dismissed from the service. His petition to the Army Board was rejected and his leave applications to the single judge and to the full Courts-Martial Appeal Court were rejected. The applicant complained that he had not been brought promptly before a judge or other officer authorised by law to exercise judicial power, that he had not had available to him a procedure to challenge his continuing detention and that he had no enforceable right to compensation or effective domestic remedy in those respects. He also claimed that he had been denied a fair and public hearing by an independent and impartial tribunal established by law.

Comm found unanimously V 5(3), V 5(5), NV5(4), not necessary to consider A 13, V 6(1) as regards fairness, independence and impartiality, NV6(1) as regards public hearing, not necessary to consider remaining complaints under 6(1) and 6(3).

Court found unanimously V 5(3), NV 5(4), V 5(5), not necessary to consider A 13, V 6(1).

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr L Ferrari Bravo, Mr P Kûris, Mr J-P Costa, Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach, Mr B Zupancic (pd), Mrs N Vajic, Mr J Hedigan, Mrs W Thomassen, Mrs M Tsatsa-Nikolovska, Mr T Pantiru, Mr E Levits, Mr K Traja, Sir John Freeland, ad hoc judge.

A 5(3) applied. Given the nature of the relevant charges and the penalty imposed, the applicant was arrested on reasonable suspicion of having committed an 'offence' within the meaning of A 5(1)(c). Moreover, the applicant's close arrest amounted to detention in view of his confinement to a cell in the unit guardroom under the supervision of a guard. The Court found that the applicant was brought before his commanding officer on 29 November 1994. The powers and duties of the commanding officer, which arose subsequent to that officer's conduct of the hearing pursuant to Rule 4 of the 1972 Rules, indicated that the commanding officer was liable to play a central role in the subsequent prosecution of the case against the applicant. Although the unit adjutant often carried out certain of those functions of the commanding officer, he did so on behalf of the commanding officer to whom he was directly subordinate in rank. In addition, the unit adjutant was generally nominated prosecuting or assistant prosecuting officer. In those circumstances, the applicant's misgivings about his commanding officer's impartiality were objectively justified. The commanding officer's concurrent responsibility for discipline and order in his command would provide an additional reason for an accused reasonably to doubt the officer's impartiality when deciding on the necessity of the pre-trial detention of an accused in his command. The procedural and substantive requirements of A 5(3) obliged the 'officer', *inter alia*, to hear himself the accused,

to examine all the facts militating for and against pre-trial detention and to set out in the decision on detention the facts upon which that decision was based. The Court recalled its previous case-law in which it had stressed the importance of 'formal, visible requirements stated in the law' as opposed to standard practices in determining whether a national procedure for deciding on the liberty of an individual satisfied the requirements of A 5(3). There had been a violation of A 5(3), since the commanding officer could not be regarded as independent of the parties at the relevant time.

The applicant failed to apply for legal aid from the civilian legal aid scheme; he was legally represented during the major part of his pre-trial detention by two lawyers, and also for the habeas corpus proceedings. In those circumstances, he had not demonstrated that he did not have available to him guarantees appropriate to the kind of deprivation of liberty in question. Accordingly, there had been no violation of A 5(4).

The applicant did not specifically refer to A 5(5) before the Court. The Commission had found a violation of A 5(5) and the Government did not contest that before the Court. As the Court had found a violation of A 5(3) and the Government had acknowledged that the applicant did not have an enforceable right to compensation in relation to such a contravention, the Court held there had been a violation of A 5(5).

In view of the conclusion of no violation of A 5(4), it was not necessary to inquire whether the less strict requirements of A 13 were complied with.

The Court recalled its previous case-law in which it had found that a general court-martial convened pursuant to the Army Act 1955 did not meet the requirements of independence and impartiality laid down by A 6(1), in view, in particular, of the central part played in the prosecution by the convening officer, who was closely linked to the prosecuting authorities, was superior in rank to the members of the court martial and had the power, albeit in prescribed circumstances, to dissolve the court martial and to refuse to confirm its decision. It had come to a similar conclusion in respect of a district court martial convened under the Air Force Act 1955. The present case could not be distinguished from the previous cases and therefore, for the same reasons, the applicant's case was not independent and impartial within the meaning of A 6(1).

Judgment constituted sufficient just satisfaction, in respect of non-pecuniary damage (by majority 16–1). Costs and expenses (GBP 10,500).

Cited: Brincat v I (26.11.1992), Brogan and Others v UK (29.11.1988), Coyne v UK (24.9.1997), De Jong, Baljet and Van den Brink v NL (22.5.1984), Duinhof and Duijf v NL (22.5.1984), Engel and Others v NL (8.6.1976), Huber v CH (23.10.1990), Letellier v F (26.6.1991), Megyeri v D (12.5.1992), Schiesser v CH (4.12.1979), Selçuk and Asker v TR (24.4.1998)

Hornsby v Greece (1997) 24 EHRR 250 97/16

[Application lodged 7.1.1990; Commission report 23.10.1995; Court Judgment 19.3.1997 (merits), 1.4.1998 (A 50)]

David and Ada Ann Hornsby were graduate teachers of English living in Rhodes. They considered that making nationality a condition for authorisation to establish a private school to teach English (frontistirion) contravened the Treaty of Rome of 25 March 1957 and they applied to the European Commission which referred the case to the Court of Justice. In a judgment of 15 March 1988, the Court of Justice held that by prohibiting nationals of other Member States from setting up frontistiria, the Hellenic Republic had failed to fulfil its obligations under the EEC Treaty. The applicants' further application resulted in two judgments of the Supreme Administrative Court on 9 and 10 May 1989, allowing their application. The applicants complained that the authorities' refusal to comply with the judgments of the Supreme Administrative Court breached A 6(1).

Comm found by majority (27–1) V 6(1).

Court dismissed by majority (8–1) Government's preliminary objections, found (7–2) V 6(1).

Judges (merits): Mr R Bernhardt, President, Mr F Gölcüklü, Mr L-E Pettiti (d), Mr A Spielmann, Mr N Valticos (d), Mr JM Morenilla (c), Sir John Freeland, Mr L Wildhaber, Mr D Gotchev.

Judges (A 50): Mr R Bernhardt, President, Mr F Gölcüklü, Mr L-E Pettiti (d), Mr A Spielmann, Mr N Valticos (d), Mr JM Morenilla (d), Sir John Freeland, Mr L Wildhaber, Mr D Gotchev.

The situation complained of by the applicants began with the relevant authorities' refusal to grant them the authorisation they sought and continued after the lodging of their application to the Commission. The Supreme Administrative Court dismissed the third party appeal on 25 April 1991. The preliminary objection regarding non-observance of the six month time limit therefore had to be dismissed. An action for damages could not in the present case be deemed sufficient to remedy the applicants' complaints. As regards judicial review in the Supreme Administrative Court, there was no reason to suppose that the applicants would have obtained the authorisation they sought. Proceedings in the Rhodes Administrative Court were decisive only in connection with just satisfaction. Accordingly, the objection of non-exhaustion of domestic remedies had to be dismissed.

A 6(1) embodied the right to a court, of which the right of access, that is, the right to institute proceedings before courts in civil matters, constituted one aspect. That right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by any court had to be regarded as an integral part of the 'trial' for the purposes of A 6. Those principles were of even greater importance in the context of administrative proceedings concerning a dispute whose outcome was decisive for a litigant's civil rights. The Court of Justice of the European Communities had given judgment on 15 March 1988 and on 9 and 10 May 1989 the Supreme Administrative Court gave its ruling on the applicants' case. Until the adoption of Presidential Decree No 211/1994 on 10 August 1994, the Greek legislation in force laid down no particular condition for nationals of European Community Member States who wished to open a frontistirion in Greece. By refraining for more than five years from taking the necessary measures to comply with a final, enforceable judicial decision in the present case, the Greek authorities deprived the provisions of A 6(1) of all useful effect. There had accordingly been a breach of that article (A 6(1)).

Pecuniary and non-pecuniary damage (by majority (6–3) GRD 25,000,000). Costs not awarded (applicants reimbursed in domestic costs, presented own case to Commission, did not participate before Court).

Cited: Di Pede v I (26.9.1996), Golder v UK (21.2.1975), Philis v GR (27.8.1991), Zappia v I (26.9.1996).

Hozee v The Netherlands 98/37

[Application lodged 26.5.1993; Commission report 9.4.1997; Court Judgment 22.5.1998]

Mr Wilhelmus Hozee, was the managing director of cleaning agencies which were limited liability companies. The companies were investigated by the Tax Inspector from 1981. On 14 June 1984, the Fiscal Intelligence and Investigation Department (FIID) interrogated the applicant as a suspect and on 8 May 1985, he was arrested on suspicion of fraud. He was convicted of the fraud charges on 10 August 1989 by the Regional Court. His final appeal on points of law was rejected by the Supreme Court on 1 December 1992. He complained of the length of the criminal proceedings against him.

Comm found unanimously NV 6(1).

Court found by majority (7–2) NV 6(1).

Judges: Mr R Bernhardt, President, Mr L-E Pettiti (d), Mr AN Loizou, Sir John Freeland, Mr L Wildhaber, Mr B Repik (d), Mr P Jambrek, Mr U Lôhmus, Mr P Van Dijk.

In criminal matters, the 'reasonable time' referred to in A 6(1) began to run as soon as a person was charged; that might occur on a date prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when preliminary investigations were opened. Furthermore, 'charge', for the purposes of A 6(1) could be defined as 'the official notification given to an individual by the competent authority of an allegation that he had committed a criminal offence', a definition that also corresponded to the test whether the situation of the suspect has been substantially affected. Even

if a fiscal penalty or tax surcharge could in certain circumstances be considered a criminal charge within the meaning of A 6(1) of the Convention, the penalty in the present case was imposed by the tax authorities at the end of 1981 on the applicant's companies and not on him personally. Between 1981 and May 1984, the applicant's companies were under investigation in connection with the tax returns which they had submitted. The applicant himself had no reason to suppose during that period that he was under investigation in his personal capacity and he was not substantially affected by any measure taken. On 14 June 1984, the FIOD questioned the applicant and officially notified him that he was under suspicion of having committed a criminal offence. It was at that moment, when he became a suspect for the first time, that his situation was substantially affected. Therefore, the proceedings began on 14 June 1984, the date from which there was a 'charge' within the meaning of A 6(1), and ended on 1 December 1992, when the Supreme Court rejected the appeal, a period of eight years, five months and 18 days. The reasonableness of the length of the impugned proceedings had to be assessed in the light of the particular circumstances of the case and with regard to the criteria laid down in its case-law, in particular the complexity of the case, and the conduct of the parties. Although the investigating judge concluded the preliminary judicial investigation four years and seven months after the applicant was first questioned as a suspect, the case was complex (involving the unraveling of a network of interconnecting companies and accounts, interviewing of substantial number of witnesses, collecting and examining significant volume of material and involvement of other suspects) and the pre-trial investigation did not disclose any period of inertia on the part of the authorities. The length of that phase of the proceedings could not therefore be considered unreasonable. With regard to the length of the court proceedings following the close of the pre-trial investigation, the period spent disposing of the case at three levels, namely, three years and 10 and a half months, could not be regarded as excessive. There had therefore been no breach of A 6(1) in the circumstances of the instant case.

Cited: Bendenoun v F (24.2.1994), Eckle v D (15.7.1982), Philis v GR (No 2) (27.6.1997).

Huber v France (1998) 26 EHRR 457 98/4

[Application lodged 6.1.1995; Commission report 15.10.1996; Court Judgment 19.2.1998]

Mr François Huber, a secondary school teacher of classics, had been a civil servant in the State education service since 1978. The applicant complained about the length of two sets of administrative proceedings. In the first set of proceedings he had applied to have quashed a decision of 4 November 1990 whereby he had been sent on compulsory leave for one month on the ground that on account of his 'physical or mental state' the children were 'exposed to immediate danger' and a decision of 6 December 1988, whereby payment of his salary had been suspended and to have execution of the latter decision stayed; he also sought to have quashed three decisions of 5 October 1989, whereby he had been sent on extended sick leave and then on extended leave of absence until 6 May 1990. In the second set of proceedings in issue he applied to have quashed the Minister of Education's implicit refusal of his request of 9 August 1991 for a ruling on his administrative position after 6 May 1990 and for payment of an advance on his salary, and also sought a stay of execution of that implicit refusal; he also applied to have quashed two decisions of 6 January 1993 whereby his extended leave of absence was prolonged from 7 May 1990 to 6 November 1992 and he was reinstated in his post at the Lower Secondary School. On 25 November 1996, he had appealed on points of law to the Conseil d'Etat against the Administrative Court of Appeal's judgment and the case was still pending.

Comm found by majority (25–4) V 6(1).

Court found by majority (5–4) A 6(1) did not apply in the present case.

Judges: Mr R Bernhardt, President, Mr F Matscher, Mr L-E Pettiti, Mr I Foighel (d), Mr R Pekkanen (d), Mr D Gotchev, Mr P Kûris, Mr U Lôhmus (jd), Mr J Casadevall (jd).

The applicant had submitted to the French administrative courts a dispute over a right within the meaning of A 6(1). The only matter in issue was whether that right was a 'civil' one. Disputes

relating to the recruitment, careers and termination of service of civil servants were, as a general rule, outside the scope of A 6(1). However, matters were different where the claims in issue related to a purely economic right, such as payment of a salary or pension, or at least an essentially economic one. The applicant's disputes related essentially to his having been sent on compulsory leave and the consequences of that; they therefore primarily concerned his career. The mere fact that the consequences were also partly pecuniary did not suffice to make the proceedings in issue 'civil' ones. A 6(1) therefore did not apply in the present case.

Cited: De Santa v I (2.9.1997), Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993), Neigel v F (17.3.1997), Nicodemo v I (2.9.1997).

Huber v Switzerland 90/24

[Application lodged 27.2.1987; Commission report 10.4.1989; Court Judgment 23.10.1990]

Mrs Jutta Huber, the applicant, was taken to the District Attorney's office on 11 August 1983 and questioned in connection with a criminal investigation concerning two people suspected of living on the earnings of prostitution and of procuring. The DA, suspecting her of giving false evidence, remanded her in custody for fear of collusion and tampering with evidence. She was released on 19 August 1983. Proceedings were instituted against her by the DA on 12 October 1984. Following her trial on 10 January 1985, she was acquitted on the ground that she had never been validly summonsed to appear as a witness. The prosecution appealed successfully and she was fined. Her further appeals were unsuccessful. She complained that as the same DA had ruled on her detention and then indicted her, he could not be regarded as an 'officer authorised by law to exercise judicial power'.

Comm found by majority V 5(3).

Court found by majority (21–1) V 5(3).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Matscher (d), Mr J Pinheiro Farinha, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer, Mr N Valticos, Mr SK Martens, Mrs E Palm, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla Rodriguez.

The only issue in dispute was the impartiality of the Zürich District Attorney when the detention order was made. The applicant did not deny that he was independent of the executive, that he heard her himself before placing her in detention on remand and that he examined with equal care the circumstances militating for and against such detention. The DA first intervened at the stage of the investigation when he ordered the applicant's detention; he had then conducted the investigation. Subsequently, 14 months after the arrest, he acted as prosecuting authority in drawing up the indictment, but had not prosecuted at the trial court. The Convention did not rule out the possibility of the judicial officer who ordered the detention carrying out other duties, but his impartiality was capable of appearing open to doubt if he was entitled to intervene in the subsequent criminal proceedings as a representative of the prosecuting authority. Since that was the situation in the present case, there had been a breach of A 5(3).

Costs and expenses (4,492 CHF). Present judgment sufficient just satisfaction for non-pecuniary damage.

Cited: De Cubber v B (26.10.1984), De Jong, Baljet and van den Brink v NL (22.5.1984), Duinhof and Duijf v NL (22.5.1984), Hauschildt v DK (24.5.1989), Lamy v B (30.3.1989), Pauwels v B (26.5.1988), Schiesser v CH (4.12.1979) 38), Van Der Sluijs, Zuiderveld and Klappe v NL (22.5.1984).

Humen v Poland 99/64

[Application lodged 7.4.1994; Commission report 20.5.1998; Court Judgment 15.10.1999]

On 3 May 1982, Mr Edward Humen, the applicant, was arrested by the militia because he had taken part in a street demonstration in Gdañsk. Subsequently, he was detained on remand on suspicion of having participated in an illegal assembly. On 5 January 1983, the Gdañsk Regional

Court convicted the applicant of participating in an illegal assembly constituting a violent attack against third persons and public property and sentenced him, under martial law as then in force, to 16 months' imprisonment. On 8 June 1983, the Supreme Court upheld the first instance judgment. On 3 March 1993, a seven judge panel of the Criminal Chamber of the Supreme Court quashed the decisions and acquitted the applicant, finding that he had not committed any offence, but had merely exercised his fundamental civil liberties as 'he had taken part in a peaceful and patriotic demonstration'. On 13 April 1993, the applicant lodged a request for compensation from the State Treasury for his wrongful conviction in 1983 and his unjustified detention which had lasted 249 days. On 6 March 1996, the Regional Court granted the applicant compensation of 6,800 Polish zlotys for pecuniary and non-pecuniary damage. In the absence of appeal, the decision became final and enforceable on 26 March 1996. He complained, *inter alia*, about the length of the proceedings.

Comm found by majority (8–6) V 6(1).

Court found unanimously NV 6(1).

Judges: Mr C Rozakis, President, Mrs E Palm, Sir Nicolas Bratza, Mr M Pellonpää, Mr B Conforti, Mr G Bonello, Mr J Makarczyk, Mr R Türmen, Mrs F Tulkens, Mrs V Stráznická, Mr M Fischbach, Mr V Butkevych, Mr J Casadevall, Mrs HS Greve, Mr A Baka, Mr R Maruste, Mrs S Botoucharova.

A 6(1) applied to the case; the proceedings concerned a dispute over the applicant's right to compensation for his wrongful conviction and unjustified detention, which was a civil right within the meaning of A 6(1). The period to be taken into consideration began not on 13 April 1993, when the applicant initiated the proceedings, but on 1 May 1993, when Poland's declaration recognising the right of individual petition for the purposes of former A 25 took effect. The period ended on 26 March 1996, when the decision of the Gdañsk Regional Court became final and enforceable. Accordingly, the proceedings lasted 2 years and nearly 11 months. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the parties, and the importance of what was at stake for the applicant in the litigation. Certain features of the case were complex, the medical evidence assessment of quantum. Only delays attributable to the State could justify a finding of failure to comply with the reasonable time requirement. Although the applicant's conduct in the initial stages could not be regarded as hindering the progress of the proceedings, his subsequent behaviour (failure to submit himself to a brain tomography and inaccurate account of certain facts relating to his employment) was not consistent with the diligence which should normally be shown by a claimant. By the time the applicant initiated the compensation proceedings, his reputation, in so far as it had been damaged by the wrongful and politically motivated conviction, had already been restored as a result of the fact that his conviction had been quashed by the Supreme Court. All that was at stake in those proceedings was, therefore, a compensation claim. It had taken the Gdañsk Regional Court 14 months to prepare the applicant's case for the first hearing, however, except for that instance of failure to make progress in the proceedings, the Court did not find any substantial period of inactivity for which the authorities could be held responsible. During the period under consideration, the case was twice heard at first instance and once on appeal. The hearings were held at reasonable intervals and adjourned only when it was necessary to obtain evidence. When the case was adjourned for about a year (from 17 June 1994), the Gdañsk Regional Court did not remain passive, it obtained extensive medical and documentary evidence and supervised the experts' work and made efforts to ensure that the process of obtaining evidence followed its proper course. Therefore, on the whole, the authorities did not fail to act with all due diligence in the conduct of the applicant's case. The length of the proceedings complained of could not be regarded as unreasonable.

Cited: Georgiadis v GR (29.5.1997), Podbielski v PL (30.10.1998), Proszak v PL (16.12.1997), Styranowski v PL (30.10.1998).

Hurtado v Switzerland 94/1

[Application lodged 30.10.1990; Commission report 8.7.1993; Court Judgment 28.1.1994]

Mr Antonio Hurtado, a Colombian national, was arrested by six officers of the Vaud cantonal police on 5 October 1989. They had thrown a stun grenade before entering the flat, forcing him to the ground and handcuffing and hooding him. It was alleged that they then proceeded to beat him until he lost consciousness. He was questioned at the police headquarters and was not able to change his clothes, which had been dirtied during the police action, until his arrival at the prison on the evening of 6 October. He was examined by a doctor on 13 October; X-rays were taken on 16 October which revealed a fracture of the anterior arch of a rib. His complaint alleging actual bodily harm and abuse of official authority was dismissed by an investigating judge on the ground that there was no case to answer. That decision was upheld by the Federal Court. On 24 May 1991, the District Criminal Court sentenced him to five years' imprisonment for a serious breach of the Federal Dangerous Drugs Act and ordered him to pay part of the costs. It also directed that he be expelled from Swiss territory and banned from re-entering for 15 years. On 7 October, the Criminal Division of the Vaud Cantonal Court increased the prison sentence to eight years. The applicant complained about his treatment in detention.

Comm found by majority (12–4) NV 3 on account of the circumstances of the applicant's arrest, (15–1) V 3 regarding having to wear soiled clothing, unanimously V 3 regarding not being given immediate medical treatment.

Court noted the friendly settlement and struck the case from the list.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr L-E Pettiti, Mr AN Loizou, Mr F Bigi, Sir John Freeland, Mr AB Baka, Mr L Wildhaber, Mr D Gotchev.

The Court took formal note of the friendly settlement concluded between the Government and the applicant and discerned no reason of public policy militating against striking the case out of the list.

FS (payment to the applicant of CHF 14,000 by the Swiss Confederation), therefore case struck out of the list.

Hussain v United Kingdom (1996) 22 EHRR 1 96/8

[Application lodged 31.3.1993; Commission report 11.10.1994; Court Judgment 21.2.1996]

Mr Abed Hussain, the applicant, then aged 16, was convicted on 12 December 1978 of the murder of his younger brother, aged two. He received a mandatory sentence of detention 'during Her Majesty's pleasure', the effect of which was to render him liable to be detained in such a place and under such conditions as the Secretary of State for the Home Department directed. The Court of Appeal dismissed his appeal on 5 March 1980. In 1986, the applicant's tariff was set at 15 years by the Secretary of State after a confidential process of consultation involving the trial judge and the Lord Chief Justice. In the course of the applicant's detention, the Parole Board considered whether or not to recommend the applicant's release on four occasions. The applicant complained that, under the current regulations, he had no right to a periodic review by a court of his continued detention, the ultimate decision as to his release lay with the executive, he had no right to an oral hearing or to question or call witnesses, he had no acknowledged right to see the reports before the Parole Board and that he had been irrationally discriminated against on the basis of his status as a person convicted of murder.

Comm found unanimously V 5(4), not necessary to examine A 14.

Court unanimously found V 5(4), not necessary to examine A 14.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr R Macdonald, Mr A Spielmann, Mr N Valticos, Mrs E Palm, Mr F Bigi, Sir John Freeland, Mr P Jambrek.

As the applicant's complaint of the secretive and unfair manner in which his tariff had been established was not dealt with by the Commission and his punitive period had expired, the Court did not consider it necessary to examine that complaint.

On all the evidence, the applicant's sentence, after the expiration of his tariff, was more comparable to a discretionary life sentence. The decisive ground for the applicant's continued detention was and continued to be his dangerousness to society, a characteristic susceptible to change with the passage of time. Accordingly, new issues of lawfulness may arise in the course of detention and the applicant was entitled under A 5(4) to take proceedings to have those issues decided by a court at reasonable intervals. A 5(4) did not guarantee a right to judicial control of such scope as to empower the 'court' on all aspects of the case, including questions of expediency, to substitute its own discretion for that of the decision making authority; the review, nevertheless, had to be wide enough to bear on those conditions which, according to the Convention, were essential for the lawful detention of a person subject to the special type of deprivation of liberty ordered against the applicant. The Parole Board did not satisfy the requirements of A 5(4). It could not order the release of a prisoner. In addition, the lack of adversarial proceedings before the Parole Board also prevented it from being regarded as a court or court-like body for the purposes of A 5(4). In matters of such crucial importance as the deprivation of liberty and where questions arose which involved, for example, an assessment of the applicant's character or mental state, it could be essential to the fairness of the proceedings that the applicant be present at an oral hearing. In a situation such as that of the applicant, where a substantial term of imprisonment may be at stake and where characteristics pertaining to his personality and level of maturity were of importance in deciding on his dangerousness, A 5(4) required an oral hearing in the context of an adversarial procedure involving legal representation and the possibility of calling and questioning witnesses. Proceedings for judicial review did not provide a substitute, as A 5(4) presupposed the existence of a procedure in conformity with its requirements without the necessity of instituting separate legal proceedings in order to bring it about. In addition, the applicant's possibility of obtaining an oral hearing by way of proceedings for judicial review was not sufficiently certain to be regarded as satisfying the requirements of A 5(4). There had been a violation of A 5(4) in that the applicant, after the expiry of his tariff, was unable to bring the case of his continued detention during Her Majesty's pleasure before a court with the powers and procedural guarantees satisfying that provision.

The applicant did not make any reference to his complaint under A 14, and since no separate issues appeared to arise under that provision, the Court saw no reason to entertain it of its own motion.

Judgment constituted just satisfaction for non-pecuniary damage. Costs and expenses (GBP 19,000 less FF 14,475).

Cited: E v N (29.8.1990), Kremzow v A (21.9.1993), Powell and Rayner v UK (21.2.1990), Thynne, Wilson and Gunnell v UK (25.10.1990), Weeks v UK (2.3.1987), Wynne v UK (18.7.1994).

Huvig v France (1990) 12 EHRR 528 90/9

[Application lodged 9.8.1984; Commission report 14.12.1988; Court Judgment 24.4.1990]

Mr Jacques Huvig and his wife Janine ran a wholesale fruit and vegetable business. On 20 December 1973, the Director of the Tax Office lodged a complaint against the applicants and other persons alleging tax evasion, failure to make entries in accounts and false accounting. Mr and Mrs Huvig's home was searched, as were their business premises, pursuant to a warrant issued on 14 March 1974 by the investigating judge. The judge also issued a warrant to the gendarmerie requiring them to monitor and transcribe all Mr and Mrs Huvig's telephone calls, both business and private ones, on that day and the next day. The applicants complained, *inter alia*, that the tapping was in violation of A 8.

Commission found by majority (10–2) V 8.

Court held unanimously V 8.

Judges: Mr R Ryssdal, President, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans.

The telephone tapping amounted to an interference by a public authority with the applicants' right to respect for their correspondence and private life. 'Prescribed by law' covered not only statute, but also unwritten law. 'In accordance with the law' required the measure to have some basis in domestic law; it referred to the quality of the law and required it to be accessible, foreseeable and compatible with the rule of law. The interference had a basis in French law, in the Code of Criminal Procedure. There was no problem with accessibility, but difficulties with foreseeability. Regarding the quality of evidence, there had to be protection against arbitrary interference by public authorities, sufficient clarity, and the scope of any discretion had to be indicated. There were some safeguards in the Code and in judgments, but there were not adequate safeguards against various possible abuses. There was no definition of the categories of people who could have their phones tapped or the offences which could give rise to such an order. There was no limit on the duration of the tapping. The procedure for drawing up summary reports of the intercepted conversations was not specified. The precautions for communicating the recordings and their handling and circumstances for their destruction were also unspecified. French law did not indicate with reasonable clarity the scope and manner of the discretion on the authorities and did not provide the applicants with a minimum degree of protection to which they were entitled under the rule of law in a democratic society. The applicants suffered little or no harm as the tapping did not serve as a basis for the prosecution, but a violation was conceivable even in the absence of any detriment. There had, therefore, been a breach of A 8.

Neither compensation nor costs and expenses sought before the Court.

Cited: Chappell v UK (30.3.1989), De Wilde, Ooms and Versyp v B (18.6.1971), Dudgeon v UK (22.10.1981), Eriksson v S (22.6.1989), Johnston v IRL (18.12.1986), Klass v D (8.12.1978), Kostovski v NL (20.11.1989), Malone v UK (2.8.1984), Markt Intern Verlag GmbH and Beermann v D (20.11.1989), Müller v CH (24.5.1988), Salabiaku v F (7.10.1988), Silver and Others v UK (25.3.1983), Sunday Times v UK (26.4.1979).

I

I v Italy 99/106

[Application lodged 24.10.1997; Court Judgment 14.12.1999]

The applicant complained about the length of civil proceedings.

Court found unanimously V 6(1).

The period to be taken into consideration began on 21 March 1991 and was still pending on 29 September 1999. It had lasted more than eight years, six months at one level of jurisdiction. The period could not be considered reasonable.

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mrs Tsatsa-Nikolovska, Mr A Baka.

Non-pecuniary damage (ITL 20 million), costs and expenses (ITL 3 million).

Cited: Bottazi v Italy (28.7.1999).

IA v France 98/86

[Application lodged 29.3.1993; Commission report 10.9.1997; Court Judgment 23.9.1998.]

The applicant, who was born in Beirut, married a young Lebanese woman, who became his second wife. On 21 June 1991, the body of his wife was found at the harbour mouth. The applicant had reported her disappearance in August 1991. When he was interviewed in September, he had stated that his wife had left him in June. He then claimed that she had killed herself, and that fearing the reactions of his wife's family, he had disposed of the body. In December 1991, the investigating judge charged the applicant with murder and made a provisional order for his imprisonment. The judge made an order for his detention on remand a few days later. Over the course of the investigation, various experts were consulted and detailed inquiries were made. The applicant made numerous applications for release, all of which were rejected. In January 1996, the applicant was committed for trial for murder. An appeal against this decision was rejected in June. At the hearing in December 1996, the court adjourned the case, in response to an application from the applicant, who objected to being tried in the absence of two witnesses and an expert who had all been summonsed. In March 1997, the court sentenced the applicant to life imprisonment, with ineligibility for parole during the first 18 years. The applicant appealed, and in April 1998, the judgment was quashed and declared null and void, on the ground that the court had misapplied a relevant provision, and the case was remitted to another Assize Court. In April and May 1998, the applicant lodged applications for release, which respectively were withdrawn and dismissed. The applicant complained, under A 6(1), of the excessive length of the criminal proceedings against him and, under A 5(3), of his detention on remand.

Comm found unanimously V 5(3) and NV 6(1).

Court held unanimously V 5(3) and NV 6(1).

Judges: Mr R Bernhardt, President, Mr L-E Pettiti (c), Mr R MacDonald, Mr J De Meyer, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla, Mr AB Baka, Mr E Levits.

A 5(3): The period to be considered had begun on the day when the applicant was charged with murder and placed in detention on remand. In principle, conviction by a court marked the end of the period to be considered under A 5(3); from that point on, the detention of the person concerned fell within the scope of A 5(1)(a). The period to be considered under A 5(3) ended on 20 March 1997: just over five years and three months. It fell in the first place to the national judicial authorities to ensure that the pre-trial detention of an accused person did not exceed a reasonable time. The persistence of reasonable suspicion that the person arrested had committed an offence was a condition *sine qua non* for the validity of the continued detention, but, after a certain lapse of time, it no longer sufficed; the Court had to then establish whether the other grounds cited by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were 'relevant' and 'sufficient', the Court also had to ascertain whether the competent national authorities displayed special diligence in the conduct of the proceedings. The French courts ruled

on the applicant's detention on remand 57 times at first instance and five times on appeal. The grounds for their decisions referred to the Code of Criminal Procedure, under which detention on remand could not be ordered or extended unless it was the sole means of preserving evidence, of preventing pressure being brought to bear on witnesses or victims, of preventing collusion between persons under investigation and accomplices, was necessary to protect the person concerned, to put an end to the offence or prevent its repetition, to ensure that the person concerned remained at the disposal of the judicial authorities, or to preserve public order from the disturbance caused by the offence. To have been compatible with the Convention, the considerable length of the deprivation of liberty suffered by the applicant should have been based on particularly convincing justifications. The initial relevance of the grounds cited by the French courts for their decisions as to the continuation of the applicant's detention did not stand the test of time. Through its excessive length, the detention breached A 5(3).

A 6(1): The period to be taken into consideration began on the date when the applicant was charged; the proceedings had not yet ended, and to date lasted approximately six years and nine months. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case, regard being had to the criteria laid down in the case-law, in particular, the complexity of the case, the applicant's conduct and that of the competent authorities. In the present case, the stage of the proceedings subsequent to the judgment committing the applicant for trial (24 January 1996) could not be seriously criticised from the standpoint of A 6(1). The length of the preparatory investigation, more than four years and six months, raised questions. The conduct of the judicial authorities handling the investigation was not exempt from criticism. The late transmission of the case to the investigating judge slowed down the progress of the proceedings. Nevertheless, the case was sufficiently complex factually to explain certain delays. In addition, although the applicant could not be criticised for lodging applications for his release, however numerous, or for constantly denying that he had committed murder, he too substantially contributed to the protractedness of the investigation. Having regard to the evidence and considering the proceedings as matters stood on the date of judgment, there had been no breach of A 6(1).

No compensation required for any prejudice. Costs and expenses (FF 25,000).

Cited: B v A (28.3.1990), Kemmache v F (Nos 1 and 2) (27.11.1991), Letellier v F (26.6.1991), Neumeister v A (27.6.1968), Reinhardt and Slimane-Kaïd v F (31.3.1998).

IR v Italy 00/73

[Application lodged 25.9.1996; Commission report 30.11.1998; Court Judgment 15.2.1999]

The applicant complained about the length of civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

The period to be taken into consideration began on 7 December 1979 and had lasted more than 16 years 11 months. The period could not be considered reasonable.

Judges: Mr J-P Costa, Mr L Ferrari Bravo, Mr P Kûris, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

Non-pecuniary damage (ITL 40,000,000), costs and expenses (ITL 6,448,000 million).

Cited: Bottazzi v Italy (28.7.1999).

IS v Slovakia 00/113

[Application lodged 3.5.1994; Commission report 27.10.1998; Court Judgment 4.4.2000]

The applicant and four other persons lodged an action for restitution of land against two State enterprises. On 24 January 1992, a judge of the District Court invited the defendants to submit written observations on the merits of the action. The case was dealt with at two jurisdictional

levels. On 8 April 1999, the Regional Court found in the applicant's favour. On 31 May 1999, the judgment was sent to the parties and on 7 June 1999 it became final. The applicant complained, *inter alia*, about the length of the proceedings.

Comm found unanimously V 6(1).

Court unanimously dismissed Government's preliminary objections, found V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr A Baka, Mr E Levits.

The rule of exhaustion of domestic remedies obliged those seeking to bring their case against the State before an international judicial body to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. In order to comply with the rule, normal recourse should be had by an applicant to remedies which were available and sufficient to afford redress in respect of the breaches alleged. Moreover, an applicant who had exhausted a remedy that was apparently effective and sufficient could not be required also to have tried others that were available, but probably no more likely to be successful. The mere fact that the applicant did not complain about the delay referring to the domestic Act could not in the circumstances of the case lead to the conclusion that the applicant had failed to comply with the rule on exhaustion of domestic remedies. Consequently, Government's preliminary objection dismissed. The Government had not raised the objection of failure to observe the six month time limit before the Commission and were therefore estopped from raising it before the Court.

The proceedings were brought on 19 November 1991. However, the relevant period began on 18 March 1992, when the former Czech and Slovak Federal Republic ratified the Convention and recognised the right of individual petition. The proceedings ended on 31 May 1999 when the decision of the Regional Court of 8 April 1999 was sent to the parties. In order to determine the reasonableness of the length of time in question, regard had to be had to the state of the case on 18 March 1992. The proceedings lasted seven years, six months, two days for two sets at two levels of jurisdiction each, out of which seven years, two months, 13 days were taken into consideration by the Court. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities. The restitution proceedings raised a complex issue of a factual nature which contributed to some extent to the overall length of the proceedings. The applicant's conduct contributed to the delay. The authorities had been responsible for some delay. There had been a violation of A 6(1).

No claim submitted for just satisfaction.

Cited: A v F (23.11.1993), Assenov and Others v BG (28.10.1998), Matter v SLO (5.7.1999), Nikolova v BG (25.3.1999), Zielinski and Pradal and Gonzalez and Others v F (28.10.1999).

Iadanza v Italy 99/118

[Application lodged 8.11.1997; Court Judgment 14.12.1999]

The applicant complained about the length of civil proceedings.

Court found unanimously V 6(1).

The period to be taken into consideration began on 7 October 1986 and was still pending on 24 March 1999. It had lasted more than 12 years, five months at two levels of jurisdiction. The period could not be considered reasonable.

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mrs Tsatsa-Nikolovska, Mr A Baka.

Non-pecuniary damage (ITL 24,000,000), costs and expenses (ITL 3,803,352).

Cited: Bottazi v I (28.7.1999).

Iatridis v Greece (2000) 30 EHRR 97 99/15

[Application lodged 28.3.1996; Commission report 16.4.1998; Court Judgment 25.3.1999]

In 1978, the Ilioupolis open-air cinema was leased to the applicant, who completely restored it. On 16 November 1988, the State Lands Authority assigned the cinema to Ilioupolis Town Council. The applicant was served with an eviction order and the Ilioupolis Town Council seized possession of the cinema. The applicant challenged the eviction order in the Athens District Court, which found for the State. The applicant appealed to the Athens Court of First Instance which, on 23 October 1989, quashed the eviction order. The Minister of Finance refused to return the property. Despite continuing litigation, the cinema was still being operated by Ilioupolis Town Council and had not been returned to the applicant. The applicant had not set up business elsewhere. He complained of a breach of P1A1.

Comm found by majority (14–1) V 13, V P1A1, unanimously not necessary to examine 6(1), 8.

Court dismissed by majority (16–1) Government's preliminary objection that domestic remedies had not been exhausted, unanimously Government's preliminary objection that the six month time limit had not been observed, found unanimously V P1A1, by majority (16–1) V 13, unanimously not necessary to rule on 6(1), 8.

Judges: Mrs E Palm, President, Mr L Ferrari Bravo, Mr G Jörundsson, Mr L Caflisch, Mr I Cabral Barreto, Mr K Jungwiert, Mr M Fischbach, Mr J Casadevall, Mr B Zupancic, Mrs N Vajic, Mr J Hedigan, Mrs W Thomassen, Mrs M Tsatsa-Nikolovska, Mr T Pantiru, Mr E Levits, Mr K Traja, Mr C Yeraris (pd), ad hoc judge.

The only remedies A 35 required to be exhausted were those that were available and sufficient and related to the breaches alleged. The applicant could not be criticised for not having made use of a legal remedy which would have been directed to essentially the same end as the one already taken and which, moreover, would not have had a better prospect of success. An action for damages would not have been an alternative to the measures which the Greek legal system should have afforded the applicant to overcome the fact that he was unable to regain possession of the cinema despite a court decision quashing the eviction order. A 35 required the exhaustion only of remedies that related to the breaches alleged: suing a private individual could not be regarded as such a remedy in respect of an act on the part of the State. Accordingly, the objection was dismissed. The Minister of Finance's refusal to comply with the decision of the Court of First Instance had led to a continuing situation, so that the six month rule did not apply. In addition, the applicant did not receive a copy of the State Lands Authority's opinion until 7 November 1995 and he lodged his request for the Minister to approve the recommendation on 15 November. In lodging his application with the Commission on 28 March 1996, he had complied with the six month time limit. The objection was therefore dismissed.

The concept of 'possessions' in P1A1 had an autonomous meaning which was not limited to ownership of physical goods: certain other rights and interests constituting assets could also be regarded as 'property rights', and thus as 'possessions' for the purposes of the provision. The applicant, who had a specific licence to operate the cinema he had rented, was evicted from it by Ilioupolis Town Council. Despite a judicial decision quashing the eviction order, the applicant could not regain possession of the cinema because the Minister of Finance refused to revoke the assignment of it to the Council. There had therefore been an interference with the applicant's property rights. Since he held only a lease of his business premises, the interference neither amounted to an expropriation nor was an instance of controlling the use of property, but came under the first sentence of the first paragraph of P1A1. Any interference by a public authority with the peaceful enjoyment of possessions had to be lawful. Moreover, the rule of law, one of the fundamental principles of a democratic society, was inherent in all the articles of the Convention and entailed a duty on the part of the State or other public authority to comply with judicial orders or decisions against it. The applicant's eviction on 17 March 1989 had a legal basis in domestic law. However, on 23 October 1989, the Athens Court of First Instance heard the case under summary procedure and quashed the eviction order on the grounds that the conditions for issuing it had not been satisfied. No appeal lay against that decision. From that moment on, the applicant's eviction

thus ceased to have any legal basis and the Town Council became an unlawful occupier and should have returned the cinema to the applicant. The interference was manifestly in breach of Greek law and accordingly incompatible with the applicant's right to peaceful enjoyment of his possessions. It was unnecessary, therefore, to ascertain whether a fair balance had been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. There had been a violation of P1A1.

The complaint under A 13 arose out of the same facts as those examined when dealing with the objection of non-exhaustion and the complaints under P1A1. However, there was a difference in the nature of the interests protected by A 13 and P1A1: the former afforded a procedural safeguard, namely the right to an effective remedy, whereas the procedural requirement inherent in the latter was ancillary to the wider purpose of ensuring respect for the right to peaceful enjoyment of possessions. The remedy required by A 13 had to be effective in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State. In the light of the Minister of Finance's refusal to comply with the judgment of the Court of First Instance in this case, the remedy in question could not be regarded as 'effective' under A 13 and there had therefore been a violation .

The applicant's complaints under A 8 and 6(1) were essentially the same as those under P1A1 and A 13 respectively. It was therefore not necessary to examine the complaints under A 8 and 6(1) separately, as in this case the requirements of those articles are subsumed under those of P1A1 and A 13.

Just satisfaction not ready for decision.

Cited: Aksoy v TR (18.12.1996), Amuur v F (25.6.1996), Erdagöz v TR (22.101997), Gasus Dosier- und Fördertechnik GmbH v NL (23.2.1995), Hornsby v GR (19.3.1997), James and Others v UK (21.2.1986), McMichael v UK (24.2.1995), Miailhe v F (25.2.1993), Pine Valley Developments Ltd and Others v IRL (29.11.1991), Sporrong and Lönnroth v S (23.9.1982), Tsomtsos and Others v GR (15.11.1996) Van Marle and Others v NL (26.6.1986).

Idrocalce Srl v Italy 92/17

[Application lodged 1.4.1986; Commission report 5.12.1990; Court Judgment 27.2.1992]

The applicant was a limited company in the process of liquidation. By a writ served on 26 September and 2 October 1980, the applicant company took proceedings before the Taranto District Court against Mr N, its debtor, and Others. By a decision of 13 February 1987, the applicant's claim was dismissed on account of Mr N's bankruptcy. On 27 April 1989, the Court of Appeal upheld the appealed decision by a ruling filed with the court registry on 10 June 1989. No appeal was lodged in the Court of Cassation. The applicant company complained about the length of the civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr A N Loizou, Mr J M Morenilla, Mr F Bigi.

The period to be taken into consideration began on 26 September 1980, when the proceedings were instituted against Mr N in the Taranto District Court, and ended on 10 June 1990, when the judgment of the Court of Appeal became final. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The applicant had contributed to the slowness of some of the proceedings. However, there were several long periods of stagnation and delay on the part of the courts. The lapse of time in the case could not be regarded as reasonable.

Judgment constituted sufficient just satisfaction for any non-pecuniary damage. Costs and expenses (ITL 8,040,000).

Cited: Capuano v I (256.1987), Pugliese (No 2) v I (24.5.1991), Vocaturo v I (24.5.1991).

Ignaccolo-Zenide v Romania 00/12

[Application lodged 22.1.1996; Commission report 9.9.1998; Court Judgment 25.1.2000]

Mrs Ignaccolo-Zenide, a French national, and her husband DZ, who held French and Romanian nationality, had two children. Following their divorce, a French court ruled that the children were to live with her. During the 1990 holidays, the children went to stay with DZ, who was living in the US. At the end of the holidays he refused to return the children to the applicant. He changed his address several times and then fled to Romania in March 1994. On 14 December 1994, the Bucharest Court of First Instance issued an injunction ordering that the children be returned to the applicant. The applicant's efforts to have the injunction enforced proved unsuccessful. Since 1990, she had seen her children only once, at a meeting organised by the Romanian authorities on 29 January 1997. The applicant complained that the failure of the Romanian authorities to enforce the injunction of the First Instance Court amounted to a breach of her right to respect for family life.

Comm found unanimously V8.

Court found by majority (6–1) V 8.

Judges: Mrs E Palm, President, Mr J Casadevall, Mr Gaukur Jörundsson, Mr R Türmen, Mrs W Thomassen, Mr R Maruste (pd), Mrs A Diculescu-Sova (pd), ad hoc judge.

A 8 included a right for parents to have measures taken with a view to their being reunited with their children and an obligation for the national authorities to take such measures. That obligation was not absolute, since some preparation might be needed prior to the reunion of a parent with a child who had been living for any length of time with the other parent. The nature and extent of the preparation depended on the circumstances of each case and any obligation the authorities had to apply coercion was limited since the interests and rights and freedoms of all concerned, particularly the paramount interests of the child and his rights under A 8, had to be taken into account. Where contact with the parent might threaten those interests or interfere with those rights, it was for the national authorities to strike a fair balance between them. The positive obligation which A 8 imposed on Contracting States to help reunite parents with their children had to be construed in the light of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Although the first attempts of enforcement of the injunction were made promptly in December 1994, only two attempts were made in 1995. No action was taken between December 1995 and January 1997. In addition, the authorities had not done any preparation for the enforcement of the order. No social workers or psychologists had been involved in the preparation of the meeting of 29 January 1997. The authorities had not implemented the measures set out in the Hague Convention to secure the childrens' return to the applicant. The authorities had failed to take adequate and sufficient steps to comply with the applicant's right to the return of her children and had therefore infringed her right to respect for her family life.

Non-pecuniary damage ((by majority 6–1) FF 100,000), costs and expenses (FF 86,000).

Cited: Margareta and Roger Andersson v S (25.2.1992), Eriksson v S (22.6.1989), Hokkanen v SF (23.9.1994), Keegan v IRL (26.5.1994), McMichael v UK (24.2.1995), Olsson v S (No 2) (27.11.1992).

Ilhan v Turkey 00/171

[Application lodged 24.6.1993; Commission report 23.4.1999; Court Judgment 27.6.2000]

On 26 December 1992, gendarmes carried out an operation at Aytepe village. The applicant's brother Abdüllatif Ilhan and another villager saw the soldiers approaching the village and hid. The gendarmes found both men hiding under the bushes and trees in the garden area. The applicant claimed that his brother was beaten, kicked and hit with rifle butts, including being hit on the head. They were taken to the gendarme station where statements were taken. On 27 December, Abdüllatif was taken to hospital. He was said to be in a life threatening situation. On 11 February 1993, the public prosecutor, without interviewing Abdüllatif, the other villager or any gendarme

who had witnessed the alleged accident, issued a decision not to prosecute, stating that the injury resulted from an accident for which no one was at fault, either intentionally or negligently. On the same day, the public prosecutor drew up an indictment charging Abdüllatif Ilhan with the offence of resistance to officers by running away from the security forces during the operation and ignoring their orders to stop. On 30 March 1993, Abdüllatif appeared before the Mardin Justice of the Peace Court which found him guilty and sentenced him to a fine of TKL 35,000, which was suspended. The applicant Nasir Ilhan complained, *inter alia*, that his brother had been the victim of life threatening assault and torture, that he was not given necessary medical treatment, and that he did not have any effective remedy in respect of these matters.

Comm found by majority (27–5) V 2, unanimously V 3, by majority (29–3) V 13, unanimously NV 14.

Court dismissed unanimously the Government's preliminary objections, found by majority (12–5) NV 2, unanimously V 3, 13.

Judges: Mr L Wildhaber, President, Mr J-P Costa, Mr A Pastor Ridruejo, Mr L Ferrari Bravo, Mr G Bonello (jpd), Mr J Makarczyk, Mr P Kûris, Mrs F Tulkens (jpd), Mr V Butkevych, Mr J Casadevall (jpd), Mrs N Vajic (jpd), Mrs HS Greve (jpd), Mr AB Baka, Mr R Maruste, Mrs S Botoucharova, Mr M Ugrekhelidze, Mr F Gölcüklü (d), ad hoc judge.

The rules of admissibility had to be applied with some degree of flexibility and without excessive formalism and the Convention generally had to be interpreted and applied so as to make its safeguards practical and effective The system of individual petition under A 34 excluded applications by way of *actio popularis*; complaints had to be brought by or on behalf of persons who claimed to be victims of a violation of the Convention. Such persons had to be able to show that they were 'directly affected' by the measure complained of. Victim status could exist even where there was no damage, damage being an issue relevant under A 41. Although Abdüllatif was the immediate victim of the alleged assault and ill-treatment in the present case, the applicant's application made it clear that he was complaining on behalf of his brother and that his brother, due to his health, was not in a position to pursue the application himself. The fact that Nasir used his own name as that of the applicant rather than that of his brother did not disclose an abuse of the Convention system as Abdüllatif consented to the proceedings, gave evidence before the Convention delegates and there was no apparent conflict of interest arising from the applicant's involvement on behalf of his brother. Special considerations could arise where a victim of an alleged violation of A 2 and 3 at the hands of the security forces was still suffering from serious after-effects to his health. Having regard, therefore, to the special circumstances of this case, where Abdüllatif could claim to have been in a particularly vulnerable position, the applicant could be regarded as having validly introduced the application on his behalf. Accordingly, the Government's preliminary objection in that respect was dismissed. The rule of exhaustion of domestic remedies obliged applicants to use first the remedies that were normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies had to be sufficiently certain, in practice as well as in theory, failing which they would lack the requisite accessibility and effectiveness. A 35(1) also required that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which were inadequate or ineffective. A 35(1) had to be applied with some degree of flexibility and without excessive formalism. It was neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it was essential to have regard to the circumstances of the individual case. With respect to an action in administrative law based on the authorities' strict liability, a Contracting State's obligation under A 2, 3 and 13 of the Convention to conduct an investigation capable of leading to the identification and punishment of those responsible in cases of fatal assault, or A 3 treatment, might be rendered illusory if in respect of complaints under those articles an applicant were to be required to exhaust an administrative law action leading only to an award of damages. Consequently, the applicant was not required to bring the administrative proceedings in question and the preliminary objection was, in that respect, unfounded. As regards a civil action for redress for damage sustained through illegal acts or

patently unlawful conduct on the part of State agents, a plaintiff had to identify the person believed to have committed the tort as well as establishing a causal link between the tort and the damage sustained. The public prosecutor had not taken any steps to identify who was present or involved in the incident and it was not apparent that there was any basis on which Abdüllatif could have pursued a civil claim with any reasonable prospect of success. With regard to the criminal law remedies, the public prosecutor had chosen not to make any inquiry as to the circumstances in which the injuries were caused. The Government's preliminary objections as regards civil and criminal law remedies were therefore dismissed.

A 2: The force used against Abdüllatif was not in the event lethal, although that did not exclude an examination of the applicant's complaints under A 2. The criminal responsibility of those concerned in the use of force was not in issue in the proceedings; nonetheless, the degree and type of force used and the unequivocal intention or aim behind the use of force might, amongst other factors, be relevant in assessing whether in a particular case the State agents' actions in inflicting injury short of death had to be regarded as incompatible with the object and purpose of A 2. In almost all cases where a person was assaulted or maltreated by police or soldiers, their complaints would fall to be examined rather under A 3. Abdüllatif suffered brain damage following at least one blow to the head by a rifle butt inflicted by gendarmes who had been ordered to apprehend him during an operation and who kicked and beat him when they found him hiding. Medical reports had identified the head injury as being of a life threatening character. The seriousness of his injury was therefore not in doubt. However, the use of force applied by the gendarmes was not of such a nature or degree as to breach A 2. Nor did any separate issue arise in this context concerning the alleged lack of prompt medical treatment for his injuries. There had therefore been no violation of A 2 concerning the infliction of injuries on Abdüllatif. In the light of that conclusion, it was not necessary to examine the allegations under A 2 of the Convention that there was a failure on the part of the authorities to protect Abdüllatif's right to life or to conduct an effective investigation into the use of force.

A 3: Ill-treatment had to attain a minimum level of severity to fall within the scope of A 3. The assessment of that minimum was relative: it depended on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim. Having regard to the severity of the ill-treatment suffered by Abdüllatif and the surrounding circumstances, including the significant lapse in time before he received proper medical attention, he was a victim of very serious and cruel suffering that could be characterised as torture. There had therefore been a breach of A 3 in this regard.

The notion of effective remedy included the duty to carry out a thorough and effective investigation capable of leading to the identification and punishment of those responsible for any ill-treatment and permitting effective access for the complainant to the investigatory procedure. Whether it was appropriate or necessary to find a procedural breach of A 3 would depend on the circumstances of the particular case. In the present case, the complaints concerning the lack of any effective investigation by the authorities into the cause of his injuries fell to be dealt with under A 13. The Government were responsible under A 3 for ill-treatment of Abdüllatif amounting to torture. The authorities had an obligation to carry out an effective investigation into the circumstances in which Abdüllatif received his injuries. There had been inadequate action on the part of the public prosecutor and the medical report had been deficient. On the evidence, no effective criminal investigation could be considered to have been conducted in accordance with A 13. Therefore, no effective remedy had been provided in respect of Abdüllatif's injuries and thereby access to any other available remedies, including a claim for compensation, had also been denied.

Damage (by majority (16–1) GBP 80,600 for pecuniary damage to be held by the applicant for his brother, GBP 25,000 non-pecuniary damage to be held by the applicant for his brother), costs and expenses (GBP 17,000 less FF 11,300).

Cited: Akdivar and Others v TR (16.9.1996), Aksoy v TR (18.12.1996), Assenov v BG (28.10.1998), Aydin v TR (25.9.1997), Boyle and Rice v UK (27.4.1988), Cardot v F (19.3.1991), Ireland v UK (18.1.1978) Kaya v TR

(19.2.1998), LCB v UK (9.6.1998), Labita v I (6.4.2000), McCann and Others v UK (27.9.1995), Open Door and Dublin Well Woman v IRL (29.10.1992), Osman v UK (28.10.1998), Selmouni v F (28.7. 1999), Tekin v TR (9.6.1998), Wassink v NL (27.9.1990), Worm v A (29.8.1997), Yasa v TR (2.9.1998).

Imbrioscia v Switzerland (1994) 17 EHRR 441 93/51

[Application lodged 5.5.1988; Commission report 14.5.1992; Court Judgment 24.11.1993]

Mr Franco Imbrioscia, an Italian commercial traveller, was arrested at Zürich airport on a Bangkok flight and charged with drugs offences. On 8 February, Ms BG, through someone known to the applicant, wrote to him offering to represent him. He agreed, but on 25 February she withdrew as his lawyer. On the same day, Mr Fischer was officially assigned to act for the applicant. The applicant was interrogated and committed for trial. He was convicted of offences against the dangerous drugs legislation and sentenced to seven years' imprisonment and banned from residing in Switzerland for 15 years as well being ordered to pay costs. His appeals to the Zürich Court of Appeal and Court of Cassation were dismissed. He complained, *inter alia*, that he had not been assisted by a lawyer during most of his interrogations and that the lawyer had not attended the examination of various witnesses in Italy.

Comm found by majority (9–5) NV 6(1) and (3)(c).

Court found by majority (6–3) NV 6(1)+6(3)(c).

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr L-E Pettiti (d), Mr J De Meyer (d), Mr I Foighel, Mr Pekkanen, Mr AB Baka, Mr MA Lopes Rocha (d), Mr L Wildhaber.

The primary purpose of A 6 as far as criminal matters were concerned was to ensure a fair trial by a tribunal competent to determine any criminal charge, however, it did not follow that A 6 had no application to pre-trial proceedings. The requirements of A 6, especially of A 6(3), could be relevant before a case was sent for trial if and in so far as the fairness of the trial was likely to be seriously prejudiced by an initial failure to comply with them. A 6(3)(c) did not specify the manner of exercising the right. Contracting States were left the choice of the means of ensuring that it was secured in their judicial systems, the Court's task being only to ascertain whether the method they had chosen was consistent with the requirements of a fair trial. The Convention was designed to guarantee not rights that were theoretical or illusory, but rights that were practical and effective and assigning a counsel did not in itself ensure the effectiveness of the assistance he might afford an accused. The manner in which A 6(1) and 6(3)(c) were to be applied during the preliminary investigation depended on the special features of the proceedings involved and on the circumstances of the case. In order to determine whether the aim of A 6 had been achieved, regard had to be had to the entirety of the domestic proceedings conducted in the case. The applicant did not have the necessary legal support at the outset. However, a State could not be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes or chosen by the accused. Owing to the legal profession's independence, the conduct of the defence was essentially a matter between the defendant and his representative; under A 6(3)(c), Contracting States were required to intervene only if a failure by counsel to provide effective representation was manifest or sufficiently brought to their attention. Since the period in question was so short and the applicant had not complained about Ms BG's inactivity, the relevant authorities could not be expected to intervene. When she informed them of her withdrawal, they immediately officially assigned a lawyer for his defence. Mr Fischer had visited his client in prison on 1 March, soon after receiving the file. When he returned it to the district prosecutor on 4 March, he did not raise the issue of the non-attendance by a lawyer at the earlier interrogations of which he had inspected the transcripts. Although Mr Fischer did not attend the first two interviews with the district prosecutor, he was given the opportunity to do so; he had been given the relevant transcripts of the investigation, the applicant was able to talk to his counsel before and after each interview. The hearings in the Bülach District Court and the Zürich Court of Appeal were attended by adequate safeguards; the judges heard the applicant in the presence of his lawyer, who had every opportunity to examine him and his co-defendant and to challenge the prosecution's submissions

in his address. A scrutiny of the proceedings as a whole therefore led the Court to hold that the applicant was not denied a fair trial. There had not been a breach of A 6(1) and 6(3)(c).

Cited: Artico v I (13.5.1980), Campbell and Fell v UK (28.6.1984), Can v A (30.9.1985), Delta v F (19.12.1990), Engel and Others v NL (8.6.1976), Granger v UK (28.3.1990), Kamasinski v A (19.12.1989), Lamy v B (30.3.1989), Luedicke, Belkacem and Koç v D, (28.11.1978), Maj v I (19.2.1991), Messina v I (26.2.1993), Quaranta v CH (24.5.1991), S v CH (28.11.1991), Viezzer v Italy (19.2.1991) Wemhoff v D (27.6.1968).

Immobiliare Saffi v Italy 99/47

[Application lodged 23.9.1993; Commission report 2.12.1999; Court Judgment 28.7.1999]

Immobiliare Saffi, a construction company, became the owner of an apartment in Livorno in 1988 following a corporate merger. The tenancy on the apartment had expired on 31 December 1993 and, although an order for possession had been made by the Livorno magistrate, the tenant had refused to vacate the premises. The bailiff made 11 unsuccessful attempts to recover possession. Under the statutory provisions providing for the suspension or staggering of evictions, the applicant company was not entitled to police assistance. The applicant company did not repossess the apartment until 11 April 1996, following the death of the tenant. The applicant company complained under P1A1 and A 6(1) that over a lengthy period it had been unable to enforce the order for possession.

Comm found by majority (28–1) V P1A1, unanimously V 6(1) as regards the right of access to a tribunal, no separate question arose under A 6(1) as regards the length of the eviction proceedings.

Court dismissed Government's preliminary objection, found unanimously V P1A1, 6(1).

Judges: Mr L Wildhaber, President, Mr M Pellonpää, Mr A Pastor Ridruejo, Mr L Ferrari Bravo, Mr L Caflisch, Mr P Kûris, Mr R Türmen, Mr J-P Costa, Mrs F Tulkens, Mrs V Stráznická, Mr M Fischbach, Mr V Butkevych, Mr J Casadevall, Mr J Hedigan, Mrs HS Greve, Mr R Maruste, Mrs S Botoucharova.

As there was no basis for challenging the criteria for establishing priority (regarding requests for police assistance in enforcing possession orders after 1 January 1990), an application to the administrative courts could not be regarded as having been an effective remedy. In the Italian legal system, an individual was not entitled to apply directly to the Constitutional Court for review of a law's constitutionality. Accordingly, such an application could not be a remedy whose exhaustion was required under A 35. The Government's preliminary objection regarding non-exhaustion therefore had to be dismissed.

P1A1: The implementation of the legislative measures allowed the tenant to continue to occupy the apartment and therefore amounted to control of the use of property. Accordingly, the second paragraph of P1A1 was applicable. The impugned legislation had a legitimate aim in the general interest, as the simultaneous eviction of a large number of tenants would undoubtedly have led to considerable social tension and jeopardised public order. An interference, particularly one falling to be considered under the second paragraph of P1A1, had to strike a 'fair balance' between the demands of the general interest and the requirements of the protection of the individual's fundamental rights. There had to be a reasonable relationship of proportionality between the means employed and the aim pursued and States enjoyed a wide margin of appreciation in that regard. That was so in spheres such as housing, which played a central role in the welfare and economic policies of modern societies. In principle, a system of temporary suspension or staggering of the enforcement of court orders followed by the reinstatement of the landlord in his property was not in itself open to criticism, having regard in particular to the margin of appreciation permitted under the second paragraph of P1A1. However, such a system carried with it the risk of imposing on landlords an excessive burden in terms of their ability to dispose of their property and had accordingly to provide certain procedural safeguards so as to ensure that the operation of the system and its impact on a landlord's property rights were neither arbitrary nor unforeseeable. The Italian system suffered from a degree of inflexibility: by providing that cases in which the lease had been terminated on the ground that the landlord urgently needed to recover

the apartment for himself or his family should always be given priority, it automatically made the enforcement of non-urgent orders for possession dependent on there being no requests warranting priority treatment. It followed that, since there were always a large number of priority requests outstanding, non-urgent orders were in practice never enforced after January 1990. The provision of police assistance, which the prefect determined by reference to an order of priority, therefore ended up depending almost entirely on the volume of prior-ranking requests for police assistance and the number of police officers at the prefect's disposal. For approximately 11 years, the applicant company was thus left in a state of uncertainty as to when it would be able to repossess its apartment. It could not apply to either the judge dealing with the enforcement proceedings or the administrative court, nor had it any means of compelling the Government to take into account any particular difficulties it might encounter as a result of the delay in the eviction. It had no prospect of obtaining compensation through the Italian courts for its protracted wait, during which it was unable to sell or let the apartment at market value. Nothing in the file suggested that the tenant occupying the applicant company's premises deserved any special protection. In the circumstances, the system of staggering the enforcement of orders for possession, coupled with what had already been a six-year wait because of the statutory suspension of the enforcement of such orders, imposed an excessive burden on the applicant company and accordingly upset the balance that had to be struck between the protection of the right of property and the requirements of the general interest. Consequently, there had been a violation of P1A1.

A 6(1): Execution of a judgment given by any court had to be regarded as an integral part of the trial for the purposes of A 6 and therefore A 6 was applicable in the present case. The right to a court as guaranteed by A 6 also protected the implementation of final, binding judicial decisions, which could not remain inoperative to the detriment of one party. Accordingly, the execution of a judicial decision could not be unduly delayed. A stay of execution of a judicial decision for such period as was strictly necessary to enable a satisfactory solution to be found to public order problems could be justified in exceptional circumstances. The present case did not concern an isolated refusal by the prefect to provide police assistance. The enforcement of the order was stayed after January 1990 as a result of the intervention of the legislature, which reopened the magistrate's decision regarding the date by which the tenant was required to vacate the premises. The postponement of the date by which the premises had to be vacated rendered nugatory the Livorno magistrate's decision on that point. The assessment of whether it was appropriate subsequently to stay enforcement of the order for possession and therefore *de facto* to extend the lease, was not subject to any effective review by the courts, since the scope of judicial review of the prefect's decision was limited to verifying whether he had complied with the criteria governing the order of priority. Although Contracting States might, in exceptional circumstances, avail themselves of their margin of appreciation to control the use of property and intervene in proceedings for the enforcement of a judicial decision, the consequence of such intervention should not be that execution was prevented, invalidated or unduly delayed or, still less, that the substance of the decision was undermined. In the present case, the impugned legislation rendered nugatory the Livorno magistrate's ruling and from the moment the prefect became the authority responsible for determining when the order for possession would be enforced, and in the light of the fact that there could be no effective judicial review of his decisions, the applicant company was deprived of its right under A 6(1) to have its dispute with its tenant decided by a court. Consequently, there had been a violation of A 6(1). The complaint concerning the length of the proceedings had been absorbed by the complaint regarding the right to a court.

Pecuniary damage (ITL 28,440,150), costs and expenses (ITL 5,000,000).

Cited: AGOSI v UK (24.10.1986), Air Canada v UK (5.5.1995), Chassagnou and Others v F (29.4.1999), Gasus Dosier und Fördertechnik GmbH v NL (23.2.1995), Hornsby v GR (19.3.1997), Iatridis v GR (25.3.1999), James and Others v UK (21.2.1986), Mellacher and Others v A (1912.1989), Scollo v I (28.9.1995), Spadea and Scalabrino v I (28.9.1995), Sporrong and Lönnroth v S (23.9.1982).

Incal v Turkey (2000) 29 EHRR 449 98/49

[Application lodged 7.9.1993; Commission report 25.2.1997; Court Judgment 9.6.1998]

Mr Ibrahim Incal, a lawyer, was at the material time a member of the executive committee of the Izmir section of the People's Labour Party (HEP). That party, which was represented in the National Assembly, was dissolved by the Constitutional Court on 14 July 1993. In July 1992, the executive committee decided to distribute in the Izmir constituency a leaflet criticising the measures taken by the local authorities, in particular against small-scale illegal trading and the sprawl of squatters' camps around the city. By a letter accompanied by a copy of the leaflet in question, the president of the HEP asked the Izmir prefecture for permission to distribute the leaflet. The Izmir security police considered that the leaflet contained separatist propaganda capable of inciting the people to resist the government and commit criminal offences. The National Security Court issued an injunction ordering the seizure of the leaflets and prohibiting their distribution. HEP's premises were searched, copies of the leaflets seized and a criminal investigation against the HEP's local leaders and the members of its executive committee was opened. On 9 February 1993, the National Security Court, composed of three judges, one of whom was a member of the Military Legal Service, found the applicant guilty and sentenced him to six months and 20 days' imprisonment and a fine of TRL 55,555. It also ordered the confiscation of the leaflets and disqualified him from driving for 15 days. An appeal to the Court of Cassation was dismissed. The applicant complained that his criminal conviction on account of his contribution to preparation of the leaflet in issue had infringed his right to freedom of expression and that he had not had a fair trial before an independent tribunal.

Comm found unanimously V 10, V 6(1) as regards fair hearing by an independent and impartial tribunal, NV 6(1)+14, by majority (26–5) V 6(1) as regards applicant being unable to reply to the public prosecutor's opinion, (26–5) NV 6(1) as regards non-appearance of applicant before Court of Cassation.

Court found unanimously V 10, by majority (12–8) V 6(1) as regards the complaint relating to the independence and impartiality of the National Security Court, (19–1) not necessary to consider the applicant's other complaints under 6(1), whether taken separately or in conjunction with 14.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson (jpd), Mr F Gölcüklü (pc/jpd), Mr F Matscher (jpd), Mr A Spielmann, Mr N Valticos, Mr I Foighel (jpd), Mr AN Loizou, Mr JM Morenilla, Sir John Freeland (jpd), Mr MA Lopes Rocha (jpd), Mr L Wildhaber (jpd), Mr D Gotchev (jpd), Mr B Repik, Mr P Kûris, Mr E Levits, Mr J Cassadevall, Mr T Pantiru, Mr M Voicu, Mr V Toumanov.

The applicant's conviction amounted to an interference with the exercise of his right to freedom of expression. The interference was prescribed by law; the conviction was based on the Criminal Code and the Press Act. The conviction pursued the legitimate aim of the prevention of disorder. Freedom of expression was particularly important for political parties and their active members and accordingly, interferences with the freedom of expression of a politician who was a member of an opposition party called for the closest scrutiny. The leaflet criticised certain administrative and municipal measures taken by the authorities, in particular against street traders. They thus reported actual events which were of some interest to the people of Izmir. The leaflet appealed to the Kurdish population to band together to raise certain political demands, but was not an incitement to the use of violence, hostility or hatred between citizens. The dominant position which the government occupied made it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means were available for replying to the unjustified attacks and criticisms of its adversaries. A copy of the leaflet had been submitted to the Izmir prefecture with an application for permission to distribute it. At that stage, the authorities were in a position to require changes to the text. However, the day after this application was lodged at the prefecture, the leaflets were seized and prosecutions brought against its authors. The nature of the interference had been radical; the National Security Court had sentenced the applicant to imprisonment and a fine and disqualified him from driving for 15 days; in addition, as a result of his conviction for a public order offence, he was debarred from the Civil Service and forbidden to take part in a number of activities within political organisations, associations or trade unions. The Court took

into account the background to the case and did not discern anything which would warrant the conclusion that the applicant was in any way responsible for the problems of terrorism in Turkey, and more specifically in Izmir. The applicant's conviction was disproportionate to the aim pursued, and therefore unnecessary in a democratic society. There had accordingly been a breach of A 10.

In order to establish whether a tribunal could be considered 'independent' for the purposes of A 6(1), regard had to be had, *inter alia*, to the manner of appointment of its members and their term of office, the existence of safeguards against outside pressures and the question whether it presented an appearance of independence. Regarding 'impartiality', the personal conviction of a particular judge in a given case had to be ascertained and then whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect. The National Security Court was composed of three judges, one of whom was a regular officer and member of the Military Legal Service. The independence and impartiality of the two civilian judges was not disputed. The status of military judges sitting as members of National Security Courts provided certain guarantees of independence and impartiality. Military judges underwent the same professional training as their civilian counterparts, which gave them the status of career members of the Military Legal Service. When sitting as members of National Security Courts, they enjoyed constitutional safeguards identical to those of civilian judges; in addition, with certain exceptions, they could not be removed from office or made to retire early without their consent, they sat as individuals, they had to be independent and no public authority could give them instructions concerning their judicial activities or influence them in the performance of their duties. However, they were servicemen who still belonged to the army, which took its orders from the executive; they remained subject to military discipline and assessment reports were compiled on them by the army, decisions pertaining to their appointment were to a great extent taken by the administrative authorities and the army and their term of office as National Security Court judges was only four years and could be renewed. Appearances could be of a certain importance. What was at stake was the confidence which the courts in a democratic society had to inspire in the public and, above all, as far as criminal proceedings were concerned, in the accused. In deciding whether there was a legitimate reason to fear that a particular court lacked independence or impartiality, the standpoint of the accused was important without being decisive. What was decisive was whether his doubts could be held to be objectively justified. The applicant could legitimately fear that because one of the judges of the National Security Court was a military judge, it might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. The Court of Cassation was not able to dispel those concerns, as it did not have full jurisdiction. Accordingly, the applicant had legitimate cause to doubt the independence and impartiality of the National Security Court. There had accordingly been a breach of A 6(1).

The applicant did not maintain this complaint under A 14 before the Court, which saw no reason to examine it of its own motion.

Non-pecuniary damage (FF 30,000), costs and expenses (FF 15,000).

Cited: Akdivar and Others v TR (A 50) (1.4.1998), Aksoy v TR (18.12.1996), Castells v E (23.4.1992), Demicoli v M (27.8.1991), Ettl and Others v A (23.4.1987), Fey v A (24.2.1993), Findlay v UK (25.2.1997), Gautrin and Others v F (20.5.1998), Hauschildt v DK (24.5.1989), Helle v SF (19.12.1997), Ireland v UK (18.1.1978), Pullar v UK (10.6.1996), Thorgeir Thorgeirson v ISL; (25.6.1992), United Communist Party of Turkey and Others v TR (30.1.1998), Vereinigung demokratischer Soldaten Österreichs and Gubi v A (19.12.1994), Vereniging Weekblad Bluf! v NL (9.2.1995), Vogt v D (26.9.1995), Zana v TR (25.11.1997).

Informationsverein Lentia and Others v Austria (1994) 17 EHRR 93 93/52

[Applications lodged between 16.4.1987 and 20.8.1990; Commission report 9.9.1992; Court Judgment 24.11.1993]

Informationsverein Lentia, the first applicant, Arbeitsgemeinschaft Offenes Radio (AGORA), the third applicant and Radio Melody GmbH, the fifth applicant, all applied for operating licences under the Telecommunications legislation. Their applications were refused and their appeals to the

Constitutional Court were dismissed. Jörg Haider, the second applicant, and Wilhelm Weber, the fourth applicant, gave up the idea of applying for licences in view of the Constitutional Court interpretation of the law. They complained that the impossibility of obtaining an operating licence was an unjustified interference with their right to communicate information and infringed A 10.

Comm found V 10 (unanimously as regards the first applicant and by 14–1 for the others), not necessary also to A 14 (unanimously as regards the first applicant and by 14–1 for the third applicant).

Court found unanimously V 10, not necessary to examine 14+10.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr F Matscher, Mr L-E Pettiti, Mr A Spielmann, Mrs E Palm, Mr F Bigi, Mr AB Baka, Mr G Mifsud Bonnici.

The restrictions in issue amounted to an 'interference' with the exercise by the applicants of their freedom to impart information and ideas. The object and purpose of the third sentence of A 10(1) and the scope of its application had to be considered in the context of the article as a whole and in particular, in relation to the requirements of A 10(2) to which licensing measures remained subject. States were permitted to regulate by a licensing system the way in which broadcasting was organised in their territories, particularly in its technical aspects. That could lead to interferences whose aims would be legitimate under the third sentence of para 1, even though they did not correspond to any of the aims set out in para 2. The compatibility of such interferences with the Convention had nevertheless to be assessed in the light of the other requirements of para 2. The interferences complained of were prescribed by law. Their aim was a legitimate one. Contracting States enjoyed a margin of appreciation in assessing the need for an interference. In cases such as the present one, the supervision by the Convention institutions had to be strict because of the importance of the rights in question. A public monopoly imposed the greatest restrictions on the freedom of expression. The far-reaching character of such restrictions meant that they could only be justified where they corresponded to a pressing need. As a result of technical progress, justification for the restrictions could no longer be found in considerations relating to the number of frequencies and channels available. They had lost much of their raison d'être in view of the multiplication of foreign programmes aimed at Austrian audiences and the decision of the Administrative Court to recognise the lawfulness of their retransmission by cable. It could not be argued that there were no equivalent less restrictive solutions. The economic argument that the Austrian market was too small to sustain a sufficient number of stations to avoid regroupings and the constitution of 'private monopolies' was groundless. Accordingly, the interferences in issue were disproportionate to the aim pursued and were, accordingly, not necessary in a democratic society. There had therefore been a violation of A 10.

In view of the above finding, it was not necessary to determine whether there had also been a breach of A 14, taken in conjunction with A 10.

Costs and expenses (ATS 165,000 to each of the applicants 'Informationsverein Lentia', 'AGORA' and 'Radio Melody', and ATS 100,000 each to the applicants Haider and Weber).

Cited: Airey v IRL (9.10.1979), Autronic AG v CH (22.5.1990), Groppera Radio AG and Others v CH (28.3.1990), Observer and Guardian v UK (26.11.1991).

Inze v Austria (1988) 10 EHHR 394 87/23

[Application lodged 20.6.1979; Commission report 4.3.1986; Court Judgment 28.10.1987]

Maximilian Inze, the applicant, was illegitimate and lived on a farm belonging to his mother. His mother subsequently married and had a legitimate son. The mother died intestate and left as heirs her husband, the applicant and her second son. According to Austrian law, the widower was entitled to a one-fourth part of the inheritance and each of the sons (irrespective of their legitimacy) to three-eighths. However, the farm was subject to particular legislation providing that farms of a certain size may not be divided in the case of hereditary succession and that one of the heirs must take over the entire property and pay off the other heirs. Precedence was given to legitimate

children. The applicant claimed that he should be called to take over the farm as he was the eldest son, and also claimed that both his stepfather and his half-brother were, in any event, excluded as being unfit to work the farm. The question of the determination of the heir entitled to take over the farm was referred to the Regional Court, which decided against the applicant. The applicant appealed, submitting that the provision in the Act giving precedence to legitimate children had been abrogated by the new version of the Civil Code, and by A 14 of the Convention. His appeal and request to submit the question to the Constitutional Court were refused. A judicial settlement was reached between the applicant and his half-brother whereby the applicant renounced any claim to take over the farm, which would pass to his half-brother. In return, he was to receive a piece of land which had been promised to him by his mother during her lifetime, but no other compensation. The applicant complained that he was discriminated against, on account of his illegitimate birth, in the enjoyment of property rights relating to his mother's hereditary farm. He alleged a violation of P1A1 taken in conjunction with A 14.

Commission found by a majority V 14+P1A1.

Court rejected Government's preliminary objection, found unanimously V 14+P1A1.

Judges: Mr J Cremona, President, Mr Thór Vilhjálmsson, Mr G Lagergren, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr R Bernhardt.

The Court rejected the Government's assertion that the applicant could not claim to be a 'victim' of a Convention breach, based on his renunciation of any claim to the estate under the judicial settlement, and the value of the land received in exchange amounting roughly to three-eighths of that estate. 'Victim' in A 25 referred to the person directly affected by the act or omission at issue: the existence of a violation was conceivable even in the absence of prejudice, prejudice being relevant only for the purposes of A 50. The fact that a judicial settlement may have mitigated the disadvantage suffered by the applicant did not in principle deprive him of his victim status. Moreover, the applicant's complaint was that his illegitimate birth deprived him in law of any possibility of taking over his mother's farm in the partition of her estate. That situation remained unchanged: it was only its financial consequences which had been alleviated by the settlement. In these circumstances, the applicant could still claim to be a victim within the meaning of A 25.

A 14 complemented the other substantive provisions of the Convention and its Protocols. It had no independent existence, since it had effect solely in relation to the rights and freedoms safeguarded by those provisions. Although the application of A 14 did not presuppose a breach of one or more of such provisions, there could be no room for its application unless the facts of the case fell within the ambit of one or more of the latter. The applicant did not challenge the system of hereditary farms as such, but only the criteria applicable to the choice of the principal heir. In that respect, the Austrian legislation gave precedence to legitimate over illegitimate children. In the present case, the farm went to the younger, legitimate, son, whereas the applicant was, on the sole ground of his illegitimacy, deprived of any possibility of obtaining it. A difference of treatment under A 14 was discriminatory if it had no objective and reasonable justification, that is, if it did not pursue a legitimate aim or if there was not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Contracting States enjoyed a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justified a different treatment in law. The Convention, a living instrument, had to be interpreted in the light of present-day conditions. The question of equality between children born in and out of wedlock as regards their civil rights was given importance in the Member States. Very weighty reasons would accordingly have to be advanced before a difference of treatment on the ground of birth out of wedlock could be regarded as compatible with the Convention. In this case, the reasons advanced by the Government were insufficient, and there was a breach of A 14 taken together with P1A1.

Pecuniary damage (ATS 150,000), costs and expenses.

Cited: Abdulaziz, Cabales and Balkandali v UK (28.5.1985), AGOSI v UK (24.10.1986), Eckle v D (15.7.1982), Johnston and Others v IRL (18.12.1986), Lithgow and Others v UK (8.7.1986), Marckx v B

(13.6.1979), Nölkenbockhoff v D (25.8.1987), Sporrong and Lönnroth v S (18.12.1984), Sunday Times v UK (6.11.1980), Van Der Sluijs, Zuiderveld and Klappe v NL (22.5.1984).

Ireland v United Kingdom (1979-80) 2 EHRR 25 78/1

[Application lodged 16 December 1971; Commission report 9 February 1976; Court Judgment 18.1.1978]

In order to combat what the respondent Government described as 'the longest and most violent terrorist campaign witnessed in either part of the island of Ireland', the authorities in Northern Ireland exercised from August 1971 until December 1975 a series of extra-judicial powers of arrest, detention and internment. The proceedings in this case concerned the scope and the operation in practice of those measures as well as the alleged ill-treatment of persons thereby deprived of their liberty. The arrested persons were held at various centres, barracks and holding centres and were subjected to interrogation techniques which consisted of five particular disorientation or sensory deprivation techniques (wall-standing, hooding, subjection to noise, deprivation of sleep, deprivation of food and drink).

Comm found unanimously, that the powers of detention and internment without trial were not in conformity with 5(1–4), but were 'strictly required by the exigencies of the situation' in Northern Ireland, within the meaning of 15(1), unanimously 6 not applicable, NV 14, unanimously the combined use of the five techniques in constituted a practice of inhuman treatment and of torture, unanimously V 3 of various persons arrested, unanimously that there had been at Palace Barracks, Holywood, in the autumn of 1971, a practice in connection with the interrogation of prisoners by members of the RUC which was inhuman treatment in breach of A 3, unanimously that no practice in breach of 3 had been found to exist in relation to the some of those arrested, including the general conditions at Girdwood Park in August 1971, unanimously, that the conditions of detention at Ballykinler in August 1971 did not disclose a violation of 3, by majority (12–1) 1 could not be the subject of a separate breach.

Court found by majority (16–1) that the use of the five techniques in August and October 1971 constituted a practice of inhuman and degrading treatment in breach of 3, (13–4) the use of the five techniques did not constitute a practice of torture within the meaning of 3, (16–1) no other practice of ill-treatment was established for the unidentified interrogation, centres, unanimously that there existed at Palace Barracks in the autumn of 1971 a practice of inhuman treatment in breach of 3, by majority (14–3) that the last-mentioned practice was not one of torture within the meaning of 3, unanimously that it was not established that the practice in question continued beyond the autumn of 1971, by majority (15–2) no practice in breach of 3 was established as regards other places, unanimously that it could not direct the respondent State to institute criminal or disciplinary proceedings against those members of the security forces who had committed the breaches of 3 found by the Court and against those who condoned or tolerated such breaches, unanimously that at the relevant time there existed in Northern Ireland a public emergency threatening the life of the nation, within the meaning of 15(1), that the British notices of derogation dated 20 August 1971, 23 January 1973 and 16 August 1973 fulfilled the requirements of 15(3), by majority (16–1) although the practice followed in Northern Ireland from 9 August 1971 to March 1975 in the application of the legislation providing for extra-judicial deprivation of liberty entailed derogations from 5(1)–(4), it was not established that the said derogations exceeded the extent strictly required by the exigencies of the situation, within the meaning of A 15(1), unanimously that the UK had not disregarded in the present case other obligations under international law, within the meaning of 15(1), by majority (15–2) no discrimination contrary to 14 and 5 taken together was established, unanimously that the derogations from 6 assuming it to be applicable in the present case, were compatible with 15, by majority (15–2) no discrimination contrary to 14 and 6 (14+6) taken together, assuming 6 to be applicable in the present case, was established.

Judges: Mr G Balladore Pallieri, President, Mr G Wiarda, Mr M Zekia (so), Mr J Cremona, Mr P O'Donoghue (so), Mrs H Pedersen, Mr Thór Vilhjálmsson, Mr R Ryssdal, Mr W Ganshof Van Der Meersch, Sir Gerald Fitzmaurice (so), Mrs D Bindschedler-Robert, Mr D Evrigenis (so), Mr P-H Teitgen, Mr G Lagergren, Mr L. Liesch, Mr F Gölcüklü, Mr F Matscher (so).

The Court regretted the attitude of the British Government in not affording the Commission the assistance desired. The Government of the United Kingdom had given an unqualified undertaking, that the 'five techniques' would not be reintroduced as an aid to interrogation. In

addition, the United Kingdom had taken various measures designed to prevent the recurrence of the events complained of and to afford reparation for their consequences. Nevertheless, the responsibilities assigned to the Court within the framework of the system under the Convention extended to pronouncing on the non-contested allegations of violation of A 3. The Court's judgments served not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties. The Court had jurisdiction to take cognisance of the contested cases of violation of A 3 if and to the extent that the applicant Government put them forward as establishing the existence of a practice. A practice incompatible with the Convention consisted of an accumulation of identical or analogous breaches which were sufficiently numerous and inter-connected to amount not merely to isolated incidents or exceptions but to a pattern or system; a practice did not of itself constitute a violation separate from such breaches. The higher authorities of a State were strictly liable for the conduct of their subordinates; they were under a duty to impose their will on subordinates and could not shelter behind their inability to ensure that it was respected. The concept of practice was of particular importance for the operation of the rule of exhaustion of domestic remedies. That rule, as embodied in A 26, applied to State applications (A 24) in the same way as it did to individual applications (A 25), when the applicant State did no more than denounce a violation or violations allegedly suffered by individuals whose place, as it were, was taken by the State. On the other hand and in principle, the rule did not apply where the applicant State complained of a practice as such, with the aim of preventing its continuation or recurrence, but did not ask the Commission or the Court to give a decision on each of the cases put forward as proof or illustrations of that practice. The Court would not rely on the concept that the burden of proof was borne by one or other of the two Governments concerned. The Court examined all the material before it, whether originating from the Commission, the Parties or other sources, and, if necessary, obtained material *proprio motu*. The Court adopted the standard of proof 'beyond reasonable doubt' but added that such proof might follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the Parties when evidence was being obtained had to be taken into account. Ill-treatment had to attain a minimum level of severity to fall within the scope of A 3. The assessment of that minimum was, in the nature of things, relative; it depended on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc. The Convention prohibited in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct. There was no provision for exceptions and, under A 15(2) there could be no derogation therefrom even in the event of a public emergency threatening the life of the nation. The police used the five techniques on fourteen persons in 1971. Although never authorised in writing in any official document, the five techniques were taught orally by the English Intelligence Centre to members of the RUC at a seminar held in April 1971. There was accordingly a practice. The five techniques were applied in combination, with premeditation and for hours at a stretch; they caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected to it and also led to acute psychiatric disturbances during interrogation. They accordingly fell into the category of inhuman treatment within the meaning of A 3. The techniques were also degrading since they were such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance. The distinction between torture and inhuman or degrading treatment derived principally from a difference in the intensity of the suffering inflicted. The Convention, with its distinction between 'torture' and 'inhuman or degrading treatment', had to by the first of those terms attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. Although the five techniques undoubtedly amounted to inhuman and degrading treatment, although their object was the extraction of confessions, the naming of others and/or information and although they were used systematically, they did not occasion suffering of the particular intensity and

cruelty implied by the word torture as so understood. Those held at Palace Barracks were subjected to violence by members of the RUC which constituted a practice and led to intense suffering and to physical injury which on occasion was substantial; it thus fell into the category of inhuman treatment but did not attain the particular level inherent in the notion of torture. At Ballykinler, the RUC and the army followed a practice which was discreditable and reprehensible but did not infringe A 3. The Court did not have to consider in the proceedings whether its functions extended, in certain circumstances, to addressing consequential orders to Contracting States. The sanctions available to the Court did not include the power to direct States to institute criminal or disciplinary proceedings in accordance with its domestic law.

A 5(1) contained a list of the cases in which it was permissible under the Convention to deprive someone of his liberty. Subject to A 15 and without prejudice to P4A1, which the UK had not ratified, that list was exhaustive. The different forms of deprivation of liberty in the case did not fall under any of the sub-paragraphs of A 5(1). Paragraphs 2 to 4 of A 5 placed the Contracting States under an obligation to provide several guarantees in cases where someone was deprived of his liberty.

A 15 came into play only in time of war or other public emergency threatening the life of the nation. The existence of such an emergency was clear from the facts. The State had a wide margin of appreciation but did not enjoy an unlimited power in that respect. The Court was not bound by strict rules of evidence but was entitled to rely on evidence of every kind. The Court, being master of its own procedure and of its own rules, had complete freedom in assessing not only the admissibility and the relevance but also the probative value of each item of evidence before it. Being confronted with a massive wave of violence and intimidation, the Northern Ireland Government and then, after the introduction of direct rule (30 March 1972), the British Government were reasonably entitled to consider that normal legislation offered insufficient resources for the campaign against terrorism and that recourse to measures outside the scope of the ordinary law, in the shape of extrajudicial deprivation of liberty, was called for. It was not the Court's function to substitute for the British Government's assessment any other assessment of what might be the most prudent or most expedient policy to combat terrorism. The Court had to do no more than review the lawfulness, under the Convention, of the measures adopted by that Government from 9 August 1971 onwards. For that purpose the Court had to arrive at its decision in the light, not of a purely retrospective examination of the efficacy of those measures, but of the conditions and circumstances reigning when they were originally taken and subsequently applied. The Court accepted that the limits of the margin of appreciation left to the Contracting States by A 15 were not overstepped by the UK when it formed the opinion that extrajudicial deprivation of liberty was necessary from August 1971 to March 1975. When a State was struggling against a public emergency threatening the life of the nation, it would be rendered defenceless if it were required to accomplish everything at once, to furnish from the outset each of its chosen means of action with each of the safeguards reconcilable with the priority requirements for the proper functioning of the authorities and for restoring peace within the community. The interpretation of A 15 had to leave a place for progressive adaptations. In view of the Contracting States' margin of appreciation, the Court did not find it established that the United Kingdom exceeded the 'extent strictly required' referred to in A 15(1). A 3 and 5 embodied quite separate obligations. Moreover, the violations of A 3 found in the present judgment failed to show that it was not necessary to apply the extra-judicial powers in force. In conclusion, since the requirements of A 15 were met, the derogations from A 5 were not, in the circumstances of the case, in breach of the Convention.

Regarding A 14 taken together with A 5, the Court found that there were profound differences between Loyalist and Republican terrorism. The aim pursued until 5 February 1973 – the elimination of the most formidable organisation first of all – could be regarded as legitimate and the means employed did not appear disproportionate. After 5 February 1973 extra-judicial deprivation of liberty was used to combat terrorism as such, as defined a few months previously, and no longer just a given organisation. Taking into account the full range of the processes of the law applied in the campaign against the two categories of terrorists, the Court found that the initial

difference of treatment did not continue during the last period considered. Accordingly, no discrimination contrary to A 14 and 5 was established.

It was not necessary to give a decision on the applicability of A 6. Assuming A 6 to be material, the derogations from the guarantees of a judicial nature afforded by A 5 perforce involved derogating from those afforded by A 6. The Court had already held that the derogations from A 5 met the requirements of A 15; in the circumstances of the case, it arrived at the same conclusion as regards the derogations from A 6. In addition, the Court likewise found no discrimination with respect to A 6.

A 1, together with the other Articles, demarcated the scope of the Convention *ratione personae*, *materiae* and *loci*. A violation of A 1 followed automatically from, but added nothing to, a breach of the other provisions; hitherto, when the Court had found such a breach, it had never held that A 1 had been violated. The absence of a law expressly prohibiting a violation did not suffice to establish a breach since such a prohibition did not represent the sole method of securing the enjoyment of the rights and freedoms guaranteed. In the present case, the Court had found two practices in breach of A 3. Those practices automatically infringed A 1 as well, but that was a finding which added nothing to the previous finding and which there was no reason to include in the operative provisions of the judgment.

Not necessary to apply A 50 in the present case.

Cited: 'Belgian Linguistic' case (23.7.1968), De Wilde, Ooms and Versyp v B (18.6.1971), Delcourt v B (17.1.1970), Engel and Others v NL (8.6.1976), Golder v UK (21.2.1975), Handyside v UK (7.12.1976), Kjeldsen, Busk Madsen and Pedersen v DK (7.12.1976), Lawless v IRL (1.7.1961), Matznetter v A (10.11.1969), Neumeister v A (27.6.1968), Ringeisen v A (16.7.1971), Schmidt and Dahlström v S (6.2.1976), Stögmüller v A (10.11.1969), Swedish Engine Drivers' Union v S (6.2.1976).

Iribarne Pérez v France (1996) 22 EHRR 153 95/41

[Application lodged 18.3.1986; Commission report 28.6.1994; Court Judgment 24.10.1995]

Mr Francisco Iribarne Pérez, who was a Spanish national living in Andorra, was arrested with two others on 7 July 1985. All three were prosecuted on charges of importing prohibited drugs into Andorra, drug trafficking and unlawful possession of a firearm. The applicant was found guilty by the Tribunal de Corts, Andorra's supreme criminal court, on 26 November 1985. At the time, a person sentenced to over three months would have to serve it in either France or Spain. He chose to serve his sentence in France and was taken to Toulouse prison on 17 December 1985. On 28 January 1990, the applicant lodged a memorial with the Toulouse public prosecutor, complaining of the proceedings conducted against him in Andorra and of his detention in France. The Toulouse public prosecutor informed him that the Tribunal de Corts had sole jurisdiction for his complaints, as it had delivered the judgment. The applicant lodged a criminal complaint against the Toulouse public prosecutor, alleging arbitrary detention and denial of justice. He also joined the proceedings as a civil party, claiming that the public prosecutor had not complied with the requirements of the Code of Criminal Procedure which governed the transfer to France of persons convicted abroad. The applicant was released on 13 August 1994 and then expelled from French territory. He complained that there were no proceedings he could take in the French courts to have the lawfulness of his detention reviewed.

Comm found by a majority (9–9 with the President's casting vote) NV 5(4).

Court held unanimously NV 5(4).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr L-E Pettit, Mr R Pekkanen, Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr P Jambrek, Mr P Kûris, Mr U Lôhmus.

The Court's task was to determine whether the lawfulness of the applicant's detention should have been reviewed in France after his conviction in Andorra. The Court regarded the Tribunal de Corts as the 'competent court' to make that decision, and therefore the review required by A 5(4) was incorporated in the judgment of the Tribunal de Corts at the close of judicial proceedings. In any event, the Court did not perceive any flagrant denial of justice in this case, and noted that the

applicant did not allege any infringement of the essential rights of the defence, nor had the applicant questioned the impartiality of the Tribunal de Corts.

Cited: De Wilde, Ooms and Versyp v B (18.6.1971), Drozd and Janousek v F and E (26.6.1992), E v N (29.8.1990), Engel and Others v NL (8.6.1976), Luberti v I (23.2.1984), Thynne, Wilson and Gunnell v UK (25.10.1990), Van Droogenbroeck v B (24.6.1982), Weeks v UK (2.3.1987), Winterwerp v NL (24.10.1979), X v UK (5.11.1981).

Isgrò v Italy 91/4

[Application lodged 12.9.1984; Commission report 14.12.1989; Court Judgment 19.2.1991]

Mr Salvatore Isgrò was arrested on 11 November 1978 on suspicion of involvement in the kidnapping and death of a young man. The evidence against him came from a witness who had been questioned by investigating officers but who could not be traced at the time of the trial. The witness's statements were read at trial. The applicant was convicted and sentenced to 30 years' imprisonment. Appeals confirmed his conviction, but reduced his sentence. The applicant complained that he had been convicted on the basis of the evidence of a witness who could not be traced during the trial and whom his lawyer had never had the opportunity to examine.

Comm found by majority V 6(1) and 6(3)(d).

Court unanimously rejected the Government's preliminary objections and found NV 6(3)(d)+6(1).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr F Gölcüklü, Mr L-E Pettiti, Mr C Russo, Mr J De Meyer, Mrs E Palm, Mr I Foighel, Mr A N Loizou.

Preliminary objection of non-exhaustion rejected as in this case it would not have constituted a sufficient and effective remedy, the District Court having rejected similar cases. Second preliminary objection that the applicant was not a 'victim' had not been raised before the Commission and the Government was therefore estopped from relying on it.

The admissibility of evidence was primarily a mater for regulation by national law and, as a rule, it was for the national court to assess the evidence before it. The Court's task was to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair. Although he did not give evidence in person, the accuser was to be regarded as a witness, a term to be given an autonomous interpretation, because the national courts took account of his statements which were read out at trial. All the evidence normally had to be produced in the presence of the accused at a public hearing with a view to adversarial argument. However, the use as evidence of statements obtained pre-trial was not inconsistent with A 6(3)(d) and 6(1) provided the rights of the defence had been respected. The identity of the witness was known to both parties, confrontations had been arranged between the witness and the applicant to compare their statements, and the applicant was able to repeat his claims in court. It was not necessarily the case that the courts had based their decisions solely on the statement made by the witness to a judge, whose impartiality had not been contested. Other testimony had been presented. Although the applicant's lawyer had not been present at the confrontation, neither had the prosecution lawyer: the applicant had been able to put questions and make comments himself. Any limitations on the rights of the defence were not such as to deprive him of a fair trial. Accordingly, NV 6(3)(d) taken with 6(1).

Cited: Delta v F (19.12.1990), Kostovski v NL (20.11.1989), Windisch v A (27.9.1990).

Istituto di Vigilanza v Italy (1994) 18 EHRR 367 93/40

[Application lodged 25.11.1987; Commission report 1.7.1992; Court Judgment 22.9.1993]

Istituto di Vigilanza was a security firm. On 26 October 1978 Mrs Figus Milone, a former employee, brought proceedings against it in the Turin magistrate's court for unfair dismissal. At the first hearing, on 28 November 1978, the magistrate raised a preliminary question of his own motion and stayed the proceedings pending the decision of the Constitutional Court. The Constitutional

Court gave judgment on 16 January 1987. The plaintiff resumed the proceedings on 16 February 1987 and they ended on 28 May with a friendly settlement. The applicant company complained about the length of the proceedings brought against it in the Turin magistrate's court.

Comm found unanimously V 6(1).

Court unanimously held that it could not deal with the merits of the case.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr C Russo, Mr I Foighel, Mr F Bigi, Mr A B Baka, Mr M A Lopes Rocha, Mr L Wildhaber, Mr J Makarczyk,

Under A 47, the Court may only be seised of a case within the period of three months provided for in A 32. In order to seise a court, it was not sufficient to decide to seise it. The decision had to be implemented. The Commission had exceeded, albeit by only one day, the time allowed it. No special circumstance of a nature to suspend the running of time or justify its starting to run afresh was apparent from the file. The application was therefore inadmissible as it was made out of time.

Italiano v Italy 00/78

[Application lodged 4.6.1997; Commission report 4.3.1999; Court Judgment 15.2.2000]

Mr Rosario Italiano complained about the length of civil proceedings which had lasted more than nine years, four months at one level of jurisdiction.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

The period to be taken into consideration began on 26 November 1987 and ended on 25 March 1997. It had lasted about nine years, four months at one level of jurisdiction. The period could not be considered reasonable.

Judges: Mr M Fischbach, President, Mr Ferrari Bravo, Mr G Bonello, Mrs Tsatsa-Nikolovska, Mr P Lorenzen, Mr A B Baka, Mr E Levits.

Non-pecuniary damage (ITL 5,000,000), costs and expenses (ITL 3.500,000 million).

Cited: Bottazzi v I (28.7.1999).

J

JJ v The Netherlands (1999) 28 EHRR 168 98/19

[Application lodged 12.11.1992; Commission report 15.10.1996; Court Judgment 27.3.1998]

The applicant was a freelance tax consultant. On 14 December 1989, the Inspector of Direct Taxes sent the applicant an assessment of supplementary income tax and imposed on him a fiscal penalty. On 20 December 1989, the applicant lodged an appeal against this assessment with the Taxation Division of the Court of Appeal. The appeal was declared inadmissible by the President of the Taxation Division on 23 March 1990 on the ground that the court registration fee had not been paid. The applicant lodged an appeal on points of law with the Supreme Court. One of the advocates general to the Supreme Court submitted an advisory opinion on 19 November 1991. The applicant did not receive a copy of the advisory opinion until the Supreme Court delivered its judgment in which it dismissed the applicant's appeal on 17 June 1992. The applicant complained, *inter alia*, that he had not been able to reply to the advisory opinion submitted to the Supreme Court by the advocate general.

Comm found by majority (26–4) V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Bernhardt, President, Mr F Matscher, Mr A Spielmann, Mrs E Palm, Mr AN Loizou, Mr P Kûris, Mr E Levits, Mr P Van Dijk, Mr M Voicu.

The fiscal penalty imposed on the applicant was a 'criminal sanction'. Therefore A 6 entitled the applicant to a procedure before a court. Netherlands law provided for such a procedure in the form of an appeal to the Taxation Division of the Court of Appeal. The applicant's appeal was declared inadmissible on the sole ground that the court registration fee had not been paid. His grounds of appeal on points of law to the Supreme Court were therefore limited to the question whether or not the Court of Appeal ought to have declared his appeal admissible. The Supreme Court had jurisdiction to quash the decision of the Court of Appeal, and had it done so, it would have had full jurisdiction to substitute its own decision on the merits for that of the Court of Appeal or to refer the case back to the Court of Appeal for a complete rehearing if necessary. However, it did not and the effect of the decision of the Supreme Court was to ratify the imposition of the fiscal penalty on the applicant. It was thus decisive for the determination of the 'criminal charge' leading to the imposition on him of the penalty. In those circumstances, the fact that the applicant's appeal on points of law to the Supreme Court and the latter's decision were limited to a preliminary question of a procedural nature was not sufficient to find that A 6(1) was inapplicable.

The purpose of the advocate-general's advisory opinion was to assist the Supreme Court and to help ensure that its case-law was consistent. It was the duty of the Procurator General's department at the Supreme Court to act with the strictest objectivity. Great importance had to be attached to the part played in the proceedings before the Supreme Court by the member of the Procurator-General's department, and more particularly to the content and effects of his submissions. Although it was objective and reasoned in law, the opinion was nevertheless intended to advise and accordingly influence the Supreme Court. The outcome of the proceedings before the Supreme Court determined a 'criminal charge' against the applicant. Regard being had, therefore, to what was at stake for the applicant in the proceedings and to the nature of the advisory opinion of the advocate general, the fact that it was impossible for the applicant to reply to it before the Supreme Court took its decision infringed his right to adversarial proceedings. That right meant in principle the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed, even by an independent member of the national legal service, with a view to influencing the court's decision. Accordingly, there had been a violation of A 6(1).

No claim for damages. Costs and expenses (NLG 1,000).

Cited: AP, MP and TP v CH (29.8.1997), Engel and Others v NL (8.6.1976), Öztürk v D (21.2.1984), Putz v A (22.2.1996), Ravnsborg v S (23.3.1994), Van Orshoven v B (25.6.1997), Vermeulen v B (20.2.1996).

Jabari v Turkey 00/179

[Application lodged 26.2.1998; Court Judgment 11.7.2000]

Mrs Hoda Jabari, the applicant, was an Iranian. In 1995, at the age of 22, she met a man ('X') in Iran while attending a secretarial college. She fell in love with him and after some time they decided to get married. X's family was opposed to their marriage and in June 1997, X married another woman. The applicant continued to see him and to have sexual relations with him. In October 1997, the applicant and X were stopped by policemen while walking along a street. The policemen arrested the couple and detained them in custody as X was married. The applicant underwent a virginity examination while in custody. After a few days, she was released from detention with the help of her family. In November 1997, she entered Turkey illegally. She tried to fly to Canada via France using a forged Canadian passport, but was apprehended at Paris airport and returned to Istanbul where she was arrested on arrival. The applicant lodged an asylum application with the Aliens Department. Her application was rejected as it had been submitted out of time. On 12 February 1998, a staff member of the UNHCR, with the permission of the authorities, interviewed the applicant about her asylum request. On 16 February 1998, the applicant was granted refugee status by the UNHCR on the basis that she had a well-founded fear of persecution if removed to Iran as she risked being subjected to inhuman punishment, such as death by stoning or being whipped or flogged. Her application to the Ankara Administrative Court against her deportation was dismissed. She complained, *inter alia*, that she would be subjected to a real risk of ill-treatment and death by stoning if expelled from Turkey and that she was denied an effective remedy to challenge her expulsion.

Court found unanimously V 3 if decision to deport the applicant to Iran was implemented, V 13.

Judges: Mr G Ress, President, Mr A Pastor Ridruejo, Mr L Caflisch, Mr V Butkevych, Mr J Hedigan, Mr M Pellonpää, Mr F Gölcüklü, ad hoc judge.

Contracting States had the right, as a matter of well established international law and subject to their treaty obligations including the Convention, to control the entry, residence and expulsion of aliens. However, expulsion by a Contracting State could give rise to an issue under A 3, and hence engage the responsibility of that State under the Convention, where substantial grounds had been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to A 3 in the receiving country. Having regard to the fact that A 3 enshrined one of the most fundamental values of a democratic society and prohibited in absolute terms torture or inhuman or degrading treatment or punishment, a rigorous scrutiny had to be conducted of an individual's claim that his or her deportation to a third country would expose that individual to treatment prohibited by A 3. The applicant's failure to comply with the five day registration requirement under the Asylum Regulation 1994 denied her any scrutiny of the factual basis of her fears about being removed to Iran. The automatic and mechanical application of such a short time limit for submitting an asylum application had to be considered at variance with the protection of the fundamental value embodied in A 3 of the Convention. The authorities had not investigated the substance of her claim. It fell to the branch office of the UNHCR to interview the applicant about the background to her asylum request and to evaluate the risk to which she would be exposed in the light of the nature of the offence with which she was charged. The Ankara Administrative Court on her application for judicial review limited itself to the issue of the formal legality of the applicant's deportation rather than the more compelling question of the substance of her fears, even though by that stage the applicant must be considered to have had more than an arguable claim that she would be at risk if removed to her country of origin. Weight was given to the UNHCR's conclusion on the applicant's claim in making its own assessment of the risk which would face the applicant if her deportation were to be implemented. The material point in time for the assessment of the risk faced by the applicant was the time of the Court's own consideration of the case. There was a real risk of the applicant being subjected to treatment contrary to A 3 if she

was returned to Iran. Accordingly, the order for her deportation to Iran would, if executed, give rise to a violation of A 3.

A 13 guaranteed the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of that article was thus to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States were afforded some discretion as to the manner in which they conformed to their obligations under the provision. No assessment was made by the domestic authorities of the applicant's claim to be at risk if removed to Iran. The refusal to consider her asylum request for non-respect of procedural requirements could not be taken on appeal. Judicial review proceedings would not have entitled her to suspend the implementation of the deportation order or to have an examination of the merits of her claim. Given the irreversible nature of the harm that might occur if the risk of torture or ill-treatment alleged materialised and the importance attached to A 3, the notion of an effective remedy under A 13 required independent and rigorous scrutiny of a claim that there existed substantial grounds for fearing a real risk of treatment contrary to A 3 and the possibility of suspending the implementation of the measure impugned. Since the Ankara Administrative Court failed in the circumstances to provide any of those safeguards, the judicial review proceedings relied on by the Government did not satisfy the requirements of A 13.

Finding of potential breach of A 3 and actual breach of A 13 constituted sufficient just satisfaction for non-pecuniary damage.

Cited: Chahal v UK (15.11.1996), Cruz Varas and Others v S (20.3.1991), Soering v UK (7.7.1989), Vilvarajah and Others v UK (30.10.1991).

Allan Jacobsson v Sweden (1990) 12 EHRR 56 89/17

[Application lodged 11.1.1984; Commission report 8.10.1987; Court Judgment 25.10.1989]

Allan Jacobsson complained that protracted building prohibitions on his property violated A 6, 17 and 18 and A 1 of Protocol 1.

Comm found unanimously V 6(1), NV 17, 18, not necessary to examine A 13, by majority (7–4) NV P1A1.

Court held unanimously NV P1A1, V 6(1) and not necessary to examine A 13, 17 and 18.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr B Walsh, Mr R Bernhardt, Mr J De Meyer (c), Mr N Valticos, Mrs E Palm.

The Court referred to its own case-law and distinguished *Sporrong and Lönnroth v S*. The Court found that the applicant's property was not subject to an expropriation permit and steps had not been taken to deprive him of his right of property. The case was only concerned with the control of the use of the applicant's property pending the elaboration of a town plan. Under the second paragraph of P1A1, States were entitled to control the use of property in accordance with the general interest by enforcing such laws as they deemed necessary for the purpose. However, as that provision was to be construed in the light of the general principle enunciated in the first sentence of the first paragraph, there had to be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. In striking the fair balance between the general interest of the community and the requirements of the protection of the individual's fundamental rights, the State enjoyed a wide margin of appreciation. The interference was in accordance with Swedish law, the Building Act, and the prohibition had the legitimate aim of facilitating town planning. The applicant had not established that he had unconditional rights to build a second house or partition his land. He cannot have been unaware of the state of the law when he bought the property, he had been able to live there under the same conditions as he bought it. The need to maintain the prohibitions was reviewed regularly. Despite the long duration of the prohibitions, they could not be considered to be disproportionate to the legitimate aim of town planning. There had therefore been no violation of P1A1.

A 6: The Court recalled its case-law. A real dispute existed in this case, in particular with regard to the lawfulness of the authorities' decisions. Subject to meeting the appropriate requirements and despite the discretion of the authorities, the applicant could arguably have claimed to have a right to the permit. The prohibitions severely restricted the right, and the outcome of the proceedings whereby he challenged their lawfulness was directly decisive for his exercise of it. There was therefore a dispute over a right. The applicant's disputed right to build on his land was of a civil nature for the purposes of A 6(1). That was not affected by the general character of the building prohibitions, nor by the facts that the planning procedure was part of public law and that a building prohibition was a necessary element in urban planning. A 6(1) was applicable. As the dispute could be determined only by the Government and the Government's decisions were not open to review as to their lawfulness by either the ordinary courts or the administrative courts, or by any other body which could be considered to be a tribunal for the purposes of A 6(1), there had been a violation of that provision.

Having regard to the decision on A 6(1), it was not necessary to consider the case also under A 13 as its requirements were less strict than, and were here absorbed by, those of A 6(1).

The applicant did not rely on A 17 and 18 before the Court and there was no need to examine them *ex officio*.

No causal link between V 6(1) any alleged pecuniary damage. Court could not speculate on result if applicant had been able to bring his complaints before a court. Costs and expenses (SEK 80,000).

Cited: AGOSI v UK (24.10.1986), Pudas v S (27.10.1987), Silver v UK (1983), Sporrong and Lönnroth v S (23.9.1982), Tre Traktörer AB v S (7.7.1989).

Allan Jacobsson (No 2) v Sweden 98/6

[Application lodged 21.7.1990; Commission report 26.11.1996; Court Judgment 19.2.1998]

Whilst the applicant's first case was before the Convention institutions, he made a further request for an opinion on whether a permit to build a house on his property could be granted. The Building Committee confirmed its preliminary position rejecting his request for a building permit. The applicant's subsequent appeals to the County Administrative Board and the Government were rejected. On 11 November 1990, the Supreme Administrative Court, without holding an oral hearing, rejected the applicant's complaints against the Government's decision. The applicant complained, *inter alia*, that he had been refused an oral hearing in the proceedings before the Supreme Administrative Court.

Comm found by majority (19–7) NV 6(1).

Court found unanimously NV 6.

Judges: Mr R Bernhardt, President, Mrs E Palm, Mr JM Morenilla, Mr P Jambrek, Mr P Kûris, Mr U Lôhmus, Mr J Casadevall, Mr P Van Dijk, Mr T Pantiru.

The disagreement between the applicant and the authorities as to his right to build on his property concerned his civil rights. The dispute was a serious and genuine one and the outcome of the proceedings were directly decisive for the civil rights claimed by the applicant. Therefore, A 6(1) applied to the proceedings before the Supreme Administrative Court in the applicant's case. In proceedings before a court of first and only instance the right to a public hearing under A 6(1) entailed an entitlement to an oral hearing unless there were exceptional circumstances that justified dispensing with such a hearing. The Supreme Administrative Court did not consider that it had jurisdiction to deal with the applicant's request to be granted a building permit. It only had competence to deal with a collateral issue, namely, the lawfulness of the revocation of the detailed development plan. The interpretation of the law adopted by the Supreme Court meant that it did not need to determine any issue of fact as to the applicant's individual interests or any other factual point concerning his arguments against the revocation of the detailed development plan. Therefore, the applicant's submissions to the Supreme Administrative Court were not capable of raising any issues of fact or of law pertaining to his building rights which were of such a nature as

to require an oral hearing for their disposition. On the contrary, given the limited nature of the issues to be determined by it, the Supreme Administrative Court, although it acted as the first and only judicial instance in the case, was dispensed from its normal obligation under A 6(1) to hold an oral hearing. Accordingly there had been no violation of A 6(1).

Cited: Fischer v A (26.4.1995), Fredin v S (No 2) (23.2.1994), Allan Jacobsson v S (25.10.1989), Kerojärvi v SF (19.7.1995), Sporrong and Lönnroth v S (23.9.1982), Stallinger and Kuso v A (23.4.1997), Zander v S (25.11.1993).

Jacobsson, Mats v Sweden (1991) 13 EHRR 79 90/14

[Application lodged 5.8.1984; Commission report 16.3.1989; Court Judgment 28.6.1990]

The applicant's property was subject to a building plan of 1938 amended in 1983 which restricted construction on the site of his existing house. The applicant complained about a Board decision to prohibit constructions on the site of the applicant's existing house. He appealed to the government and then to the Supreme Administrative Court on the grounds that the decision was based on a false premise and that the plan was contrary to law. The Supreme Administrative Court rejected his application. He complained that he had not had adequate access to a court to challenge the decision to amend the 1938 building plan covering his property.

Comm found by majority (14–3) V 6(1), unanimously not necessary to examine 13.

Court found unanimously V 6(1), not necessary to examine 13 and no jurisdiction to examine P1A1.

Judges: Mr R Ryssdal, President, Mrs D Bindschedler-Robert, Mr B Walsh, Mr J De Meyer (so), Mr N Valticos, Mrs E Palm, Mr I Foighel.

Subject to meeting the requirements laid down by law and despite the discretion existing on the part of the authorities, the applicant could arguably have asserted that, by virtue of the provisions of the 1938 plan, he had, *inter alia*, a right to build a second house on his property and to obtain the necessary permit. The dispute between the applicant and the authorities was of a genuine and serious nature. The rights were civil. A 6 was applicable; the dispute could only be determined by the Government at the final instance and the Government's decisions were not, in principle, open to review as to their lawfulness by either the ordinary courts or the administrative courts, or by any other body which could be considered to be a tribunal for the purposes of A 6(1). Although the applicant could challenge the decision to amend the plan by requesting the Supreme Administrative Court to reopen the proceedings, that extraordinary remedy did not meet the requirements of A 6(1) (see *Sporrong and Lönnroth v S*). There had therefore been a violation of A 6(1).

Having regard to its decision on A 6(1) it was not necessary to consider the case also under A 13 as its requirements were less strict than, and were here absorbed by, those of A 6(1).

The complaint under P1A1 was declared inadmissible by the Commission as being manifestly ill-founded and consequently the Court had no jurisdiction to deal with the matter.

Non pecuniary damage (SEK 10,000), costs and expenses (SEK 80,000).

Cited: Allan Jacobsson v S (25.10.1989), James and Others v UK (21.2.1986), Powell and Rayner v UK (21.2.1990), Pudas v S (27.2.1990), Sporrong and Lönnroth v S (23.9.1982).

Jacquie and Ledun v France 00/103

[Application lodged 17.3.1998; Court Judgment 28.3.2000]

Marie-Claire Jacquie and Chantal Ledun were, respectively, the widow and daughter of Robert Jacquie, who died in 1990. He had been infected with hepatitis C following blood transfusions in 1983. In March 1993, the applicants commenced proceedings in the administrative court, which dismissed their claim on 28 December 1994. They appealed to the Administrative Court of Appeal, which upheld their claim on 12 February 1998. The defendants appealed to the Conseil d'État, where the proceedings were pending. The applicants complained about the length of proceedings.

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr L Loucaides, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into account began on 16 March 1993 and had not yet finished, a period of seven years. The case was not particularly complex. The applicants had not contributed to any delay. Contracting States had to organise their judicial systems so that they could meet their obligations under A 6. A period of seven years in this case could not be regarded as reasonable.

Non-pecuniary damage (FF 30,000), costs and expenses (FF 10,000).

Cited: Doustaly v F (23.4.1998), Richard v F (22.4.1998), X v F (31.3.1992).

Jacubowski v Germany (1995) 19 EHRR 64 94/19

[Application lodged 11.4.1989; Commission report 7.1.1993; Court Judgment 23.6.1994]

Mr Manfred Jacubowski, a journalist, was editor-in-chief of a news agency run by a commercial company, the Deutsche Depeschendienst GmbH, of which he was a founder member and manager. This company filed a petition in bankruptcy on 31 March 1983. A new company, the Deutsche Depeschendienst AG (ddp) was created subsequently, and Mr Jacubowski became its sole director and editor-in-chief on 3 May 1983. He was dismissed by ddp's supervisory board on 17 July 1984. On 25 September he distributed a circular letter and newspaper cuttings to 40 newspaper publishers and newspaper, radio and television journalists giving critical accounts of his dismissal, the circumstances surrounding it and the ddp's activities in general, reporting that the ddp's financial position had worsened again since the bankruptcy and that some of its clients were preparing to dispense with its services, mainly because of their poor standard and the lack of certain technical facilities. Thereafter the applicant set up a public relations agency. An application for an injunction by the owners of dpp was refused by the Düsseldorf Court of Appeal, who nevertheless ordered that the applicant should desist from any further such mailings, on pain of a fine. The Federal Court of Justice and the Federal Constitutional Court declined to accept his complaint for adjudication on the ground that it was unfounded.

Comm found unanimously V 10.

Court found by majority (6–3) NV 10.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr B Walsh (jd), Mr R Macdonald (jd), Mr R Pekkanen, Mr MA Lopes Rocha, Mr L Wildhaber (jd), Mr G Mifsud Bonnici, Mr D Gotchev.

The impugned measure was an interference with the applicant's exercise of his freedom of expression. The fact that, in a given case, that freedom was exercised other than in the discussion of matters of public interest did not deprive it of the protection of A 10. The interference was prescribed by law and pursued a legitimate aim under the Convention, namely the protection of the reputation or rights of others. A certain margin of appreciation was to be left to the Contracting States in assessing whether and to what extent an interference was necessary, but that margin went hand in hand with European supervision covering both the legislation and the decisions applying it, even those given by an independent court. Such a margin of appreciation appeared essential in commercial matters, in particular in an area as complex and fluctuating as that of unfair competition. The Court had to confine its review to the question whether the measures taken at national level were justifiable in principle and proportionate. In the instant case, the requirements of protecting the reputation and rights of others had to be weighed against the applicant's freedom to distribute his circular and the newspaper cuttings. The national courts were unanimous in regarding the applicant's action as an act of unfair competition in breach of 'accepted moral standards', as in their view it had been mainly designed to draw the ddp's clients away to the new press agency that he set up shortly afterwards. The three domestic courts had also taken into account the fact that the applicant had been personally attacked in a press release issued by his former employer, but attached less importance to that than to what they regarded as the cardinal feature, namely the essentially competitive purpose of the exercise. The impugned court order went no further than to prohibit distribution of the circular; the Düsseldorf Court of Appeal

refused the ddp's application for an injunction prohibiting the applicant from systematically criticising the ddp. He thus retained the right to voice his opinions and to defend himself by any other means. The interference complained of therefore could not be regarded as disproportionate. Accordingly, it could not be said that the German courts overstepped the margin of appreciation left to national authorities and no breach of 10 had been made out.

Cited: Barthold v D (25.3.1985), Casado Coca v E (24.2.1994), Markt intern Verlag GmbH and Klaus Beermann v D (20.11.1989).

James and Others v United Kingdom (1986) 8 EHRR 123 86/1

[Application lodged 23 October 1979; Commission report 11 May 1984; Court Judgment 21.2.1986]

The applicants, John Nigel Courtenay James, a chartered surveyor, Gerald Cavendish the Sixth Duke of Westminster, Patrick Geoffrey Corbett, a chartered accountant and Sir Richard Baker Wilbraham, a banker, were trustees acting under the Will of the Second Duke of Westminster. In the area of Belgravia in Central London, the Westminster family and its trustees had developed a large Estate which had become one of the most desirable residential areas in the capital. The applicants, as trustees, had been deprived of their ownership of a number of properties in that Estate through the exercise by the occupants of rights of acquisition conferred by the Leasehold Reform Act 1967, as amended. They complained that the compulsory transfer of some of their properties and/or at the price paid, gave rise to a breach of P1A1. They also complained that the circumstances of the transfer involved discrimination contrary to A 14 and that the absence of any system of appeal against such transfer violated A 13.

Comm found unanimously NV of any of the Articles relied upon.

Court found unanimously NV P1A1, 14+P1A1, 6(1) or 13.

Judges: Mr R Ryssdal, President, Mr W Ganshof Van Der Meersch, Mr J Cremona, Mr G Wiarda, Mr Thór Vilhjálmsson (so P1A1), Mrs D Bindschedler-Robert (jso P1A1, 13), Mr D Evrigenis, Mr G Lagergren, Mr F Gölcüklü (jso P1A1, 13), Mr F Matscher (jso P1A1, 13), Mr J Pinheiro Farinha (so 13), Mr L-E Pettiti (jso P1A1, 13), Mr B Walsh, Sir Vincent Evans, Mr C. Russo (jso P1A1, 13), Mr R Bernhardt, Mr J Gersing, Mr A Spielmann (jso P1A1, 13).

A deprivation of property effected for no reason other than to confer a private benefit on a private party could not be 'in the public interest'. Nonetheless, the compulsory transfer of property from one individual to another might, depending upon the circumstances, constitute a legitimate means for promoting the public interest. Even if there could be differences between the concepts of 'public interest' and 'general interest' in P1A1, on the point under consideration no fundamental distinction of the kind contended for by the applicants could be drawn between them. A taking of property effected in pursuance of legitimate social, economic or other policies may be 'in the public interest', even if the community at large had no direct use or enjoyment of the property taken. The leasehold reform legislation was not therefore *ipso facto* an infringement of P1A1 on that ground. Eliminating what were judged to be social injustices was an example of the functions of a democratic legislature. The margin of appreciation was wide enough to cover legislation aimed at securing greater social justice in the sphere of people's homes, even where such legislation interfered with existing contractual relations between private parties and conferred no direct benefit on the State or the community at large. In principle, therefore, the aim pursued by the leasehold reform legislation was a legitimate one. The UK Parliament's belief in the existence of a social injustice was not such as could be characterised as manifestly unreasonable. Not only should a measure depriving a person of his property pursue a legitimate aim in the public interest, but there had to also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. A measure had to be both appropriate for achieving its aim and not disproportionate thereto. The taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference which could not be considered justifiable under P1A1. P1A1 did not, however, guarantee a right to full compensation in all circumstances. Legitimate objectives of public interest, such as pursued in measures of

economic reform or measures designed to achieve greater social justice, might call for less than reimbursement of the full market value. Furthermore, the Court's power of review was limited to ascertaining whether the choice of compensation terms fell outside the State's wide margin of appreciation. It had not been established, having regard to the respondent State's wide margin of appreciation, that the 1967 basis of valuation was not such as to afford a fair balance between the interests of the private parties concerned and thereby between the general interest of society and the landlord's right of property. The compensation procedures laid down in the contested legislation did not inherently lead to delays of such a degree as to involve a violation of P1A1. The general principles of international law were not applicable to a taking by a State of the property of its own nationals. There were no grounds for finding that the enfranchisement of the applicants' properties was arbitrary because of the terms of compensation provided for under the leasehold reform legislation. For the rest, such other requirements as might be included in the phrase 'subject to the conditions provided for by law' were satisfied in the circumstances of the taking of the applicants' properties. Each of the requirements of the second sentence was of P1A1 were therefore satisfied in relation to the contested deprivation of possessions suffered by the applicants. The second sentence supplemented and qualified the general principle enunciated in the first sentence. That being so, it was inconceivable that application of that general principle to the present case should lead to any conclusion different from that already arrived at by the Court in application of the second sentence. Neither by reason of the terms and conditions of the Leasehold Reform Act 1967 as amended nor by reason of the particular circumstances of the enfranchisement transactions concerning the applicants' properties had there been a breach of P1A1.

The list of prohibited grounds of discrimination as set out in A 14 was not exhaustive. On the facts, the legislation did entail differences of treatment in regard to different categories of property owners in the enjoyment of the right safeguarded by P1A1. The grounds on which those differences of treatment were based were relevant in the context of A 14 and, accordingly, A 14 was applicable to the present case. For the purposes of A 14, a difference of treatment was discriminatory if it had no objective and reasonable justification, that is, if it did not pursue a legitimate aim or if there was not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The contested legislation, being designed to remedy a perceived imbalance in the relations between landlords and occupying tenants under the long leasehold system of tenure, would affect landlords coming within that restricted category rather than all or other property owners. The aim pursued by the legislation was a legitimate one in the public interest. Having regard to the margin of appreciation, the UK legislature did not transgress the principle of proportionality. In the Court's opinion, therefore, the contested distinction drawn in the legislation was reasonably and objectively justified. The introduction of the rateable-value limits and the institution of two levels of compensation reflected Parliament's desire to exclude from the benefits of enfranchisement the small percentage of better-off tenants not considered to be in need of economic protection and to provide more favourable terms of purchase for the vast majority of tenants, most likely to suffer hardship under the existing system. In view of the legitimate objectives being pursued in the public interest and having regard to the respondent State's margin of appreciation, the policy of different treatment could not be considered as unreasonable or as imposing a disproportionate burden on the applicants. The provisions in the legislation entailing progressively disadvantageous treatment for the landlord the lower the value of the property had to be deemed to have a reasonable and objective justification and, consequently, were not discriminatory. The facts of the case did not disclose any breach of A 14 of the Convention taken in conjunction with P1A1.

A 6(1) extended only to disputes over civil rights and obligations which could be said, at least on arguable grounds, to be recognised under domestic law; it did not in itself guarantee any particular content for civil rights and obligations in the substantive law of the Contracting States. Unlike the case of *Sporrong and Lönnroth*, where the Court found A 6(1) applicable because there existed an arguable grievance of non-compliance with Swedish law and to have been violated because of the lack of a remedy whereby that grievance could be brought before a tribunal

competent to determine all the aspects of the matter, in the present case in contrast, in so far as the applicants may have considered that there was cause for alleging non-compliance with the leasehold reform legislation, they had unimpeded access to a tribunal competent to determine any such issue. There had accordingly been no breach of A 6(1).

A 13 required that where an individual had an arguable claim to be the victim of a violation of the rights set forth in the Convention, he should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress. However the Convention did not lay down for the Contracting States any given manner for ensuring within their internal law the effective implementation of any of the provisions of the Convention. The Convention was not part of the domestic law of the UK. There was no domestic remedy in respect of the applicants' complaint that the leasehold reform legislation itself did not measure up to the standards of the Convention and its Protocols. However A 13 did not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority on the ground of being contrary to the Convention or to equivalent domestic legal norms. The Court was therefore unable to uphold the argument to that effect advanced by the applicants. The legislation, including its effects in the applicants' case, was compatible with the substantive provisions of the Convention. In such a situation, the requirements of A 13 would be satisfied if there existed domestic machinery whereby the individual could secure compliance with the relevant laws. Effective remedies in this sense were and remained available to the applicants, before the County Court; and the Leasehold Valuation Tribunal. The facts of the present case therefore disclosed no violation of A 13.

Cited: Abdulaziz, Cabales and Balkandali v UK (28.5.1985), Ashingdane v UK (28.5.1985), Bönisch v A (6.5.1985), Delcourt v B(17.1.1970), Handyside v UK (7.12.1976), Ireland v UK (18.1.1978), Klass and Others v D (6.9.1978), Malone v UK (2.8.1984), Marckx v B (13.6.1979), Rasmussen v DK (28.11.1984), Silver and Others v UK (25.3.1983), Sporrong and Lönnroth v S (23.9.1982), Sunday Times v UK (26.4.1979), Swedish Engine Drivers' Union v S (6.2.1967).

Jamil v France (1996) 21 EHRR 65 95/18

[Application lodged 13.11.1989; Commission report 10.3.1994; Court Judgment 8.6.1995]

Mr Abdallah Jamil, a Brazilian national, was formerly a photographer. He was convicted for drug offences and was sentenced to 8 years' imprisonment, deportation order, confiscation of the goods seized and ordered to pay a fine, with imprisonment in default. On appeal, the Paris Court of Appeal upheld the sentences imposed by the court below and, at the request of the customs authorities, specified that imprisonment in the event of default would be subject to the conditions recently laid down in new legislation on the prevention of drug trafficking, and increased the maximum term of imprisonment in default. The applicant's appeal to the Court of Cassation was dismissed. He was released after serving the sentence imposed under the ordinary criminal law. He did not serve any period of imprisonment in default, as that was rescinded after a sum had been paid by him. He complained that the Paris Court of Appeal's order that the term of imprisonment in default should be increased pursuant to a law enacted after the offence was committed infringed the principle that penalties must not be applied retrospectively.

Comm found unanimously V 7.

Court found unanimously V 7(1).

Judges: Mr R Ryssdal, President, Mr L-E Pettiti, Mr R Macdonald, Mrs E Palm, Mr AN Loizou, Mr AB Baka, Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr P Jambrek.

The word 'penalty' in A 7 had an autonomous meaning. The starting point in any assessment of the existence of a penalty was whether the measure in question was imposed following conviction for a criminal offence. Other factors that could be taken into account as relevant were the characterisation of the measure under national law; its nature and purpose; the procedures involved in the making and implementation of the measure; and its severity. The sanction imposed on the applicant was ordered by a criminal court, was intended to be deterrent and could have led

to a punitive deprivation of liberty. It was therefore a penalty within the meaning of A 7(1). The fact that the applicant was absolved from the obligation to pay a substantial part of the customs fine, although he had never been made to serve any period of imprisonment in default did not suffice to invalidate that conclusion. A 7 was therefore applicable. At the time when the offences were committed, the maximum period of imprisonment in default to which he was liable was 4 months. The Paris Court of Appeal nevertheless applied a new law which had increased the maximum to two years. The law had been applied retrospectively and therefore there had been a breach of A 7(1).

Findingof breach constituted sufficient just satisfaction for any non-pecuniary damage. Costs and expenses (FF 50,000).

Cited: Engel and Others v NL (8.6.1976), Öztürk v D (21.2.1984), Welch v UK (9.2.1995).

Janowski v Poland (2000) 29 EHRR 705 99/3

[Application lodged 25.1.1994; Commission report 3.12.1997; Court Judgment 21.1.1999]

Mr Józef Janowski was a journalist. On 2 September 1992, he was involved in an exchange with two municipal guards who he had noticed apparently ordering street vendors to leave a square. Subsequently, criminal proceedings were instituted against the applicant for having insulted municipal guards while they were carrying out their duties and with having acted with flagrant contempt for legal order. On 29 April 1993, the District Court convicted the applicant and sentenced him to eight months' imprisonment suspended for two years and a fine of 1,500,000 old zlotys. He was also ordered to pay the sum of PLZ 400,000 to charitable institutions and court costs. On appeal, the Regional Court quashed the part of the contested judgment relating to the sentence of imprisonment and the order to pay PLZ 400,000 to charitable institutions; however, it upheld the fine and reduced the court costs. The applicant complained, *inter alia*, that his conviction violated his right to freedom of expression.

Comm found by majority (8–7) V 10.

Court found by majority (12–5) NV 10.

Judges: Mr L Wildhaber (d), President, Mrs E Palm, Mr C Rozakis (jd), Sir Nicolas Bratza (jd), Mr M Pellonpää, Mr B Conforti, Mr JA Pastor Ridruejo, Mr G Bonello (d), Mr J Makarczyk, Mr P Kûris, Mr R Türmen, Mr C Bîrsan, Mr M Fischbach, Mr J Casadevall (d), Mrs HS Greve, Mr A Baka, Mr R Maruste.

Although the applicant raised several other complaints before the Court, only his complaint under A 10 had been declared admissible by the Commission and the Court was therefore required to examine only that complaint.

The applicant's conviction amounted to an interference with the exercise of his right to freedom of expression. The interference was prescribed by law, the applicant's conviction having been based on the Criminal Code. The applicant's conviction was intended to pursue the legitimate aim of the prevention of disorder. The Court recalled the fundamental principles which emerged from its previous judgments relating to A 10. The applicant was convicted of insulting the municipal guards by calling them 'oafs' and 'dumb' during an incident which took place in a square and was witnessed by bystanders. His remarks did not form part of an open discussion of matters of public concern; neither did they involve the issue of freedom of the press since the applicant, although a journalist by profession, clearly acted as a private individual on this occasion. The applicant's conviction was based on his utterance of the two words which were judged to be insulting by both trial and appeal courts, not the fact that he had expressed opinions critical of the guards or alleged that their actions were unlawful, therefore his conviction was not an attempt by the authorities to restore censorship and did not constitute discouragement of the expression of criticism. Civil servants had to enjoy public confidence in conditions free of undue perturbation if they were to be successful in performing their tasks and it might therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty. In the present case, the requirements of such protection did not have to be weighed in relation to the interests of the freedom of the press or of

open discussion of matters of public concern since the applicant's remarks were not uttered in such a context. The reasons prompting the applicant's conviction were relevant ones in terms of the legitimate aim pursued. Although the applicant resorted to abusive language out of genuine concern for the well-being of fellow citizens in the course of a heated discussion and that language was directed at law enforcement officers who were trained how to respond to it, he had however insulted the guards in a public place, in front of a group of bystanders, while they were carrying out their duties. The actions of the guards did not warrant resort to offensive and abusive verbal attacks. Consequently, even if there were some circumstances arguing the other way, sufficient grounds existed for the decision ultimately arrived at by the national courts. The reasons adduced by the national authorities were relevant and sufficient for the purposes of A 10(2) and the resultant interference was proportionate to the legitimate aim pursued. The applicant's sentence was substantially reduced on appeal and, most significantly, his prison sentence was quashed by the Regional Court. Therefore, it could not be said that the national authorities overstepped the margin of appreciation available to them in assessing the necessity of the contested measure. There had therefore been no breach of A 10 of the Convention.

Cited: Barfod v DK (22.2.1989), Handyside v UK (7.12.1976), Jersild v DK (23.9.1994), Lingens v A (8.7.1986), McGinley and Egan v UK (9.6.1998), Oberschlick v A (No 2) (1.7.1997).

Jasper v United Kingdom 00/84

[Application lodged 26.9.1994; Commission report 20.10.1998; Court Judgment 16.2.2000]

Mr Eric Jasper, the applicant, was charged with an offence of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of cannabis, and remanded for trial in the Crown Court. On 14 January 1994, shortly before the commencement of the trial, the prosecution made an ex parte application to the trial judge to withhold material in its possession on the grounds of public interest immunity. The defence were notified that an application was to be made, but were not informed of the category of material which the prosecution sought to withhold. They were given the opportunity to outline the defence case to the trial judge. The trial judge examined the material in question and ruled that it should not be disclosed. The defence were not informed of the reasons for the judge's decision. The applicant did not give evidence at his trial. On 31 January 1994, he was convicted of the offence charged and on 21 March 1994, he was sentenced to 10 years' imprisonment. The applicant appealed to the Court of Appeal. His counsel applied to the Court of Appeal for an order that the defence should be given a transcript of the ex parte hearing of 14 January 1994, to enable them to argue the non-disclosure as a ground of appeal. The Court of Appeal, which had before it the transcript of the ex parte hearing and the material which had been its subject matter, declined to order the disclosure of either to the defence. On 28 March 1995, the Court of Appeal dismissed the applicant's appeal. The applicant complained that the proceedings before the Crown Court and the Court of Appeal, by failing to disclose relevant evidence, undermined his right to a fair trial.

Comm found by majority (19–11) NV 6(1)+6(3)(b) and (d).

Court found by majority (9–8) NV 6(1).

Judges: Mr L Wildhaber, President, Mrs E Palm (d), Mr L Ferrari Bravo, Mr L Caflisch, Mr J-P Costa, Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach (d), Mr B Zupancic (d), Mrs N Vajic (d), Mr J Hedigan (d), Mrs W Thomassen (d), Mrs M Tsatsa-Nikolovska (d), Mr T Pantiru, Mr E Levits, Mr K Traja (d), Sir John Laws, ad hoc judge.

The guarantees in A 6(3) were specific aspects of the right to a fair trial (A 6(1)). It was a fundamental aspect of the right to a fair trial that criminal proceedings, including the elements of such proceedings which related to procedure, should be adversarial and that there should be equality of arms between the prosecution and defence. The right to an adversarial trial meant, in a criminal case, that both prosecution and defence had to be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. In addition, A 6(1) required that the prosecution authorities should disclose to the defence all

material evidence in their possession for or against the accused. However, the entitlement to disclosure of relevant evidence was not an absolute right. In any criminal proceedings, there might be competing interests, such as national security or the need to protect witnesses at risk of reprisals or keep secret police methods of investigation of crime, which had to be weighed against the rights of the accused, and it might be necessary to withhold certain evidence from the defence so as to preserve the fundamental rights of another individual or to safeguard an important public interest. However, only such measures restricting the rights of the defence which were strictly necessary were permissible under A 6(1). Moreover, in order to ensure that the accused received a fair trial, any difficulties caused to the defence by a limitation on its rights had to be sufficiently counterbalanced by the procedures followed by the judicial authorities. In cases where evidence had been withheld from the defence on public interest grounds, it was not the role of the Court to decide whether or not such non-disclosure was strictly necessary since, as a general rule, it was for the national courts to assess the evidence before them. The Court had to scrutinise the decision making procedure to ensure that, as far as possible, it complied with the requirements to provide adversarial proceedings and equality of arms and incorporated adequate safeguards to protect the interests of the accused. The defence were kept informed and permitted to make submissions and participate in the decision making process as far as was possible without revealing to them the material which the prosecution sought to keep secret on public interest grounds. The material which was not disclosed in the present case formed no part of the prosecution case and was never put to the jury. The fact that the need for disclosure was at all times under assessment by the trial judge provided a further, important, safeguard in that it was his duty to monitor throughout the trial the fairness or otherwise of the evidence being withheld. The judge was fully versed in all the evidence and issues in the case and in a position to monitor the relevance to the defence of the withheld information both before and during the trial. It could be assumed that the judge applied the principles which had recently been clarified by the Court of Appeal in such cases. The trial court had applied standards which were in conformity with the relevant principles of a fair trial embodied in A 6(1). The Court of Appeal had also considered whether or not the evidence should have been disclosed, so providing an additional level of protection for the applicant's rights. The decision making procedure complied with the requirements of adversarial proceedings and equality of arms and incorporated adequate safeguards to protect the interests of the accused, therefore there had been no violation of A 6(1) in the present case.

Cited: Brandstetter v A (28.8.1991), Doorson v NL (26.3.1996), Edwards v UK (16.12.1992), Van Mechelen and Others v NL (23.4.1997).

Jecius v Lithuania 00/200

[Application lodged 30.12.1996; Court Judgment 31.7.2000]

Mr Juozas Jecius a hotel director, was suspected of a murder committed in 1994. In 1995, the murder case was struck off because of the absence of evidence. However, he was arrested on 8 February 1996 and his 'preventive detention' for 60 days was ordered by the Chief Police Commissioner and confirmed the following day by the Regional Court. Preventive detention was authorised where there were reasons to suspect that a dangerous act, such as banditism, criminal association and terrorising a person, might be committed. On 8 March 1996, the murder case was reopened and on 14 March 1996, the Deputy Prosecutor General authorised the applicant's detention on remand until 4 June 1996. Applications by the applicant contesting his detention were rejected. On 13 June 1996, the prosecutor informed the prison administration that the applicant's detention was automatically extended until 14 June 1996 pursuant to the Code of Criminal Procedure. On 31 July 1996, the Regional Court decided that the applicant's remand should remain unchanged. From 14 to 16 October 1996 the Regional Court heard the case in the presence of the applicant and his lawyer and decided that the applicant was to remain in custody until 15 February 1997. The applicant's appeal was dismissed by the Court of Appeal in November 1997. An application to the Supreme Court was also rejected and civil proceedings against the prison administration for keeping him in detention without any formal order were unsuccessful. The

Ombudsman had in the meantime found that the applicant had been detained illegally from 14 June to 31 July. The applicant was acquitted and released in June 1997. The proceedings were discontinued in October 1997. The applicant died in 1999. He had complained about his detention.

Court dismissed the Government's preliminary objection, found unanimously V 5(1) as regards the applicant's preventive detention and his detention on remand from 4 June to 31 July 1996, NV 5(1) as regards the applicant's detention on remand from 31 July to 16 October 1996, NV 5(3) as regards the alleged failure to bring the applicant promptly before a judge or other officer, V 5(3) as regards the length of the applicant's detention on remand, V 5(4).

Judges: Mr J-P Costa, President, Mr W Fuhrmann, Mr P Kûris, Mrs F Tulkens, Mr K Jungwiert, Mr K Traja, Mr M Ugrekhelidze.

The Court considered that the applicant's widow had a legitimate interest in maintaining the application.

In respect of a complaint about the absence of a remedy for a continuing situation, such as a period of detention, the six months' time limit under A 35(1) started running from the end of that situation, such as release from custody. In addition, in applying A 35(1), the Court often looked behind mere appearances, without excessive formalism. Although, on 14 March 1996, the applicant's preventive detention was formally replaced by remand in custody, the change of statutory basis did not affect the applicant's situation for he was neither moved to another cell or prison, nor brought before a competent legal authority to be informed of the change. The overall period of the applicant's detention had to be taken as a whole for the purpose of applying the six months' rule in the case. As the applicant was still remanded in custody, of which detention he complained when lodging the present application on 30 December 1996, the case could not be dismissed as being out of time. Government's preliminary objection regarding time limit dismissed.

A person could be deprived of his liberty only for the purposes specified in A 5(1). Preventive detention of the kind found in the present case was not permitted by A 5(1)(c). There had thus been a breach.

From 4 June to 31 July 1996, no order was made by a judge or prosecutor authorising the applicant's detention and that therefore was incompatible with the domestic law then in force. The deprivation of liberty by reference to former 226(6) of the Code of the Criminal Procedure was not prescribed by law. The practice of keeping a person in detention without a specific legal basis was incompatible with the principles of legal certainty and the protection from arbitrariness. The fact that the case was transmitted to the Regional Court on 24 June 1996 did not clarify whether and under what conditions the applicant's detention could be continued during the trial. The applicant's detention by reference to the sole fact that the case had been transmitted to the court did not constitute a lawful basis for the applicant's continued remand in custody. There was no valid domestic decision or other lawful basis for the applicant's detention on remand from June to 31 July 1996. There had therefore been a violation of A 5(1).

The applicant did not dispute that during the directions hearing of 31 July 1996, the Regional Court acted within its jurisdiction in so far as it had power to make an appropriate order in respect of the applicant's detention. Although the Regional Court did not order a new remand measure, nor did it specify which type of remand should remain unchanged, given the context, the meaning of the decision must have been clear to all present, including the applicant's lawyer. The Regional Court did not act in bad faith or fail to apply the relevant domestic legislation correctly. It had not been established, therefore, that the detention order of 31 July 1996 was invalid in domestic law or that the ensuing detention was unlawful within the meaning of A 5(1). There had therefore been no breach of A 5(1) in respect of the detention from 31 July to 16 October 1996.

From his arrest on 8 February until 14 March 1996, the applicant was held in preventive detention, to which A 5(1)(c) did not apply, and therefore the guarantee that the applicant be brought promptly before an appropriate officer under A 5(3) was not applicable to his preventive detention. From 14 March to 14 October 1996, he remained in custody without being brought before an officer

within the meaning of A 5(3). However, the Lithuanian reservation which was in force until 21 June 1996 was sufficiently clear to fulfil the requirements of A 57 and the fact that the applicant was not brought before an appropriate officer when his remand in custody was ordered could not constitute a violation of A 5(3) as long as the reservation was in force. The words 'brought promptly' implied that the right to be brought before an appropriate officer related to the time when a person was first deprived of his liberty under A 5(1)(c). When the reservation to A 5(3) expired on 21 June 1996, the applicant had been held in detention on remand for more than three months and accordingly, by that date, any notion of 'promptness' had already been exceeded. A reservation would be devoid of its purpose if the State were required, on its expiry, to enforce the right retroactively. Therefore, when the reservation expired, Lithuania was no longer under an obligation to bring the applicant promptly before an appropriate officer. Consequently, there was no scope under A 5(3) for a renewed obligation after the expiry of the reservation and no violation of A 5(3).

The applicant's preventive detention from 8 February to 14 March 1996 did not fall within the scope of A 5(1)(c), and A 5(3) was not applicable to that period. The applicant's remand in custody lasted from 14 March 1996 to 9 June 1997, ie, 14 months and 26 days. By the time the applicant's detention on remand was authorised, he had been held in custody for over a month since 8 February 1996. The reasonableness of the length of detention had to be assessed according to the special features of the case. Continued detention could be justified in a given case only if there were clear indications of a genuine public interest which, notwithstanding the presumption of innocence, outweighed the right to liberty. The persistence of a reasonable suspicion that the person arrested had committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer sufficed. The only reasons given by the prosecuting authorities for the applicant's detention on remand were the gravity of the offence and the strength of evidence against him. The Regional Court gave no reasons justifying the continued remand. The suspicion against the applicant of having committed murder might initially have justified his detention, but it could not constitute a 'relevant and sufficient' ground for his being held in custody for almost 15 months, particularly when that suspicion was proved unsubstantiated by the trial court which acquitted the applicant. It followed that the length of the applicant's detention was excessive and there had been a breach of A 5(3).

A 5(4) guaranteed no right, as such, to an appeal against decisions ordering or extending detention, as the provision spoke of 'proceedings' and not of appeals. In principle, the intervention of one organ satisfied A 5(4), on condition that the procedure followed had a judicial character and gave to the individual concerned appropriate guarantees. The Regional Court, in its decisions authorising the applicant's remand in custody, made no reference to the applicant's grievances about the unlawfulness of his detention and although the Court of Appeal and the Supreme Court acknowledged that the lawfulness of the applicant's detention was open to question, they failed to examine the applicant's complaints due to the statutory bar then in force. The civil proceedings brought by the applicant against the prison administration were not relevant for the purpose of A 5(4) as the civil courts were not competent to order the applicant's release. The applicant had therefore been denied the right to contest the procedural and substantive conditions essential for the 'lawfulness' of his remand in custody. There had therefore been a breach of A 5(4).

Non-pecuniary damage (LTL 60,000), costs and expenses (LTL 40,000).

Cited: Assenov and Others v BG (28.10.1998), Belilos v CH (29.4.1988) Benham v UK (10.6.1996), Baranowski v PL (28.3.2000) Benham v UK (10.6.1996), Brogan and Others v UK (29.11.1988), Ciulla v I (22.2.1989), De Wilde, Ooms and Versyp v B (18.7.1971), Guzzardi v I (6.11.1980), Lawless v IRL (1.7.1961), Punzelt v CZ (25.4.2000) Trzaska v PL (11.7.2000).

Jersild v Denmark (1995) 19 EHRR 1 94/31

[Application lodged 25.7.1989; Commission report 8.7.1993; Court Judgment 23.9.1994]

Mr Jens Olaf Jersild was a journalist employed by Danmarks Radio assigned to its Sunday News Magazine. The editors of the Sunday News Magazine decided to produce a documentary on a

group of young people with racist attitudes who called themselves the Greenjackets. During the interview, which was conducted by the applicant, the three Greenjackets made abusive and derogatory remarks about immigrants and ethnic groups in Denmark. The applicant subsequently edited and cut the film of the interview down to a few minutes and it was broadcast on 21 July 1985. Following the programme, the Public Prosecutor instituted criminal proceedings against the three youths interviewed by the applicant under the Penal Code. The applicant and the programme controller were charged with aiding and abetting the three youths. On 24 April 1987, the City Court convicted the three youths. The applicant and the programme controller were convicted of aiding and abetting them, and sentenced to pay day fines totalling DKK 1,000 and DKK 2,000, respectively, or alternatively to five days' imprisonment. The applicant's appeals to the High Court and Supreme Court were dismissed. He complained that his conviction and sentence for having aided and abetted the dissemination of racist remarks violated his right to freedom of expression.

Comm found by majority (12–4) V 10.

Court found by majority (12–7) V 10.

Judges: Mr R Ryssdal (jd), President, Mr R Bernhardt (jd), Mr F Gölcüklü (jd/supplementary jd), Mr R Macdonald, Mr C Russo (jd), Mr A Spielmann (jd), Mr N Valticos (jd/supplementary jd), Mr SK Martens, Mrs E Palm, Mr R Pekkanen, Mr AN Loizou (jd), Mr JM Morenilla, Mr MA Lopes Rocha, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr D Gotchev, Mr B Repik, Mr A Philip, ad hoc judge.

The applicant's conviction and sentence constituted an interference with his right to freedom of expression. The interference was prescribed by law, namely, the Penal Code, and pursued a legitimate aim, namely the protection of the reputation or rights of others. The only point in dispute was whether the measures were necessary in a democratic society. The applicant did not make the objectionable statements himself, but assisted in their dissemination in his capacity of television journalist responsible for a news programme. The Court recalled its previous case-law. The applicant had himself taken the initiative of preparing the Greenjackets feature and knew in advance that racist statements were likely to be made during the interview, and encouraged those statements. He had edited the programme in such a way as to include the offensive assertions. Without his involvement, the remarks would not have been disseminated to a wide circle of people and would thus not have been punishable. However, the TV presenter's introduction, putting the programme into a context, meant that the feature could not objectively have appeared to have as its purpose the propagation of racist views and ideas; rather, it clearly sought to expose, analyse and explain this particular group of youths, limited and frustrated by their social situation, with criminal records and violent attitudes, thus dealing with specific aspects of a matter that already then was of great public concern. The item was broadcast as part of a serious Danish news programme and was intended for a well-informed audience. The TV presenter's introduction and the applicant's conduct during the interviews clearly dissociated him from the persons interviewed. The applicant also rebutted some of the racist statements. Taken as a whole, the filmed portrait conveyed the meaning that the racist statements were part of a generally anti-social attitude of the Greenjackets. News reporting based on interviews, whether edited or not, constituted one of the most important means whereby the press was able to play its vital role of 'public watchdog'. The punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there were particularly strong reasons for doing so. The remarks in respect of which the Greenjackets were convicted were more than insulting to members of the targeted groups and did not enjoy the protection of A 10. However, even having regard to the manner in which the applicant prepared the Greenjackets item, it had not been shown that, considered as a whole, the feature was such as to justify his conviction of, and punishment for, a criminal offence under the Penal Code. The applicant's purpose in compiling the broadcast in question was not racist. It had not been established convincingly that the interference was necessary in a democratic society; in particular, the means

employed were disproportionate to the aim of protecting the reputation or rights of others. Accordingly there had been a breach of A 10.

Pecuniary damage (by majority (17–2) DKK 1,000). Costs and expenses to be calculated.

Cited: Oberschlick v A (23.5.1991), Observer and Guardian v UK (26.11.1991), Schwabe v A (28.8.1992).

Johansen v Norway (1997) 23 EHRR 33 96/28

[Application lodged 10.10.1990; Commission report 17.1.1995; Court Judgment 7.8.1996]

Ms Adele Johansen gave birth to her son C when she was 17. She cohabited with a man who mistreated her and C. On many occasions, the social welfare authorities assisted the applicant in the upbringing of C. In August 1988, C began to receive psychiatric treatment and was admitted to a special school adapted to his needs. In November 1989 C, who was then 12 years old, was provisionally taken into care. On 7 December 1989, the applicant gave birth to her daughter S. In view of the applicant's difficult situation and the problems with regard to the upbringing of C, the child welfare authorities were contacted. On 3 May 1990, on the basis of the information and evidence submitted to it, the Client and Patient Committee decided to take S into care, to deprive the applicant of her parental responsibilities, to place S in a foster home with a view to adoption, to refuse the mother access as from the moment of the child's placement in the foster home and to keep the latter's address secret. The applicant's appeals against the care measures in respect of S were unsuccessful. S was placed with foster parents on 30 May 1990. The applicant had not had access to or seen her daughter since. She complained that there had been a violation of her right to respect for family life on account of the order to take her daughter into public care, the deprivation of her parental rights, the termination of her access to her daughter, the excessive length of the proceedings and their lack of fairness.

Comm found unanimously NV 8 with regard to the taking of her daughter into care and the maintenance in force of the care decision, by majority (11–2) V 8 as regards the decision depriving the applicant of her parental rights and access, by majority (12–1) that no separate issue arose under 6, unanimously no separate issue under 13.

Court found unanimously NV 8 with regard to the taking into care of the applicant's daughter and the maintenance in force of the care decision, by majority (8–1) V 8 with regard to the decision of 3 May 1990, in so far as it deprived the applicant of her access and parental rights in respect of her daughter, unanimously NV 6(1), unanimously not necessary to examine 13.

Judges: Mr R Bernhardt, President, Mr R Ryssdal, Mr R Macdonald, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla (pd), Mr P Kûris, Mr U Lôhmus.

The mutual enjoyment by parent and child of each other's company constituted a fundamental element of family life and domestic measures hindering such enjoyment amounted to an interference with the right protected by A 8. The impugned measures amounted to interferences with the applicant's right to respect for her family life. Such interference was a violation of A 8 unless it was in accordance with the law, pursued a legitimate aim or aims and could be regarded as necessary in a democratic society. The measures had a basis in national law. The measures were aimed at protecting the health and rights and freedoms of the applicant's daughter and thus pursued legitimate aims. In determining whether the impugned measures were necessary in a democratic society, the Court considered whether, in the light of the case as a whole, the reasons adduced to justify them were relevant and sufficient for the purposes of A 8(2). The margin of appreciation to be accorded to the competent national authorities would vary in the light of the nature of the issues and the seriousness of the interests at stake. The authorities enjoyed a wide margin of appreciation in assessing the necessity of taking a child into care. However, a stricter scrutiny was called for both of any further limitations, such as restrictions placed by those authorities on parental rights and access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. There was nothing to suggest that the decision-making process leading to the adoption of the impugned measures by the Committee was unfair or failed to involve the applicant to a degree sufficient to

provide her with the requisite protection of her interests. The procedure did not give rise to a breach of A 8. The taking of the applicant's daughter S into care and the maintenance in force of the care decision concerned were based on reasons which were relevant and sufficient for the purposes of A 8(2). The measures were supported by painstaking and detailed assessments by the experts appointed by the Committee and the City Court. The national authorities had acted within the margin of appreciation afforded to them in such matters. Accordingly, these measures did not constitute a violation of A 8. Taking a child into care should normally be regarded as a temporary measure to be discontinued as soon as circumstances permitted and any measures of implementation of temporary care should be consistent with the ultimate aim of reuniting the natural parent and the child. In this regard, a fair balance had to be struck between the interests of the child in remaining in public care and those of the parent in being reunited with the child. In carrying out this balancing exercise, particular importance would be attached to the best interests of the child, which, depending on their nature and seriousness, might override those of the parent. In the present case, the applicant had been deprived of her parental rights and access in the context of a permanent placement of her daughter in a foster home with a view to adoption by the foster parents. Those measures were particularly far reaching in that they totally deprived the applicant of her family life with the child and were inconsistent with the aim of reuniting them. Such measures should only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests. It was in the child's interest to ensure that the process of establishing bonds with her foster parents was not disrupted. The girl, who had been taken into care shortly after birth and had already spent half a year with temporary carers before being placed in a long term foster home, was at a stage of her development when it was crucial that she live under secure and emotionally stable conditions. There was no reason to doubt that the care in the foster home had better prospects of success if the placement was made with a view to adoption. In addition, regard had to be had to the fact that the child welfare authorities found that the applicant was not 'particularly motivated to accept treatment' and even feared that she might take her daughter away. Those considerations were all relevant to the issue of necessity under A 8(2). It remained to be examined whether they were also sufficient to justify the Committee's decision of 3 May 1990 to cut off the contact between the mother and the child. Between the birth of the applicant's daughter on 7 December 1989 and the Committee's decision of 3 May 1990, the applicant had had access to her child twice a week without any criticism. Her lifestyle had changed for the better. It was the difficulties experienced in the implementation of the care decision concerning her son which provided the reason for the authorities' view that the applicant was unlikely to co-operate and that there was a risk of her disturbing the daughter's care if given access to the foster home. However, it could not be said that those difficulties and that risk were of such a nature and degree as to dispense the authorities altogether from their normal obligation under A 8 to take measures with a view to reuniting them if the mother were to become able to provide the daughter with a satisfactory upbringing. Against that background, the Court did not consider that the decision of 3 May 1990, in so far as it deprived the applicant of her access and parental rights in respect of her daughter, was sufficiently justified for the purposes of A 8(2), it not having been shown that the measure corresponded to any overriding requirement in the child's best interests. Therefore, the national authorities overstepped their margin of appreciation, thereby violating the applicant's rights under A 8. In the circumstances, it could not be considered that the applicant's allegation that the length of the care proceedings was excessive gave rise to any issue under A 8.

A 6: The proceedings leading to the deprivation of parental rights and access commenced before the Committee on 13 December 1989 and ended when the Supreme Court refused leave to appeal on 19 September 1991, a period of one year, nine months. In view of what was at stake for the applicant and the irreversible and definitive character of the measures concerned, the competent national authorities were required by A 6(1) to act with exceptional diligence in ensuring the progress of the proceedings. However, they had not failed to discharge their obligations in this respect. The three administrative and two judicial levels involved had not been shown to have failed to act with the diligence required. Nor did it appear, having regard to the complexity of the

case, that the duration of the proceedings as a whole exceeded a reasonable time. Accordingly, there was no breach of A 6 on account of the length of the proceedings.

The complaint under A 13 was not pursued by the applicant before the Court, which did not consider it necessary to examine it of its own motion.

Cited: Margareta and Roger Andersson v S (25.2.1992), Hokkanen v SF (23.9.1994), McMichael v UK (24.2.1995), Olsson v S (No 1) (24.3.1988), Olsson (No 2) v S (27.11.1992), Sunday Times (No 1) v UK (26.4.1979), W v UK (8.7.1987).

Johnson v United Kingdom (1999) 27 EHRR 296 97/84

[Application lodged 8.7.1993; Commission report 25.6.1996; Court Judgment 24.10.1997]

Mr Stanley Johnson was convicted on 8 August 1984 of causing actual bodily harm to a woman passer-by in a random and unprovoked attack. While on remand in prison, he was diagnosed as suffering from mental illness and the Crown Court accordingly imposed a hospital order on him and also made subject to a restriction order without limit in time, the court being satisfied that this order was necessary for the protection of the public from serious harm. The applicant was admitted to Rampton Hospital, a maximum security psychiatric institution. His detention was reviewed on several occasions between December 1986 and January 1993 by a Mental Health Review Tribunal. The psychiatric reports for the review in June 1989 concluded that the applicant was free of symptoms of mental illness. The Tribunal ordered the applicant's conditional discharge, the conditions being that the applicant be subject to the psychiatric supervision of a psychiatrist and psychiatric social worker, and reside in a supervised hostel approved by his psychiatric team. The applicant's discharge was to be deferred until arrangements could be made for suitable accommodation. There were difficulties in securing appropriate accommodation. The applicant undertook a period of trial leave which was unsuccessful. At a review on 12 January 1993, the Tribunal ordered the applicant's absolute discharge on the basis that the applicant was no longer suffering from any form of mental disorder. The applicant was released from Rampton Hospital on 21 January 1993. He complained that his continued detention from June 1989 to January 1993 constituted a violation of A 5(1) and 5(4).

Comm found by majority (15–1) V 5(1), no separate issue under 5(4).

Court found unanimously V 5(1), no separate issue under 5(4).

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr A Spielmann, Mr N Valticos, Sir John Freeland, Mr AB Baka, Mr P Kûris, Mr E Levits, Mr P Van Dijk.

It did not automatically follow from a finding by an expert authority that the mental disorder which justified a patient's compulsory confinement no longer persisted, that the latter had to be immediately and unconditionally released into the community. Such a rigid approach to the interpretation of that condition would place an unacceptable degree of constraint on the responsible authority's exercise of judgment to determine in particular cases and on the basis of all the relevant circumstances whether the interests of the patient and the community into which he was to be released would be best served by this course of action. It had to also be observed that in the field of mental illness the assessment as to whether the disappearance of the symptoms of the illness was confirmation of complete recovery was not an exact science. A responsible authority was entitled to exercise a measure of discretion in deciding whether in the light of all the relevant circumstances and the interests at stake it would be appropriate to order the immediate and absolute discharge of a person who was no longer suffering from the mental disorder which led to his confinement. That authority had to be able to retain some measure of supervision over the progress of the person once he was released into the community and, to that end, make his discharge subject to conditions. The imposition of a particular condition may in certain circumstances justify a deferral of discharge from detention, having regard to the nature of the condition and to the reasons for imposing it. It was, however, of paramount importance that appropriate safeguards were in place so as to ensure that any deferral of discharge was consonant

with the purpose of A 5(1) and with the aim of the restriction in 5(1)(e) and, in particular, that discharge was not unreasonably delayed. The 1989 Tribunal could in the exercise of its judgment properly conclude that it was premature to order the applicant's absolute and immediate discharge from Rampton Hospital. The Tribunal was also in principle justified in deferring the applicant's release in order to enable the authorities to locate a hostel which best suited his needs and provided him with the most appropriate conditions for his successful rehabilitation. The requirement to remain under psychiatric and social-worker supervision would not have hindered his immediate release from Rampton Hospital into the community and could not be said to raise an issue under A 5(1). However, while imposing the hostel residence requirement on the applicant and deferring his release until the arrangements had been made to its satisfaction, the Tribunal lacked the power to guarantee that the applicant would be relocated to a suitable post-discharge hostel within a reasonable period of time. The onus was on the authorities to secure a hostel willing to admit the applicant. They were expected to proceed with all reasonable expedition in finalising the arrangements for a placement. Neither the Tribunal nor the authorities possessed the necessary powers to ensure that the condition could be implemented within a reasonable time. In addition, the earliest date on which the applicant could have had his continued detention reviewed was 12 months after the review conducted by the June 1989 Tribunal. In between reviews the applicant could not petition the Tribunal to have the terms of the hostel residence condition reconsidered; nor was the Tribunal empowered to monitor periodically outside the annual reviews the progress made in the search for a hostel and to amend the deferred conditional discharge order in the light of the difficulties encountered by the authorities. While the Secretary of State could have referred the applicant's case to the Tribunal at any time, that possibility was unlikely to be effected in practice, since even at the date of the January 1993 Tribunal, the authorities maintained their opposition to the applicant's release from detention until he had fulfilled the hostel condition. The imposition of the hostel residence condition by the June 1989 Tribunal led to the indefinite deferral of the applicant's release from Rampton Hospital, especially since the applicant was unwilling after October 1990 to co-operate further with the authorities in their efforts to secure a hostel, thereby excluding any possibility that the condition could be satisfied. While the 1990 and 1991 Tribunals considered the applicant's case afresh, they were obliged to order his continued detention since he had not yet fulfilled the terms of the conditional discharge imposed by the June 1989 Tribunal. Having regard to the situation which resulted from the decision taken by the latter Tribunal and to the lack of adequate safeguards, including provision for judicial review to ensure that the applicant's release from detention would not be unreasonably delayed, his continued confinement after 15 June 1989 could not be justified on the basis of A 5(1)(e) of the Convention. His continued detention after that date therefore constituted a violation of A 5(1).

The issues raised by the applicant under A 5(4) had already been examined in the context of his complaint under A 5(1) and therefore gave rise to no separate issue.

Non-pecuniary damage (GBP 10,000), costs and expenses (GBP 25,000).

Cited: Eriksen v N (27.5.1997), Luberti v I (23.2.1984), Lukanov v BG (20.3.1997), Wassink v NL (27.9.1990), Winterwerp v NL (24.10.1979).

Johnston and Others v Ireland (1987) 9 EHRR 203 86/15

[Application lodged 16.2.1982; Commission report 5.3.1985; Court Judgment 18.12.1986]

The first applicant Roy HW Johnston, a scientific research and development manager lived with the second applicant, Janice Williams-Johnston, who was a school-teacher and the third applicant, their daughter Nessa Doreen Williams-Johnston born in 1978. The first applicant had previously been married but that relationship had irretrievably broken down and resulted in a separation. Under the Constitution of Ireland the first applicant was unable to obtain a dissolution of his marriage to enable him to marry the second applicant. The applicants complained of the absence of provision in Ireland for divorce and for recognition of the family life of persons who, after the breakdown of the marriage of one of them, are living in a family relationship outside marriage.

Comm found unanimously NV 8 or 12 in that the right to divorce and subsequently to re-marry was not guaranteed by the Convention, by majority (12–1) NV 8 in that Irish law did not confer a recognised family status on the first and second applicants, unanimously V 8 in that the legal regime concerning the status of the third applicant under Irish law failed to respect the family life of all three applicants, unanimously NV 9 in respect of the first applicant, by majority (12–1) NV 14+8 or 14+12 in that the first and second applicants had not been discriminated against by Irish law, not necessary to examine the third applicant's separate complaint of discrimination, unanimously NV 13.

Court unanimously rejected the Government's preliminary objections, found by majority (16–1) NV 8 or 12 in respect of the absence of provision for divorce under Irish law and the resultant inability of the first and second applicants to marry each other, NV 14+8 in respect of first and second applicants by reason of the fact that certain foreign divorces could be recognised by the law of Ireland, A 9 not applicable, unanimously NV 8 regards the other aspects of their own status under Irish law complained of by the first and second applicants, unanimously V 8 in respect of the legal situation of the third applicant under Irish law as regards all three applicants (16–1) not necessary to examine the third applicant's allegation under 14+8, by reason of the disabilities to which she is subject under Irish succession law.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr G Lagergren, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha (declaration), Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr J Gersing, Mr A Spielmann, Mr J De Meyer (so), Mr J A Carrillo Salcedo.

A 25 entitled individuals to contend that a law violated their rights by itself, in the absence of an individual measure of implementation, if they run the risk of being directly affected by it. The question of the existence or absence of detriment was not a matter for A 25 which, in its use of the word victim, denoted the person directly affected by the act or omission which was in issue. The applicants were therefore entitled in the present case to claim to be victims of the breaches which they alleged. The Court did not consider that it should accede to the Government's invitation to defer judgment until after the enactment of the Status of Children Bill, which was designed to modify the relevant Irish law in a number of respects. On several occasions the Court had proceeded with its examination of a case notwithstanding the existence of proposed or intervening reforms.

The only remedies which A 26 required to be exhausted were those that related to the breaches alleged; the existence of such remedies had to be sufficiently certain not only in theory but also in practice, failing which they would lack the requisite accessibility and effectiveness; and it fell to the respondent State, if it pleaded non-exhaustion, to establish that those various conditions were satisfied. In so far as the applicants' complaints related to the prohibition of divorce under the Constitution of Ireland, no effective domestic remedy was available. As regards the remaining issues, bearing particularly in mind the established case-law of the Irish courts, the Government had not established with any degree of certainty the existence of any effective remedy.

The matters in question did not fall outside the compass of the case brought before the Court, which compass was delimited by the Commission's admissibility decision. None of them was inadmissible for non-exhaustion of domestic remedies

The right to marry covered the formation of marital relationships but not their dissolution. The Convention and its Protocols had to be interpreted in the light of present-day conditions. However, the Court could not, by means of an evolutive interpretation, derive a right that was not included therein at the outset. That was particularly so here, where the omission was deliberate. The applicants could not derive a right to divorce from A 12. That provision was therefore inapplicable in the present case, either on its own or in conjunction with A 14.

By guaranteeing the right to respect for family life, A 8 presupposed the existence of a family. A 8 applied to the family life of the illegitimate family as well as to that of the legitimate family. Although the essential object of A 8 was to protect the individual against arbitrary interference by the public authorities, there might in addition be positive obligations inherent in an effective respect for family life. The applicants constituted a family for the purposes of A 8. They were thus entitled to its protection, notwithstanding the fact that their relationship existed outside marriage.

The Convention had to be read as a whole and the Court did not consider that a right to divorce, could, with consistency, be derived from A 8 a provision of more general purpose and scope. Although the protection of private or family life might sometimes necessitate means whereby spouses could be relieved from the duty to live together, the engagements undertaken by Ireland under A 8 could not be regarded as extending to an obligation on its part to introduce measures permitting the divorce and the re-marriage which the applicants sought. There was therefore no failure to respect the family life of the first and second applicants.

A 14 safeguarded persons who are placed in analogous situations against discriminatory differences of treatment in the exercise of the rights and freedoms recognised by the Convention. Under the general Irish rules of private international law foreign divorces would be recognised in Ireland only if they had been obtained by persons domiciled abroad. It had not been established that those rules were departed from in practice. The situations of such persons and of the first and second applicants could not be regarded as analogous. There was, accordingly, no discrimination, within the meaning of A 14.

A 9 did not extend to the non-availability of divorce under Irish law. Accordingly, that provision, and A 14 were also not applicable.

There had been no interference by the public authorities with the family life of the first and second applicants: Ireland has done nothing to impede or prevent them from living together and continuing to do so and, indeed, they had been able to take a number of steps to regularise their situation as best they could. Certain legislative provisions designed to support family life were not available to the first and second applicants. However, it was not possible to derive from A 8 an obligation on the part of Ireland to establish for unmarried couples a status analogous to that of married couples. A number of the matters complained of were consequences of the inability to obtain a dissolution of the first applicant's marriage to enable him to marry the second applicant, a situation which the Court had found not to be incompatible with the Convention. As for the other matters, A 8 could not be interpreted as imposing an obligation to establish a special regime for a particular category of unmarried couples. There was accordingly no violation of A 8.

The normal development of the natural family ties between the first and second applicants and their daughter required that she should be placed, legally and socially, in a position akin to that of a legitimate child. The third applicant's present legal situation differed considerably from that of a legitimate child; in addition, it had not been shown that there were any means available to her or her parents to eliminate or reduce the differences. Having regard to the particular circumstances of the case and notwithstanding the wide margin of appreciation enjoyed by Ireland in this area, the absence of an appropriate legal regime reflecting the third applicant's natural family ties amounted to a failure to respect her family life. Moreover, the close and intimate relationship between the third applicant and her parents was such that there is of necessity also a resultant failure to respect the family life of each of the latter. There was accordingly, as regards all three applicants, a breach of A 8 under this head.

It was not necessary to give a separate ruling on the allegation under 14 and 8 as succession rights were included amongst the aspects of Irish law which were taken into consideration in the examination of the general complaint concerning the third applicant's legal situation.

Findings on violations constituted sufficient just satisfaction. Legal costs and expenses (IRP 12,000).

Cited: Abdulaziz, Cabales and Balkandali v UK (28.5.1985), Airey v IRL (9.10.1979), Campbell and Fell v UK (28.6.1984), De Jong, Baljet and Van Den Brink v NL (22.5.1984), Golder v UK (21.2.1975), James and Others v UK (21.2.1986), Le Compte, Van Leuven and De Meyere judgment v B (18.10.1982), Lithgow and Others v UK (8.7.1986), Marckx v B (13.6.1979), Rees v UK (17.10.1986), Silver and Others v UK (25.3.1983), Zimmermann and Steiner v CH (13.7.1983).

Jordan v United Kingdom 00/90

[Application lodged 19.2.1996; Court Judgment 14.3.2000]

Stephen Jordan, a soldier of the regular forces in the Grenadier Guards, was arrested on 20 April 1995 by the civilian police after having gone missing from his unit. His commanding officer dealt with the charge summarily and sentenced him to, *inter alia*, 28 days' imprisonment. He was due for release on 27 May 1995, but his detention continued on the basis of the suspected offences that were being investigated. On 16 June 1995 and 29 August 1995, the applicant was brought before his commanding officer and charges under the Theft Act were read to him. He was remanded for trial by court-martial. In November 1995, the applicant commenced habeas corpus proceedings in the High Court requesting his release. The army authorities admitted that due to an 'administrative oversight', the applicant had not been charged until 16 June 1995. He was released on 11 December 1995 and subsequently brought proceedings for compensation from the Ministry of Defence in respect of his detention from 27 May to 11 December 1995. The authorities accepted that the applicant's detention had been unlawful and the matter was settled on 21 October 1996 with the applicant being paid compensation and costs. The applicant was tried by court-martial and sentenced to imprisonment. His appeal to the Courts-Martial Appeal Court was pending.

Court found unanimously V 5(3), V 5(5).

Judges: Mr J-P Costa, President, Sir Nicolas Bratza, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mrs HS Greve, Mr K Traja.

Given the nature of the relevant charges and the penalty imposed, the applicant was arrested on reasonable suspicion of having committed an offence within the meaning of A 5(1)(c), his close arrest, that is, confinement to a cell under supervision, amounted to detention. The commanding officer was liable to play a central role in the subsequent prosecution of the case against an accused and, in addition, his responsibility for discipline and order provided an additional reason for an accused reasonably to doubt that officer's impartiality when deciding on the necessity of the pre-trial detention. Accordingly, there had been a violation of A 5(3), since the commanding officer could not be regarded as independent of the parties at the relevant time.

The applicant did not have an enforceable right to compensation. There had therefore been a violation of A 5(5).

Judgment constituted sufficient just satisfaction for any non-pecuniary damage. Costs and expenses (GBP 3,500).

De Jong, Baljet and Van den Brink v NL (22.5.1984), Engel and Others v NL (8.6.1976), Hood v UK (18.2.1999), Huber v CH (23.10.1990), Schiesser v CH (4.12.1979).

K

K v Austria 93/21

[Application lodged 27.11.1989; Commission report 13.10.1992; Court Judgment 2.6.1993]

In 1989, the applicant was accused of having bought heroin from a couple, Mr and Mrs W, who were facing a separate prosecution for drug trafficking. He pleaded not guilty in the District Court, which adjourned the trial on 19 May 1989. The Regional Court summoned him to appear on 30 May 1989 to give evidence in the trial of Mr and Mrs W. At the hearing, the applicant refused to testify because of the proceedings pending against him. The court then refused to give him leave to remain silent under the Code of Criminal Procedure and, as he persisted in his refusal, first fined him 3,000 schillings and then sentenced him to five days' imprisonment. His appeal to the Court of Appeal was declared inadmissible. He served the period of imprisonment. On 25 January 1990, when the applicant was again questioned in connection with the proceedings against Mr and Mrs W, he admitted having twice purchased heroin from them. The applicant complained that the proceedings resulting in the imposition of the fine and the obligation to make a statement liable to incriminate himself had been contrary to A 6(1). He also complained of his detention and the lack of any possibility of judicial review.

Comm found by majority (7–5) 6 inapplicable to the proceedings imposing the fine, (10–2) V 10 as regards the refusal to allow the applicant to remain silent, (11–1) NV 6(1) on the same point, (10–2) V 5(1), 5(4).

Court unanimously struck case out of the list.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr F Matscher, Mr J De Meyer, Mr JM Morenilla, Mr F Bigi, Sir John Freeland, Mr G Mifsud Bonnici, Mr J Makarczyk.

The Court took formal note of the friendly settlement reached between the Government and Mr K and considered it appropriate to strike the case out of the list.

FS (ATS 18,000 compensation for the detention plus ATS 103,460.40 costs).

K and T v Finland 00/131

[Application lodged 26.10.1994; Court Judgment 27.4.2000]

The applicants were cohabitees and had two children, J and M. K, the applicant mother, was hospitalised on occasions, having been diagnosed as suffering from schizophrenia. In 1993, the children were placed in care and restrictions were imposed on access to them. The applicants' appeals against public care orders were rejected by the Supreme Administrative Court. In May 1994, their access to the children was restricted to one monthly three hour supervised visit at the foster home. The applicants appealed unsuccessfully. They complained, *inter alia*, that their right to respect for their family life had been violated on account of the placement of the children in public care, that they had not been given the chance to work out their problems with the help of their relatives and by taking advantage of various support measures provided by the social and health care authorities, that the Social Welfare Board and the courts failed to carry out a proper examination of their request for a reunification of their family, that the access restrictions were excessive, thereby distancing the children both from their parents and other relatives.

Court unanimously found V 8, NV 13.

Judges: Mr G Ress, President, Mr M Pellonpää (c), Mr I Cabral Barreto, Mr V Butkevych, Mrs N Vajic, Mr J Hedigan, Mrs S Botoucharova.

The mutual enjoyment by parent and child of each other's company constituted a fundamental element of family life, and domestic measures hindering such enjoyment amounted to an interference with the right protected by A 8. The impugned measures amounted to interference with the applicants' right to respect for their family life as guaranteed by A 8(1) and constituted a violation of that article unless it satisfied A 8(2). The impugned measures had a basis in national law and the legitimate aim of protecting health and morals and the rights and freedoms of children. Regarding the taking into care, the reasons given and the methods used were arbitrary

and unjustified under the circumstances. The Court noted that the applicants were not given any chance of even beginning their family life with new-born J and that the care order concerning M could not be reasonably justified in a situation in which the child was already in a safe environment and faced none of the risks mentioned in the relevant law as a precondition for the care order. The applicants were not informed of the decisions in advance, even though the authorities had prepared the decisions well before. Despite the margin of appreciation enjoyed by the national authorities in assessing the necessity of taking a child into care, in the light of the case as a whole, the reasons adduced to justify the care orders were not sufficient and the methods used in implementing those decisions were excessive. The taking into public care could not be regarded as necessary in a democratic society and accordingly constituted a violation of A 8.

Taking a child into care should normally be regarded as a temporary measure, to be discontinued as soon as circumstances permitted and any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parent and the child. A fair balance had to be struck between the interests of the child in remaining in the public care and those of the parent in being reunited with the child. In carrying out this balancing exercise, particular importance had to be attached to the best interests of the child, which may override those of the parent. In particular, the parent could not be entitled under A 8 to have such measures taken as would harm the child's health and development. It was not the Court's task to substitute its view for that of the national authorities as to what should have been done. Nor did the Court suggest that public care should in all circumstances be a strictly temporary measure. In the present case, it appeared that there was a lack of any effort seriously to consider the termination of public care, despite evidence of an improvement in the situation which had led to the care orders, and that amounted to such a lack of fair balance between the various interests involved as to constitute a violation of A 8. Accordingly, there had been a violation of that article on this ground also.

In view of the above conclusion, it was not necessary to examine the access restrictions as a separate issue, except in so far as the present situation was concerned. Since 1994, the applicants had had access to the children once a month. While that may have been unreasonably restrictive earlier, the children had then been in public care for almost seven years. In view of that, the national authorities, within their margin of appreciation, could consider such restrictions necessary in the light of the present-day interests of the children. Accordingly, there was no violation of A 8 in that respect.

The applicants could apply to administrative courts against the care order, refusal to terminate the care and various access restrictions. Although the applicants' appeals did not prove successful, there was no indication that the Finnish administrative courts would not, as a general matter, fulfil the requirements of an 'effective remedy' within the meaning of A 13. Taking also into account the other remedies invoked by the Government, the Court considered that the applicants had available remedies satisfying the requirements of A 13.

Non-pecuniary damage (FIM 40,000 each), legal fees and expenses (FIM 5,190 less FF 2,230).

Cited: Hokkanen v SF (23.9.1994), Johansen v N (7.8.1996), Olsson v S (No 1) (24.3.1988), Olsson v S (No 2) (27.11.1992), Vereinigung Demokratischer Soldaten Österreichs and Gubi v A (19.12.1994).

KDB v The Netherlands (1999) 28 EHRR 168 98/20

[Application lodged 23.3.1993; Commission report 21.5.1997; Court Judgment 27.3.1998]

On 15 November 1991, the cattle on the applicant's farm were inspected by the General Inspection Service of the Ministry of Agriculture, Nature Conservancy and Fisheries. Twelve cows were singled out to which the applicant was suspected of having administered the illegal substance clenbuterol. The same day the public prosecutor ordered an interim measure under which the applicant was restrained from removing the 12 cows from his premises without permission and from obstructing the identification of the cows. His applications for the interim measure to be lifted were held before the Regional Court in camera and rejected. On 13 February 1992, through his lawyer, the applicant lodged an appeal on points of law to the Supreme Court. The lawyer did not

submit any grounds of appeal in writing. On 24 December 1992, the Procurator General of the Supreme Court submitted an advisory opinion to the effect that no grounds of appeal had been submitted and that there were no reasons for the Supreme Court to quash the decision appealed against ex officio. He appended to his opinion a copy of a preliminary ruling of the Court of Justice of the European Communities concerning the interpretation of EEC Council Directive 86/469. Neither the applicant nor his lawyer received any notice of this until after the Supreme Court had given judgment. On 1 March 1993, the applicant was notified by the Procurator General that the Supreme Court had dismissed his appeal on 19 January. The applicant complained that he had not been informed of the date on which the Supreme Court would consider his appeal on points of law and that he had not been put in a position to respond to the advisory opinion of the Procurator General.

Comm found unanimously V 6(1) with respect to not being able to respond to the advisory opinion of the Procurator General, NV 6(1) with regard to failure to notify applicant of the date the Supreme Court would consider his appeal.

Court found unanimously NV 6(1) with respect to the failure to notify the applicant of the date on which his case would be examined by the Supreme Court, V 6(1) with respect to the lack of opportunity for the applicant to respond to the advisory opinion submitted by the advocate general to the Supreme Court.

Judges: Mr Thór Vilhjálmsson, President, Mr B Walsh, Mr G Mifsud Bonnici, Mr P Kûris, Mr J Casadevall, Mr P Van Dijk, Mr T Pantiru, Mr M Voicu, Mr V Toumanov.

A 6 did not compel Contracting States to set up courts of appeal. However, where such courts existed, the guarantees of A 6 had to be complied with. The manner in which A 6(1) applied to courts of appeal depended on the special features of the proceedings concerned and account had to be taken of the entirety of the proceedings conducted in the domestic legal order and the court of appeal's role in them. Provided that there had been a public hearing at first instance, the absence of 'public hearings' before a second or third instance may be justified by the special features of the proceedings at issue. Thus, leave-to-appeal proceedings and proceedings involving only questions of law may comply with the requirements of A 6, although the appellant was not given an opportunity of being heard in person by the appeal court. In the present case, the appeal to the Supreme Court was made after the applicant's claims had been heard by the Regional Court, which had full jurisdiction over questions of fact and law and which had held an oral hearing attended by the applicant and his counsel. The fairness of those proceedings had not been called into question in any respect. As a rule, the Supreme Court held no hearing before deciding on appeals on points of law lodged against orders given in camera. As the applicant was assisted by a lawyer, he could be expected to have requested the Supreme Court to hold a hearing if he wanted to appear in person before that court, but he failed to do so. It had not been shown that it would not have been possible for the applicant to file written grounds of appeal before the Supreme Court started to examine his case. Given the Supreme Court's role as an appellate court and having regard to the proceedings as a whole, the failure to inform the applicant of the date on which the Supreme Court would examine his case did not amount to a breach of A 6(1).

The purpose of the advocate general's advisory opinion was to assist the Supreme Court and to help ensure that its case-law was consistent. It was the duty of the Procurator General's department at the Supreme Court to act with the strictest objectivity. Great importance had to be attached to the part played in the proceedings before the Supreme Court by the member of the Procurator General's department, and more particularly to the content and effects of his submissions. Although it was objective and reasoned in law, the opinion was nevertheless intended to advise and accordingly influence the Supreme Court. Having regard to what was at stake for the applicant in the proceedings and to the nature of the advisory opinion of the advocate general, the fact that it was impossible for the applicant to reply to it before the Supreme Court took its decision infringed his right to adversarial proceedings. That right meant in principle the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed, even by an independent member of the national legal service, with a view to influencing the court's decision. There had therefore been a violation of A 6(1).

Costs and expenses (NLG 9,750).

Cited: Brualla Gómez de la Torre v E (19.12.1997), Ekbatani v S (26.5.1988), Sutter v CH (22.2.1984), Van Orshoven v B (25.6.1997), Vermeulen v B (20.2.1996).

K-F v Germany (1998) 26 EHRR 390 97/92

[Application lodged 14.12.1993; Commission report 10.9.1996; Court Judgment 27.11.1997]

Mr K-F was a lawyer. In May 1991, he and his wife rented a holiday flat and paid for their stay in May. On 3 July 1991, the landlady of the flat, Mrs S, asked for payment of rent arrears, including telephone calls. On 4 July, Mrs S telephoned the police station and reported that Mr and Mrs K-F had caused a car accident and that they were about to make off without paying the rent they owed. Police officers went to the flat and took statements. After making further inquiries, the police officers discovered that the address of the applicant and his wife was a Post Office box and that the applicant had previously been under investigation for fraud. Mr and Mrs K-F were arrested at 9.45 pm and taken to the police station so that their identities could be checked. The questioning ended at 12.45 am. After inquiries had been made, they were released at 10.30 am. Criminal proceedings were discontinued against them in September 1991. Their subsequent complaints against the police officers and public prosecutors concerning their arrest and detention on 4 and 5 July 1991 were dismissed. The applicant complained that his arrest and subsequent detention were unlawful as he had not committed any criminal offence and disputes over rent belonged in the realm of civil law.

Comm found by majority (7–6) NV 5(1).

Court dismissed by majority (7–2) Government's preliminary objection, found unanimously V 5(1)(c).

Judges: Mr R Ryssdal, President, Mr R Bernhardt (jpd/pc), Mr C Russo, Mr N Valticos, Mrs E Palm, Mr G Mifsud Bonnici, Mr B Repik, Mr K Jungwiert, Mr U Lôhmus (jpd/pc).

The purpose of A 26 was to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations were submitted to the Convention institutions. Thus, the complaint to be submitted to the Commission must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time limits. However, the only remedies that had to be exhausted were those that were effective and capable of redressing the alleged violation and A 26 also had to be applied with some degree of flexibility and without excessive formalism. The applicant raised his complaints under A 5(1) in substance in the German courts. The remedy he used (criminal proceedings) was effective and adequate to deal with his complaint. The preliminary objection was therefore dismissed.

The reasonableness of the suspicion on which an arrest had to be based formed an essential part of the safeguard against arbitrary arrest and detention which was laid down in A 5(1)(c). Having a 'reasonable suspicion' presupposed the existence of facts or information which would satisfy an objective observer that the person concerned might have committed the offence. However, facts which raised a suspicion did not have to be of the same level as those necessary to justify a conviction or even the bringing of a charge, which would come at a later stage of the process of criminal investigation. The Court could follow the reasoning of the Koblenz Court of Appeal, which held that the police officers' suspicions of rent fraud and the danger that Mr K-F would abscond were justified. Consequently, the applicant was detained on reasonable suspicion of having committed an offence, within the meaning of A 5(1)(c). The fact that the applicant was neither charged nor brought before a court did not necessarily mean that the purpose of his detention was not in accordance with A 5(1)(c). The existence of such a purpose had to be considered independently of its achievement and sub-para (c) of A 5(1) did not presuppose that the police should have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicant was in custody. There was nothing to suggest that the police inquiries were not conducted in good faith or that the applicant's arrest and detention, which were decided after

consultation of the public prosecutor's office, were effected for a purpose other than to complete the inquiries by checking the identity of the applicant and investigating the allegations made against him. The deprivation of liberty pursued the purpose indicated in para 1(c). The Court saw no reason to come to a different conclusion from the Court of Appeal which found that the applicant's arrest and detention were lawful. The police continued to make inquiries throughout the night and up until the applicant's release, partly in order to check whether an arrest warrant had been issued against him. Having regard to those circumstances, the Court concluded that the applicant's detention from 9.45 pm on 4 July to 9.45 am the following day was justifiable. However, the length of time the applicant spent in detention exceeded the legal maximum of 12 hours laid down by the Code of Criminal Procedure. The list of exceptions to the right to liberty secured in A 5(1) was an exhaustive one and only a narrow interpretation of those exceptions was consistent with the aim of that provision, namely, to ensure that no one was arbitrarily deprived of his or her liberty. Since the maximum period of detention was known in advance, it was laid down by law and was absolute, the authorities responsible for the detention were under a duty to take all necessary precautions to ensure that the permitted duration was not exceeded. That applied also to the recording of the applicant's personal details, which should have been carried out during the period of detention allotted for that purpose. As that maximum period laid down by law for detaining the applicant was exceeded, there had been a breach of A 5(1)(c).

No causal link between violation and pecuniary damage. Finding of violation constituted sufficient just satisfaction for non-pecuniary damage, costs and expenses (DM 10,000).

Cited: Ankerl v CH (23.10.1996), Brogan and Others v UK (29.11.1988), Fox, Campbell and Hartley v UK (30.8.1990), Hentrich v F (22.9.1994), Lukanov v BG (20.3.1997), Manzoni, Giulia v I (1.7.1997), Murray v UK (28.10.1994), Quinn v F (22.3.1995), Remli v F (23.4.1996).

Kadubec v Slovakia 98/74

[Application lodged 14.10.1994; Commission report 30.10.1997; Court Judgment 2.9.1998]

Mr Jaroslav Kadubec, the applicant, was found by a local office on 30 November 1993 to have committed a minor offence against public order under the 1990 Minor Offences Act in that he had disturbed boarders in the spa establishment by his noisy behaviour and refused to obey police officers. He was fined SKK 1,000 and ordered to pay SKK 150 costs. He appealed to the district office, complaining that his case had not been examined properly and that he was prevented from defending himself since the decision of the local office had been taken in his absence. He also requested that a witness be heard. His appeal was dismissed. He appealed to the Constitutional Court. On 25 May 1994, the Constitutional Court dismissed the applicant's complaint because of his failure to instruct a lawyer to represent him in the proceedings, as required by the Constitutional Court Act. He complained, *inter alia*, that his case had not been examined by an independent and impartial tribunal established by law and that he was deprived of the right to defend himself through legal assistance.

Comm found unanimously V 6(1) no separate issue under 6(3) and 13.

Court found unanimously V 6(1), not necessary to examine 6(3)(c) and 13.

*Judges: Mr **R** Bernhardt, President, Mr F Gölcüklü, Mr R Pekkanen, Mr D Gotchev, Mr B Repik, Mr U Lôhmus, Mr J Casadevall, Mr P Van Dijk, Mr V Butkevych.*

In order to determine whether an offence qualified as 'criminal', regard had to be had first to the classification of the offence in national law, secondly, to the nature of the offence and finally, the nature and degree of severity of the penalty that the person concerned risked incurring. It was not disputed that the minor offence of which the applicant was convicted was not characterised under domestic law as 'criminal'. However, the domestic law had only a relative value. The second and third criteria were alternative and not cumulative. That did not exclude the possibility of a cumulative approach being adopted where the separate analysis of each criterion did not make it possible to reach a clear conclusion as to the existence of a 'criminal charge'. The applicant was convicted under the Minor Offences Act, which regulated minor offences against public order. The

legal rule infringed by him was directed towards all citizens and not towards a given group possessing a special status. The general character of the legal rule referred to the fact that all citizens had to ensure respect for legal rules and the rights of other citizens and defined a minor offence as a wrongful act which interfered with or caused danger to the public interest. The sentence of a fine was intended as a punishment to deter reoffending. It had a punitive character, which was the customary distinguishing feature of criminal penalties. The fact that the commission of the offence was not punishable by imprisonment and was not entered on the criminal record were not decisive of the classification of the offence for the purpose of the applicability of A 6(1). The general character of the legal provision infringed by the applicant together with the deterrent and punitive purpose of the penalty imposed on him, sufficed to show that the offence in question was, in terms of A 6, criminal in nature. Accordingly, there was no need to examine it also in the light of the third criterion. The relative lack of seriousness of the penalty at stake could not deprive an offence of its inherently criminal character. A 6(1) was therefore applicable.

In order to determine whether a body could be considered to be 'independent' of the executive it was necessary to have regard to the manner of appointment of its members and the duration of their term of office, the existence of guarantees against outside pressures and the question whether the body presented an appearance of independence. The local office and district office were charged with carrying out local State administration under the control of the government. The appointment of the heads of those bodies was controlled by the executive and their officers, whose employment contracts were governed by the provisions of the Labour Code, had the status of salaried employees. Therefore, the manner of appointment of the officers of the local and district offices together with the lack of any guarantees against outside pressures and any appearance of independence clearly showed that those bodies could not be considered to be 'independent' of the executive within the meaning of A 6(1). While entrusting the prosecution and punishment of minor offences to administrative authorities was not inconsistent with the Convention, it was to be stressed that the person concerned had to have an opportunity to challenge any decision made against him before a tribunal that offered the guarantees of A 6. In the present case, however, the applicant was unable to have the decisions of the local and district offices reviewed by an independent and impartial tribunal. There had therefore been an infringement of the applicant's right to a hearing by an independent and impartial tribunal.

The guarantees provided by A 6(3)(c) developed the notion of a fair trial laid down in A 6(1). In view of the examination of the issues arising under A 6(1) and the conclusion concerning the violation of that provision, it was unnecessary to examine this complaint.

The requirements of A 13 were less strict than, and were here absorbed by, those of A 6. Accordingly, having regard to the conclusion under A 6, the Court did not consider it necessary also to examine the case under A 13.

Non-pecuniary damages (SKK 5,000), costs and expenses (SKK 395).

Cited: AP, MP and TP v CH (29.8.1997), Bendenoun v F (24.2.1994), Campbell and Fell v UK (28.6.1984), De Cubber v B (26.10.1984), Garyfallou AEBE v GR (24.9.1997), Kamasinski v A (19.12.1989), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Lutz v D (25.8.1987), Öztürk v D (21.2.1984).

Kalaç v Turkey (1999) 27 EHRR 552 97/39

[Application lodged 13.7.1992; Commission report 27.2.1996; Court Judgment 1.7.1997]

Mr Faruk Kalaç was judge advocate in the air force. In 1990 he was serving with the rank of group captain, as the high command's director of legal affairs. By an order of 1 August 1990, the Supreme Military Council ordered the compulsory retirement of three officers, including the applicant, and 28 non-commissioned officers for breaches of discipline and scandalous conduct. The decision, which was based on the Military Personnel Act, Military Legal Service Act and Regulations on assessment of officers and non-commissioned officers, made the specific criticism, in the applicant's case, that his conduct and attitude 'revealed that he had adopted unlawful

fundamentalist opinions'. On 21 September 1990, the applicant asked the Supreme Administrative Court of the Armed Forces to set aside the order. In a judgment of 30 May 1991, the Supreme Administrative Court of the Armed Forces ruled that it did not have jurisdiction to entertain the application to set aside the order, on the ground that under A 125 of the Constitution, the decisions of the Supreme Military Council were final and not subject to judicial review. The applicant complained that he had been removed from his post as judge advocate on account of his religious convictions.

Comm found unanimously V 9.

Court unanimously dismissed the Government's preliminary objection, found NV 9.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr L-E Pettiti, Mr C Russo, Mr A Spielmann, Mr I Foighel, Sir John Freeland, Mr AB Baka, Mr D Gotchev.

The applicant's fresh complaint under A 6(1) lay outside the compass of the case as delimited by the Commission's decision on admissibility and as it was not dealt with either in that decision or in the Commission's report, it could not be considered by the Court.

The objection of failure to exhaust domestic remedies had to be dismissed because, under the Constitution, and as the Supreme Administrative Court of the Armed Forces held in its judgment of 30 May 1991, the Supreme Military Council's decision against the applicant was not subject to judicial review.

While religious freedom was primarily a matter of individual conscience, it also implied, *inter alia*, freedom to manifest one's religion not only in community with others, in public and within the circle of those whose faith one shared, but also alone and in private. A 9 listed a number of forms which manifestation of one's religion or belief might take, namely worship, teaching, practice and observance. Nevertheless, A 9 did not protect every act motivated or inspired by a religion or belief. Moreover, in exercising his freedom to manifest his religion, an individual might need to take his specific situation into account. In choosing to pursue a military career, the applicant was accepting of his own accord a system of military discipline that by its very nature implied the possibility of placing on certain of the rights and freedoms of members of the armed forces limitations incapable of being imposed on civilians. States could adopt for their armies disciplinary regulations forbidding certain types of conduct, in particular an attitude inimical to an established order reflecting the requirements of military service. It was not contested that the applicant, within the limits imposed by the requirements of military life, was able to fulfil the obligations which constituted the normal forms through which a Muslim practised his religion. The Supreme Military Council's order was, moreover, not based on the applicant's religious opinions and beliefs or the way he had performed his religious duties, but on his conduct and attitude, which according to the authorities, breached military discipline and infringed the principle of secularism. The applicant's compulsory retirement did not amount to an interference with the right guaranteed by A 9 since it was not prompted by the way he manifested his religion.

Cited: Engel and Others v NL (8.6.1976), Hussain v UK (21.2.1996), Kokkinakis v GR (25.5.1993), Scollo v I (28.9.1995).

Kamasinski v Austria (1991) 13 EHRR 36 89/23

[Application lodged 6.11.1981; Commission report 5.5.1988; Court Judgment 19.12.1989]

Theodore Kamasinski, an American citizen, was arrested in Austria on 4 October 1980 for fraud and misappropriation. He complained about aspects of the proceedings, in particular the inadequacy of legal representation (including non-attendance of lawyer at a hearing, brevity of pre-trial visits to prison, failure to keep him informed of prosecution case and performance at trial) and inadequacy of interpretation facilities. After the trial, he was found guilty and sentenced to 18 months' imprisonment by the Regional Court. He appealed, pleading nullity (based on inadequate representation, insufficiency and inadequacy of interpretation facilities, court failure to allow investigation of bankers, insufficiently reasoned judgment). The Supreme Court refused the

applicant leave to appear in person. After a hearing, at which the applicant was represented by Counsel, the Supreme Court dismissed his appeal.

Comm found as regards Regional Court proceedings by majority (11–6) NV 6(3)(a) to be informed, in a language he understood and in detail, of the accusation against him, (14–3) NV 6(3)(b) to have adequate facilities for the preparation of his defence, unanimously NV 6(3)(c) legal assistance, unanimously NV 6(3)(d) to examine witnesses, (15 with 2 abstentions) NV 6(3)(e) to have the assistance of an interpreter, (11–6) NV 6(1) a fair hearing, unanimously NV 6(2), found as regards the Supreme Court unanimously V 6(1) regarding plea of nullity proceedings, (10–1 with 6 abstentions) V 14+6(1) and V 14+6(3)(c) regarding right to defend himself in person, unanimously as regards case as a whole, no separate issue under 13.

Court unanimously rejected Government's preliminary objection, found unanimously V 6(1) (on plea of nullity), by majority (6–1) NV 14+6(1) and NV 14+6(3)(c) (on refusal to allow leave to appear), unanimously no other violation of 6 or 6+14 and not necessary to examine 13.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr J Pinheiro Farinha, Sir Vincent Evans, Mr R Macdonald, Mr J De Meyer (so), Mr JA Carrillo Salcedo.

Preliminary objection of non-exhaustion rejected as out of time.

The Court recalled its previous case-law. The Convention was intended to guarantee rights that were practical and effective. Nomination alone did not ensure effective assistance from the lawyer appointed for legal aid purposes. A State could not be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes. It followed from the independence of the legal profession that the conduct of the defence was essentially a matter between the defendant and his counsel, whether appointed under a legal aid scheme or privately financed. National authorities were required under A 6(3)(c) to intervene only if a failure by legal aid counsel to provide effective representation was manifest or sufficiently brought to their attention in some other way. There was no indication in the pre-trial stage that the authorities had cause to intervene as concerned the applicant's legal representation. At the trial, the applicant's counsel asked the trial court to discharge him from his functions as defence counsel but his request was refused. However, on the evidence before the Court, the decision at the trial not to discharge defence counsel did not deprive the applicant of the effective assistance of counsel. There had therefore been no breach of A 6(1) and 6(3)(c) in this respect.

The right in A 6(3)(e) to the free assistance of an interpreter applied not only to oral statements made at the trial hearing, but also to documentary material and the pre-trial proceedings. However, it did not require a written translation of all items of written evidence or official documents in the procedure. The interpretation assistance provided had to be such as to enable the defendant to have knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events. The obligation of the competent authorities was not limited to the appointment of an interpreter but, if put on notice, might also extend to a degree of subsequent control over the adequacy of the interpretation provided. There was no evidence that the requirements of this provision were not met during the pre-trial questioning by the police and the investigating judges. As a result of the oral explanations given to him in English, the applicant had been sufficiently informed of 'the nature and cause of the accusation against him', for the purposes of A 6(3)(a). The absence of a written translation of the indictment neither prevented him from defending himself nor denied him a fair trial. Accordingly, no breach of A 6 in that respect. The interpretation at the trial was not simultaneous, but consecutive and summarising. In particular, questions put to the witnesses were not interpreted. That in itself did not suffice to establish a violation of A 6(3)(d) or 6(3)(e) but was one of the factors to be considered. For the purposes of A 6(3)(d), the applicant had to be identified with his counsel and no liability could be attributed to the respondent State in circumstances where counsel had consented to a witness statement being read. Provisions which allowed civil claimants to be joined to criminal proceedings to recover compensation in the event of conviction were not inconsistent with the principles of a fair trial.

Regarding the nullity proceedings, it was an inherent part of a fair hearing in criminal proceedings that the defendant should be given the opportunity to comment on evidence regarding disputed

facts even if they related to procedure rather than the alleged offence. The presiding judge had undertaken the inquiry into the adequacy of interpretation at trial. The Supreme Court failed to observe one of the principal guarantees of judicial procedures, namely, that contending parties should be heard. The right to a fair trial extended to appeal proceedings. However, the personal attendance of the defendant did not take on the same crucial significance for an appeal hearing as for a trial. National authorities enjoyed a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justified a different treatment in law. Under Austrian law, appeals did not involve retrial of evidence or assessment of guilt or innocence, the applicant had been represented by counsel at the appeal, the Supreme Court did not have power to impose a more severe sentence than that of the first instance court. The decision to refuse leave to appear therefore did not fall outside the State's margin of appreciation. Even if he was in a comparable position to appellants at liberty, the national authorities had good grounds to believe there was objective and reasonable justification for difference in treatment regarding attendance.

The arguments relied on under A 13 were essentially the same as those adduced in the context of A 6. The requirements of A 13 were less strict than, and were here absorbed by, those of A 6. It was not therefore necessary to examine the case under A 13.

Present judgment constituted sufficient just satisfaction for A 50. Costs and expenses (USD 5,000).

Cited: Artico v I (13.5.1980) Brogan and Others v UK (30.5.1989), Colozza v I (12.2.1985), Delcourt v B (17.1.1970), Dudgeon v UK (24.2.1983), Ekbatani v S (26.5.1988), Feldbrugge v NL (29.5.1986), H v F (24.10.1989), Allan Jacobsson v S (25.10.1989), Kostovski v NL (20.11.1989), Luedicke, Belkacem and Koç v D (28.11.1978), Marckx v B (13.6.1979), Monnell and Morris v UK (2.3.1987), Olsson v S (24.3.1988), Rasmussen v D (28.11.1984), Soering v UK (7.7.1989).

Kampanis v Greece (1996) 21 EHRR 43 95/23

[Application lodged 7.3.1991; Commission report 11.1.1994; Court Judgment 13.7.1995]

Mr Stamatios Kampanis was a physicist by training. In November 1988, a criminal investigation was opened in connection with alleged offences of misappropriation, fraud and making false statements. He was remanded in custody from 21 December. His applications for release on bail were refused by the Court of Appeal. The Indictment Division heard the application for the prolongation of the applicant's detention on remand in the absence of the applicant. His appeals were dismissed by the Court of Cassation. Following trial, he was found guilty and sentenced to imprisonment with a deduction for the period of two years, eleven months and three days he had spent in detention on remand. He complained that his detention on remand was unlawful, had exceeded a 'reasonable time' and that there had been a failure to observe the principle of equality of arms before the Indictment Division of the Court of Appeal, which had infringed his right to take proceedings before the court.

Comm found V 5(4), but only in the proceedings concerning the application for release made on 30 January 1991.

Court found unanimously V 5(4) as regards the proceedings relating to the application for release of 30 January 1991, NV 5(4) as regards the proceedings relating to the application lodged on 18 December 1990 during the committal proceedings and the application for release made on 29 March 1991.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr A Spielmann, Mr N Valticos, Mr AB Baka, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr B Repik, Mr P Kûris.

According to the Court's case-law, the possibility for a prisoner to be heard either in person or, where necessary, through some form of representation featured in certain instances among the fundamental guarantees of procedure applied in matters of deprivation of liberty. That was the case in particular where the prisoner's appearance could be regarded as a means of ensuring respect for equality of arms, one of the main safeguards inherent in judicial proceedings conducted in conformity with the Convention. Regarding the application of 18 December 1990, the applicant requested leave to appear on 18 December 1990, although the prosecutor had been heard on 17 September 1990. As he did not comply with the time limit laid down by the relevant national law

on this question, he could not complain of an infringement of the principle of equality of arms in connection with those proceedings. Regarding the application of 30 January 1991, the applicant had lodged his application for leave to appear on 30 January 1991, although the investigation had been closed since 11 June 1990 and the file had been before the Indictment Division since 5 September 1990. The prosecutor essentially represented the interests of society in criminal proceedings. In connection with the application in issue, his task was to suggest to the Indictment Division either that the accused's detention be prolonged or that he be released. The applicant filed a number of applications for release and a number of pleadings in support of them, both during the investigation and even after it had been closed. When he lodged the application in question, the applicant had been in prison for 25 months and 10 days pursuant to three successive orders, each of which fixed a different starting-point for the calculation of his detention on remand. In that application he criticised, *inter alia*, the incompatibility of the length of his detention with the Constitution and the Convention. In the light of those considerations, to ensure equality of arms it was necessary to give the applicant the opportunity to appear at the same time as the prosecutor so that he could reply to his arguments. As the applicant was not afforded an adequate opportunity to participate in proceedings whose outcome determined whether his detention was to continue or to be terminated, the Greek rules in force at the material time, as applied in the instant case, did not satisfy the requirements of A 5(4). Regarding the application of 29 March 1991, the Indictment Division of the Court of Appeal gave the applicant and his lawyer leave to appear before it on 16 April 1991 while the prosecutor was present and gave them until 23 April to file further observations. No breach of A 5(4) had been established.

Just satisfaction for non-pecuniary damage. Costs and expenses (GRD 1,400,000).

Cited: Kraska v CH (19.4.1993), Sanchez-Reisse v CH (21.10.1986).

Karakaya v France 94/24

[Application lodged 30.9.1993; Commission report 9.3.1994; Court Judgment 26.8.1994]

Mr Mustafa Karakaya, the applicant, was a haemophiliac. He had numerous blood transfusions and became infected with the HIV virus. On 29 December 1989, the applicant submitted a preliminary claim for compensation to the Minister for Solidarity, Health and Social Protection, maintaining that he had been infected as a result of the Minister's negligent delay in implementing appropriate rules for the supply of blood products. His claim was rejected and he appealed. On 2 March 1994, the Administrative Court delivered a judgment finding for the applicant. The judgment was served on the applicant on 5 April 1994. Earlier, in April 1992, the applicant submitted a claim to the Compensation Fund set up by statute. In May 1992, the Fund offered him monetary compensation, which he accepted. The applicant alleged that his case had not been heard within a reasonable time as required by A 6(1).

Comm found unanimously V 6(1).

Court held unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr L-E Pettiti, Mrs E Palm, Mr I Foighel, Mr AN Loizou, Mr JM Morenilla, Mr AB Baka, Mr D Gotchev, Mr P Jambrek.

It was not disputed that A 6(1) was applicable. The period to be taken into consideration began on 29 December 1989, when the applicant lodged his preliminary claim for compensation with the Minister for Solidarity, Health and Social Protection, and ended on 5 April 1994, when the Paris Administrative Court's judgment was served: a period of four years and three months. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances and having regard to the criteria laid down in case-law, in particular the complexity of the case and the conduct of the parties and what was at stake for the applicant in the litigation. Even if the case was of some complexity, the information needed to determine the State's liability had been available for a long time. The establishment of a special fund, however laudable, did not have the effect of speeding up either main or supplementary proceedings in the courts dealing with

applications from infected persons. Despite the Fund's award of money in June 1992 and February 1993, when a reasonable time had already been exceeded, what was at stake in the proceedings in the administrative courts remained of great importance both in non-pecuniary terms and in terms of additional compensation. What was at stake in the proceedings in issue was of crucial importance to the applicant in view of his incurable disease and his limited life expectancy. He was infected in 1984 and was classified in 1992 as having reached the last but one stage of infection. Exceptional expedition was called for in this instance, notwithstanding the number of cases which were pending, in particular as the facts of the controversy had been known to the Government for several years and its seriousness must have been obvious to them. The Administrative Court did not use its powers to expedite the proceedings, although it was aware of case-law and of the applicant's state of health. Several periods were abnormally long: the 22 months between the application to the Versailles Administrative Court and the first hearing; the year between the first and second interlocutory judgments; the four months taken to serve the judgment of 22 April 1992; and the five months taken to serve the judgment of 14 April 1993. A period of more than four years to obtain a judgment in first instance proceedings far exceeded a reasonable time in a case of this nature. Such a reasonable time had been exceeded even before the applicant was paid compensation by the Fund in June 1992 and February 1993. After the latter date, what was at stake in the proceedings, in both pecuniary and non-pecuniary terms, continued to be of great importance to the applicant. There had been a violation of A 6(1).

Damages (FF 200,000), costs and expenses (FF 58,114).

Cited: Vallée v France (26.4.1994), X v France (31.3.1992).

Karatas v Turkey 99/33

[Application lodged 27.8.1993; Commission report 11.12.1997; Court Judgment 8.7.1999]

Mr Hüseyin Karatas, a Kurdish Turk, worked as a psychologist. In November 1991, he published an anthology of poems in Istanbul. On 8 January 1992, the Public Prosecutor accused the applicant and his publisher of disseminating propaganda against the 'indivisible unity of the State'. On 22 February 1993, the National Security Court, composed of three judges, including a military judge, found the applicant guilty of the offences charged and sentenced him to one year, eight months' imprisonment and a fine of TRL 41,666,666. It also ordered confiscation of the publications concerned. The Court of Cassation dismissed his appeal on 1 July 1993. On 30 October 1995, a new law came into force which, *inter alia*, reduced the length of prison sentences that could be imposed while increasing the level of fines. Consequently, the National Security Court reviewed the applicant's case on the merits. In a judgment of 19 April 1996, it reduced the applicant's prison sentence to one year, one month and ten days but increased the fine to TRL 111,111,110. On an appeal by the applicant, the Court of Cassation upheld that decision on 1 December 1997. He complained that he had been denied a fair trial and that his conviction violated A 9 and 10.

Comm found by majority (26–6) V 10, considered jointly with A 9, (31–1) V 6(1).

Court found by majority (12–5) V 10, (16-1) V 6(1).

Judges: Mr L Wildhaber (declaration/jpd), President, Mrs E Palm (jc), Mr A Pastor Ridruejo (jpd), Mr G Bonello (c), Mr J Makarczyk, Mr P Kûris, Mr J-P Costa (jpd), Mrs F Tulkens (jc), Mrs V Stráznická, Mr M Fischbach (jc), Mr V Butkevych, Mr J Casadevall (jc), Mrs HS Greve (jc), Mr A. Baka (jpd), Mr R Maruste, Mr K Traja, Mr F Gölcüklü (d), ad hoc judge.

Before the Court, the applicant raised a new complaint under A 7. As he did not raise that complaint at the admissibility stage of the procedure before the Commission, the Court had no jurisdiction to examine it.

The applicant's conviction amounted to an interference with the exercise of his right to freedom of expression. Such an interference breached A 10 unless it satisfied the requirements of the second paragraph of A 10. Since the applicant's conviction was based on s 8 of the Law No 3713, the interference could be regarded as prescribed by law. Having regard to the sensitivity of the security situation in south-east Turkey and to the need for the authorities to be alert to acts capable of

fuelling additional violence, the measures taken against the applicant could be said to have been in furtherance of certain of the aims of protection of national security and territorial integrity and the prevention of disorder and crime. The Court recalled its previous case-law. A 10 included freedom of artistic expression, which afforded the opportunity to take part in the public exchange of cultural, political and social information and ideas of all kinds In the present case, the poems had an obvious political dimension. There was little scope under A 10(2) for restrictions on political speech or on debate on matters of public interest. The applicant was a private individual who expressed his views through poetry rather than through the mass media, a fact which limited their potential impact on national security, public order and territorial integrity to a substantial degree. Thus, even though some of the passages from the poems appeared very aggressive in tone and to call for the use of violence, the Court considered that the fact that they were artistic in nature and of limited impact made them less a call to an uprising than an expression of deep distress in the face of a difficult political situation. The applicant was convicted by the Ankara National Security Court not so much for having incited violence, but rather for having disseminated separatist propaganda by referring to a particular region of Turkey as 'Kurdistan' and for having glorified the insurrectionary movements in that region. The Court was struck by the severity of the penalty imposed on the applicant and the persistence of the prosecution's efforts to secure his conviction. The nature and severity of penalties imposed were factors to be taken into account when assessing the proportionality of the interference. The applicant's conviction was disproportionate to the aims pursued and accordingly not necessary in a democratic society. There had therefore been a violation of A 10 of the Convention.

The Court recalled its previous judgments where it had found that the status of military judges sitting as members of National Security Courts did provide some guarantees of independence and impartiality. However, certain aspects of those judges' status made their independence and impartiality questionable: for example, the fact that they were servicemen who still belonged to the army, which in turn took its orders from the executive; the fact that they remained subject to military discipline; and the fact that decisions pertaining to their appointment were to a great extent taken by the administrative authorities and the army. It was understandable that the applicant, prosecuted in a National Security Court for disseminating propaganda aimed at undermining the territorial integrity of the State and national unity, should have been apprehensive about being tried by a bench which included a regular army officer, who was a member of the Military Legal Service. On that account, he could legitimately fear that the Istanbul National Security Court might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. In other words, the applicant's fears as to that court's lack of independence and impartiality could be regarded as objectively justified. The proceedings in the Court of Cassation were not able to dispel these fears since that court did not have full jurisdiction. There had therefore been a breach of A 6(1).

Non-pecuniary damage (by majority (16–1) FF 40,000), costs and expenses (by majority (16–1) FF 10,446.45).

Cited: Çiraklar v TR (28.10.1998), De Haes and Gijsels v B (24.2.1997), Findlay v UK (25.2.1997), Fressoz and Roire v F (21.1.1999), Guerra and Others v I (19.2.1998), Incal v TR (9.6.1998), Müller and Others v CH (24.5.1988), Wingrove v UK (25.11.1996), Zana v TR (25.11.1997).

Karlheinz Schmidt v Germany (1994) 18 EHRR 513 94/21

[Application lodged 11.8.1987; Commission report 14.1.1993; Court Judgment 18.7.1994]

Mr Karlheinz Schmidt was a German national resident in Baden-Württemberg. He was required by the municipal authorities pay a fire service levy of DM 75 for 1982 under the Land Fire Brigades Act, which required all male adults residing in the area to pay the contribution. The applicant's appeal to the administrative authority of the district of Lake Constance was rejected. His subsequent appeals to the Administrative Court, the Administrative Appeals Court, Federal Administrative Court and the Federal Constitutional Court were all rejected. He complained of a

breach of the principle of sexual equality in so far as in the Land of Baden-Württemberg, only men were subject to the obligation to serve as firemen or pay a financial contribution.

Comm found by majority (14–3) V 14+P1A1 and 14+4(3)(d).

Court found by majority (6–3) V 14+4(3)(d), unanimously not necessary to examine 14+P1A1.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr F Matscher, Mr A Spielmann (jd), Mrs E Palm, Mr JM Morenilla (c), Sir John Freeland, Mr G Mifsud Bonnici (d), Mr D Gotchev (jd).

A 14 complemented the other substantive provisions of the Convention and the Protocols. It had no independent existence since it had effect solely in relation to 'the enjoyment of the rights and freedoms' safeguarded by those provisions. Although the application of A 14 did not presuppose a breach of those provisions, there could be no room for its application unless the facts at issue fell within the ambit of one or more of the latter. A 4(3) was not intended to 'limit' the exercise of the right guaranteed by A 4(2), but to 'delimit' the very content of that right, for it formed a whole with para 2 and indicated what the term 'forced or compulsory labour' should not include. That being so, A 4(3) served as an aid to the interpretation of A 4(2). The four sub-paragraphs of A 4(3), notwithstanding their diversity, were grounded on the governing ideas of the general interest, social solidarity and what was normal in the ordinary course of affairs. The compulsory fire service was one of the 'normal civic obligations' envisaged in A 4(3)(d). The financial contribution which was payable in lieu of service was, according to the Federal Constitutional Court, a 'compensatory charge'. Therefore, on account of its close links with the obligation to serve, the obligation to pay also fell within the scope of A 4(3)(d). Therefore, A14 and 4(3)(d) was applicable.

Under A 14, a difference of treatment was discriminatory if it had no objective and reasonable justification, that is, if it did not pursue a legitimate aim or if there was not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Moreover, the Contracting States enjoyed a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justified a different treatment. However, very weighty reasons would have to be put forward before the Court could regard a difference of treatment based exclusively on the ground of sex as compatible with the Convention. Some German Länder did not impose different obligations for the two sexes in this field, and even in Baden-Württemberg, women were accepted for voluntary service in the fire brigade. Irrespective of whether or not there could nowadays exist any justification for treating men and women differently as regards compulsory service in the fire brigade, what was finally decisive in the present case was that the obligation to perform such service was exclusively one of law and theory. In view of the continuing existence of a sufficient number of volunteers, no male person was in practice obliged to serve in a fire brigade. The financial contribution had, not in law but in fact, lost its compensatory character and had become the only effective duty. In the imposition of a financial burden such as this, a difference of treatment on the ground of sex could not be justified. There had accordingly been a violation of A 14 and 4(3)(d).

In view of the above conclusions, it was not necessary to examine the complaint under 14 and P1A1.

Damages and costs and expenses (by majority (8–1) DM 620).

Cited: Abdulaziz, Cabales and Balkandali v UK (28.5.1985), Burghartz v CH (22.2.1994), Inze v A (28.10.1987), Schuler-Zgraggen v CH (24.6.1993), Van der Mussele v B (23.11.1983).

Katikaridis and Others v Greece 96/47

[Application lodged 24.10.1991; Commission report 28.6.1995; Court Judgment 15.11.1996 (merits), 31.3.1998 (A 50)]

On 28 July 1981, the State expropriated part of each of the properties belonging to the applicants for the purpose of constructing a flyover. Law No 653/1977 created a presumption that the owners of properties on major roads benefit when such roads were widened and provided that they had to contribute accordingly to the cost of any expropriation. The first two applicants, Mr Savvas

Katikaridis and Mr Nicolaos Katikaridis, sold car tyres from their premises; the third applicant, Mr Tormanidis, owned a service station, and the fourth applicant, Agrotikes Syneteristikes Ekdosis was a publishing and printing firm, they all had some of their property expropriated. By a judgment of 8 December 1983, the Salonika Court of Appeal determined the final amount for compensation calculations. Because of the legal presumption operating, the State did not compensate the applicants for a 15 metre wide area. On 20 July 1984, the applicants applied to the Salonika Court of First Instance seeking payment of the compensation. On 27 June 1985, the court dismissed the claim. Their appeal to the Salonika Court of Appeal was successful. On 30 September 1987, the State lodged an appeal on points of law. The Third Division of the Court of Cassation referred the case to the Fourth Division of the Court of Cassation and eventually the case was considered by the full Court of Cassation (32 judges), which gave judgment on 6 June 1991. Although the case was subsequently sent back to the Fourth Division so that it could rule on the merits of the applicants' action, the applicants did not resume the proceedings as the action was bound to fail after the Court of Cassation's judgment. The applicants complained about the length of the proceedings and that the presumption created by the law and the fact that the Court of Cassation had held that it was an irrebuttable one had prevented them from obtaining in the courts the compensation to which they were entitled by virtue of a final court decision following the expropriation of part of their properties.

Comm found unanimously V 6(1), V P1A1.

Court unanimously dismissed the Government's preliminary objection, found NV 6(1), V P1A1.

Judges (merits): Mr R Ryssdal, President, Mr F Gölcüklü, Mr L-E Pettiti, Mr N Valticos, Mrs E Palm, Mr I Foighel, Mr AB Baka, Mr B Repik, Mr P Kûris.

Judges (A 50): Mr F Gölcüklü, President, Mr L-E Pettiti, Mr C Russo, Mr N Valticos, Mrs E Palm, Mr I Foighel, Mr AB Baka, Mr B Repik, Mr P Kûris.

A 26 had to be applied with some degree of flexibility and without excessive formalism. It was sufficient that the complaints intended to be made subsequently before the Convention organs should have been raised at least in substance and in compliance with the formal requirements and time limits laid down in domestic law. In addition, the only remedies A 26 required to be exhausted were those that were available and sufficient and related to the breaches alleged. In the proceedings before the full court of the Court of Cassation, the applicants expressly referred to A 6 and P1A1. The proceedings before the Fourth Division of the Court of Cassation would have had no prospect of success after the full court's judgment of 6 June 1991. Therefore, the Government's preliminary objection of non-exhaustion was dismissed.

A 6: The relevant period began on 20 November 1985, when the declaration whereby Greece accepted the right of individual petition took effect. The proceedings ended on 6 June 1991, when the full court of the Court of Cassation delivered its judgment. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the parties. The proceedings in the Salonika Court of First Instance and the Salonika Court of Appeal were not open to criticism. The length of proceedings in the Court of Cassation of just over three years resulted from the fact that the matter came before three differently composed benches of the court in succession and was explained by the conflict between the judgments delivered by the Third and Fourth Divisions, which the full court had to resolve. Having regard to the circumstances of the case, and especially its complexity, there had been no violation of A 6(1).

The applicants had been deprived of their property in accordance with the provisions of legislation, so that improvements could be made to a major road, the expropriation therefore pursued a lawful aim in the public interest. When compensation due to the owners of properties expropriated for roadworks to be carried out was being assessed, it was legitimate to take into account the benefit derived from the works by adjoining owners. In the system applied in the present case, the compensation was in every case reduced by an amount equal to the value of an area 15 metres wide, without the owners concerned being allowed to argue that in reality, the effect

of the works concerned either had been of no or less benefit to them or had caused them to sustain varying degrees of loss. That system, which was too inflexible, took no account of the diversity of situations, ignored the differences due in particular to the nature of the works, and the layout of the site was manifestly without reasonable foundation. In the case of a large number of owners, it necessarily upset the fair balance between the protection of the right to property and the requirements of the general interest. In the present case, the applicants had had to bear an individual and excessive burden which could have been rendered legitimate only if they had had the possibility of obtaining payment of the compensation in question. There had therefore been a violation of P1A1.

Costs and expenses (GRD 4,000,000). FS (Government deposited agreed sum in bank) therefore A 50 case SO.

Cited: Ausiello v I (21.5.1996), Castells v E (23.4.1992), James and Others v UK (21.2.1986), Manoussakis and Others v GR (26.9.1996), Mellacher and Others v A (19.12.1989), Stran Greek Refineries and Stratis Andreadis v GR (9.12.1994).

Katte Klitsche de la Grange v Italy (1995) 19 EHRR 368 94/33

[Application lodged 10.11.1986; Commission report 6.4.1993; Court Judgment 27.10.1994]

Mr Adolfo Katte Klitsche de la Grange, the applicant, was a lawyer who lived in Rome until his death on 31 December 1989. His widow, Mrs Cocchi, and her two sons continued the proceedings. The applicant owned a large portion of Cibona Park, consisting of woodland, arable land, unproductive land and grassland. On 9 July 1966, Tolfa District Council unanimously approved a plan for the development of the park. On 28 June 1969, the District Council adopted a land-use plan, which excluded part of the applicant's land from the area intended for 'residential construction'. The applicant appealed to the Lazio Regional Administrative Court, which on 14 July 1976 annulled the plan in respect of the applicant's property. On an appeal by Tolfa District Council, the Consiglio di Stato upheld the lower court's decision by a judgment of 14 February 1978. Further proceedings were commenced for the enforcement of the judgment of July 1976 of the Regional Administrative Court. The applicant also instituted proceedings for compensation for damages deriving from the fact that an unlawful measure, the land-use plan, had unfairly deprived him of the right to build on a part of Cibona Park. The Rome District Court dismissed his action on 1 March 1982 and his appeals to the Court of Appeal and to the Court of Cassation were dismissed. He complained of an interference with his possessions on account of the prohibition on building imposed in respect of his land and the lack of compensation for the damage which he had sustained. He also complained of the length of the proceedings.

Comm found by majority (8–3) V P1A1, unanimously V 6(1).

Court unanimously dismissed the Government's preliminary objection, found NV P1A1, NV 6(1).

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr C Russo, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi, Sir John Freeland, Mr J Makarczyk.

The only remedies that A 26 required to be exhausted were those that were available and sufficient and related to the breaches alleged. The applicant's complaint did not relate to the Tolfa District Council's refusal to grant him permission to build, but to the restrictions imposed on the exercise of his right of property by the 1969 land-use plan. The remedy relied on by the Government (through the mayor) could not therefore be taken into account. The objection of non-exhaustion was therefore unfounded.

The conclusion of an agreement of the kind in issue in the present case between a private individual and the authorities had no effect on the powers of those authorities in the planning sphere. The mere approval of the land-use plan was sufficient to restrict the applicant's exercise of his right to the peaceful enjoyment of his possessions. The dispute fell to be dealt with under the first sentence of the first paragraph of P1A1, since it did not involve a deprivation of property within the meaning of the second sentence of the first paragraph or control of the use of property as envisaged in the second paragraph. There had been an interference with the applicant's right of

ownership. The development agreement was valid again following the court proceedings and the applicant could have applied to the Standing Committee on Agriculture, Forestry and the Upland Economy for the authorisations necessary to continue with the housing scheme as the District Council had not sought a stay of execution in its notice of appeal to the Consiglio di Stato. The applicant did not take the appropriate steps he could have taken once the plan had been annulled by the Regional Administrative Court. There was never an absolute prohibition on building on all the applicant's land. The applicant's property had not been the subject of a *de facto* expropriation and he could not therefore claim compensation for violation of a right. The balance between the interests of the community and those of the applicant was not upset. There had been no breach of P1A1.

The period to be taken into consideration began on 9 May 1978 when the applicant instituted proceedings against the Tolfa District Council and the Lazio Regional Authority in the Rome District Court and ended on 13 May 1986, the date on which the Court of Cassation's judgment was deposited with the registry, a little over eight years. The reasonableness of the length of proceedings had to be determined in the light of the circumstances of the case and with reference to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the parties. The case was complex as regards both the facts and the law. In requiring cases to be heard within a reasonable time, the Convention underlined the importance of administering justice without delays which might jeopardise its effectiveness and credibility. Although there were three periods which appeared abnormal, having regard to all the circumstances of the case and the complexity of the facts and the legal issues involved, those periods did not warrant the conclusion that the length of the proceedings was excessive, in particular since the decisions, which concerned such a sensitive area as town planning and the protection of the environment, had important repercussions on the Italian case-law concerning the distinction between a right and a legitimate interest. There had not been a violation of A 6 (1).

Cited: Brozicek v I (19.12.1989), Monnet v F (27.10.1993), Sporrong and Lönnroth v S (23.9.1982).

Kaya v Turkey (1999) 28 EHRR 1 98/11

[Application lodged 23.9.1993; Commission report 24.10.1996; Court Judgment 19.2.1998]

Mr Mehmet Kaya, was a farmer living in the south-eastern Turkey. His brother, Mr Abdülmenaf Kaya, who also lived and farmed in the same area before his death, was killed on 25 March 1993 in the vicinity of the village in circumstances which were disputed. The application was lodged by the applicant on his own behalf and on behalf of his deceased brother and the widow and seven children of the deceased. The applicant alleged that his brother was deliberately killed by the security forces on 25 March 1993. The Government contended that Mr Abdülmenaf Kaya was killed in a gun battle between members of the security forces and a group of terrorists who had engaged the security forces on the day in question. They claimed that the applicant's brother was among the assailants. The applicant complained that his brother was unlawfully killed by the security forces on 25 March 1993 and that the circumstances surrounding his killing had not been adequately investigated by the authorities.

Comm found by majority (27–3) V 2 on account of the inadequacy of the investigation conducted by the authorities into the death of the applicant's brother, unanimously NV 3, by majority (27–3) V 6, (28–2) no separate issue arose under 13, unanimously NV 14.

Court by majority (8–1) dismissed the Government's preliminary objection concerning the applicant's lack of standing, found unanimously NV 2 in respect of applicant's brother being unlawfully killed, by majority (8–1) V 2 on account of the failure to conduct an effective investigation into the circumstances surrounding the death of the applicant's brother, unanimously not necessary to consider the applicant's complaint under 2 regarding the alleged lack of protection in domestic law of the right to life, by majority (8–1) V 13, unanimously not necessary to consider the applicant's complaint under 6(1), unanimously NV 14+2, 14+6, 14+13.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü (d), Mr C Russo, Mr J M Morenilla, Mr K Jungwiert, Mr P Kûris, Mr E Levits, Mr J Casadevall.

The Government's challenge was not raised at the admissibility stage, or even at any subsequent stage of the proceedings before the Commission, therefore they were estopped from disputing before the Court either the validity of the applicant's application to the Commission or his standing as an applicant. The Government's preliminary objection was accordingly dismissed.

The Court was confronted with fundamentally divergent accounts of how the applicant's brother died. The establishment and verification of the facts were primarily a matter for the Commission. There were no exceptional circumstances which would compel it to reach a conclusion different from that of the Commission. The Commission's fact-finding was considerably impaired on account of the failure of the applicant and eyewitnesses to testify before the delegates. Having regard to the Commission's fact-finding and to its own careful examination of the evidence, the Court considered that there was an insufficient factual and evidentiary basis on which to conclude that the applicant's brother was, beyond reasonable doubt, intentionally killed by the security forces in the circumstances alleged by the applicant.

The general legal prohibition on arbitrary killing by agents of the State contained in A 2 would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities. The obligation to protect the right to life required by implication that there should be some form of effective official investigation when individuals had been killed as a result of the use of force by, inter alios, agents of the State. The present case was not a clear-cut case of lawful killing by the security forces so that the authorities were dispensed from having to comply with anything other than minimum formalities. The official account of the events was impaired through the absence of corroborating evidence. The minimum formalities relied on by the Government were in themselves seriously deficient even for the purposes of an alleged open and shut case of justified killing by members of the security forces. The investigation, autopsy report, on-the-spot post-mortem and forensic examination were not adequate. The public prosecutor proceeded on the basis that the deceased was a terrorist killed in an armed clash with the security forces and that was never tested against any other evidence. Neither the prevalence of violent armed clashes nor the high incidence of fatalities could displace the obligation under A 2 to ensure that an effective, independent investigation was conducted into deaths arising out of clashes involving the security forces, more so in cases such as the present where the circumstances were in many respects unclear. The authorities failed to carry out an effective investigation into the circumstances surrounding the death of the applicant's brother. There had accordingly been a violation of A 2 in that respect.

It was not necessary to examine the complaint of an alleged lack of protection in domestic law of the right to life having regard to the finding that the authorities were in breach of A 2 on account of their failure to carry out an effective investigation into the killing of the applicant's brother.

A 6(1) applied to a civil claim for compensation by the near relatives of a person who had been killed by agents of the State. The applicant did not at any stage pursue a compensation claim before a civil or administrative court. It was not possible for the Court to determine whether the domestic courts would have been able to adjudicate on the applicant's claim had he, for example, brought a tort action against individual members of the security forces. The complaint under A 6(1) was inextricably bound up with the more general complaint concerning the manner in which the investigating authorities treated the death of his brother and the repercussions which this had on access to effective remedies which would help redress the grievances which he and the deceased's family harboured as a result of the killing and accordingly it was appropriate to examine it under A 13.

Where relatives had an arguable claim that the victim had been unlawfully killed by agents of the State, the notion of an effective remedy for the purposes of A 13 entailed, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the relatives to the investigatory procedure. Seen in those terms the requirements of A 13 were broader than a Contracting State's procedural obligation under A 2 to conduct an effective investigation. In the case at issue, the relatives had arguable grounds for claiming that Abdülmenaf

Kaya was unlawfully killed by the security forces. The Court had concluded that it had not been established beyond reasonable doubt that the deceased was indeed unlawfully killed. Nevertheless, the fact that the applicant's allegations were not ultimately substantiated did not prevent his claim from being an arguable one for the purposes of A 13 of the Convention. Accordingly, the Court's conclusion on the merits did not dispense with the requirement to conduct an effective investigation into the substance of the allegation. There were serious deficiencies of the autopsy and forensic examination conducted at the scene as well as a failure of the investigating authorities to consider seriously any alternative options which may have explained the death. Having regard to the absence of any effective investigation into the circumstances of the killing, it had to be concluded that the applicant and the next-of-kin were on that account denied an effective remedy against the authorities in respect of the death of Abdülmenaf Kaya, in violation of A 13, and thereby access to any other available remedies at their disposal, including a claim for compensation. There had accordingly been a breach of A 13.

The applicant had not produced any evidence which could ground a violation under A 14.

The evidence assembled by the Commission was insufficient to allow the Court to reach a conclusion on the existence of any administrative practice of the violation of any of the Articles relied on by the applicant.

Non-pecuniary damage (by majority (8–1) GBP 10,000 to the surviving widow and children of Abdülmenaf Kaya), costs and expenses (unanimously to applicant GBP 17,000).

Cited: Aksoy v TR (18.12.1996), Aydin v TR (25.9.1997), Boyle and Rice v UK (27.4.1988), McCann and Others v UK (27.9.1995), Mentes v TR (28.11.1997).

Kaya, Mahmut v Turkey 00/110

[Application lodged 13.8.1993; Court Judgment 28.3.2000]

Dr Hasan Kaya, the applicant's brother, practised medicine in south-east Turkey. His friend Metin Can was a lawyer and President of a Human Rights Association, also in the south-east. In February 1993, they had gone to see and treat a wounded member of the PKK and failed to return. A few days later they were found dead. Their hands had been bound and they had been shot in the head. They had previously said that they believed they were under surveillance and that their lives were at risk. The applicant's father lodged several petitions with the public prosecutor. Unsuccessful attempts were made to apprehend the suspects and the file was transferred on several occasions to different prosecutors on jurisdictional grounds.

Court found by majority (6–1) V 2 regarding failure to protect life, unanimously V 2 regarding failure to conduct an effective investigation, by majority (6–1) V 3, V 13, unanimously not necessary to A 14.

Judges: Mrs E Palm, President, Mr J Casadevall, Mr L Ferrari Bravo, Mr B Zupancic, Mrs W Thomassen, Mr R Maruste, Mr F Gölcüklü (pd), ad hoc judge.

The Court accepted the facts as established by the Commission. In the present case it had not been established beyond reasonable doubt that any State agent was involved in the killing of Hasan Kaya; however, from the circumstances of the case, strong inferences could be drawn that the perpetrators of the murder were known to the authorities. The question to be determined was whether in the circumstances, the authorities failed in a positive obligation to protect Hasan Kaya from a risk to his life. At the time, there were rumours of contra-guerrilla elements and a significant number of 'unknown perpetrator killings'. Hasan Kaya, as a doctor suspected of aiding and abetting the PKK, was at this time at particular risk, real and immediate, of falling victim to an unlawful attack. With regard to whether the authorities did all that could be reasonably expected of them to avoid the risk to him, there was a framework of law in place with the aim of protecting life, but the implementation of the criminal law in the south-east disclosed particular characteristics which undermined the effectiveness of the criminal law protection (such as transfer of jurisdiction to administrative councils, failure to investigate incidents). That permitted or fostered a lack of accountability of members of the security forces for their actions which was not

compatible with the rule of law in a democratic society respecting the fundamental rights and freedoms guaranteed under the Convention. Consequently, those defects removed the protection which Hasan Kaya should have received by law. A wide range of preventive measures would have been available to the authorities regarding the activities of their own security forces and those groups allegedly acting under their auspices or with their knowledge. In the circumstances of the case, the authorities failed to take reasonable measures available to them to prevent a real and immediate risk to the life of Hasan Kaya. There had accordingly been a violation of A 2.

The obligation to protect life under A 2 read in conjunction with the State's general duty under A 1 required by implication that there should be some form of effective official investigation when individuals had been killed as a result of the use of force. Regarding the investigation in the present case, the file had changed hands four times, the first autopsy was cursory and the second incomplete, there was no forensic examination of the scene or report regarding how the victims were transported. The steps taken by the public prosecutors were often limited and superficial, the investigation was also dilatory, there were significant delays in seeking statements and there were periods of apparent inactivity. Where there were serious allegations of misconduct and infliction of unlawful harm implicating state security officers, it was incumbent on the authorities to respond actively and with reasonable expedition. The Court was not satisfied that the investigation was adequate or effective. It failed to establish significant elements of the incident or clarify what happened to the two men and had not been conducted with the diligence and determination necessary for there to be any realistic prospect of the identification and apprehension of the perpetrators. It had remained from the early stages within the jurisdiction of the State Security Court prosecutors who investigate primarily terrorist or separatist offences. There had been in this respect a violation of A 2.

The authorities knew, or ought to have known, that Hasan Kaya was at risk of targeting as he was suspected of giving assistance to wounded members of the PKK. The failure to protect his life through specific measures and through the general failings in the criminal law framework placed him in danger not only of extra-judicial execution, but also of ill-treatment from persons who were unaccountable for their actions. It followed that the Government was responsible for ill-treatment suffered by Hasan Kaya after his disappearance and prior to his death. The medical evidence available did not establish that the level of suffering could be regarded as very cruel and severe. However, the binding of Hasan Kaya's wrists with wire in such a manner as to cut the skin and the prolonged exposure of his feet to water or snow, whether caused intentionally or otherwise, could be regarded as inflicting inhuman and degrading treatment under A 3.

Although it had not been found proved beyond reasonable doubt that agents of the State carried out, or were otherwise implicated in, the killing of the applicant's brother, that did not preclude the complaint in relation to A 2 from being an 'arguable' one for the purposes of A 13. The applicant's brother was the victim of an unlawful killing and he could therefore be considered to have an 'arguable claim'. The authorities thus had an obligation to carry out an effective investigation into the circumstances of the killing. No effective criminal investigation had been conducted in accordance with A 13, the requirements of which were broader than the obligation to investigate imposed by A 2, therefore that the applicant had been denied an effective remedy.

Having regard to the findings under A 2 and 3 it was not necessary to determine whether the failings identified in the case were part of a practice adopted by the authorities.

The complaints under A 14 arose out of the same facts considered under A 2, 3 and 13 and it was not necessary to examine them separately.

Non-pecuniary damage (GBP 15,000 and GBP 2,500), costs and expenses (GBP 22,000 less FF 15,095).

Cited: A v UK (23.9.1998), Aksoy v TR (18.12.1996), Aydin v TR (25.9.1997), Boyle and Rice v UK (27.4.1988), Cakici v TR (8.7.1999), Ergi v TR (28.7.1998), Güleç v TR (27.7.1998), Incal v TR (9.6.1998), Ireland v UK (18.1.1978), Kaya v TR (19.2.1998), Kurt v TR (25.5.1998), LCB v UK (9.6.1998), McCann and Others v UK (27.9.1995), Mentes and Others v TR (28.11.1997), Ogur v TR (20.5.1999), Osman v UK (28.10.1998), Selçuk and Asker v TR (24.4.1998), Selmouni v F (28.7.1999), Tanrikulu v TR (8.7.1999), Tekin v TR (9.6.1998), Yasa v TR (2.9.1998).

Keegan v Ireland (1994) 18 EHRR 342 94/18

[Application lodged 1.5.1990; Commission report 17.2.1993; Court Judgment 26.5.1994]

Mr Joseph Keegan, the applicant, and his girlfriend, Miss V, lived together from February 1987 until February 1988. On 14 February 1988, they became engaged to be married and on 22 February 1988, it was confirmed that she was pregnant. Shortly afterwards, the relationship broke down and they ceased cohabiting. On 29 September 1988, V gave birth to a daughter, S, of whom the applicant was the father. On 17 November 1988, V had the child placed by a registered adoption society with prospective adopters and informed the applicant of that in a letter dated 22 November 1988. The applicant instituted proceedings before the Circuit Court which, in May 1989, appointed him guardian and awarded him custody. The decision was upheld by the High Court. V appealed to the Supreme Court, which remitted the case back to the High Court for the case to be decided in light of the former court's interpretation of the law. Following the subsequent proceedings before the High Court, the appeal of the mother was allowed. The applicant complained that there had been a violation of his right to respect for family life in that his child had been placed for adoption without his knowledge or consent and that national law did not afford him a right to be appointed guardian. He further complained of a denial of his right of access to court in that he had no *locus standi* in the proceedings before the Adoption Board. He also alleged that, as the natural father, he had been discriminated against in the exercise of the above-mentioned rights when his position was compared to that of a married father.

Comm found unanimously V 8, V 6(1), by majority (11–1) not necessary to examine 14+6 or 14+8.

Court unanimously rejected the Government's preliminary objections, found V 8, V 6(1), not necessary to examine 14.

Judges: Mr R Ryssdal, President, Mr J De Meyer, Mr SK Martens, Mrs E Palm, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla, Mr J Makarczyk, Mr J Blayney, ad hoc judge.

It was not necessary to examine the Government's preliminary objection that the applicant had no *locus standi* with regard to his daughter's claim as it was no longer pursued by the applicant in view of the adoption order made in respect of his daughter. The claim that the applicant had not appealed to the Supreme Court against the final determination of the guardianship and custody proceedings by the High Court, was not raised before the Commission and therefore the Government was estopped from relying on it. Regarding other failures to appeal or challenge decisions, under Irish law no appeal lay from the decision of the High Court on an appeal from the Circuit Court. The only remedies required to be exhausted were remedies which were effective and capable of redressing the alleged violation. The applicant would have had no prospect of success in making those claims before the courts having regard to the case-law of the Supreme Court, which denied to a natural father any constitutional right to take part in the adoption process. Therefore, the Government's objections based on non-exhaustion of domestic remedies failed.

The notion of the family in A 8 was not confined solely to marriage-based relationships and could encompass other *de facto* 'family' ties where the parties were living together outside of marriage. A child born out of such a relationship was *ipso iure* part of that family unit from the moment of his birth and by the very fact of it. There thus existed between the child and his parents a bond amounting to family life even if at the time of his or her birth the parents were no longer cohabiting or if their relationship had then ended. The essential object of A 8 was to protect the individual against arbitrary action by the public authorities. Regard had to be had to the fair balance that had to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoyed a certain margin of appreciation. The fact that Irish law permitted the secret placement of the child for adoption without the applicant's knowledge or consent, leading to the bonding of the child with the proposed adopters and to the subsequent making of an adoption order, amounted to an interference with his right to respect for family life. The decision to place the child for adoption without the father's knowledge

or consent was in accordance with Irish law and pursued the legitimate aim of protecting the rights and freedoms of the child. Irish law permitted the applicant's child to have been placed for adoption shortly after her birth without his knowledge or consent. Where a child was placed with alternative carers, he or she may in the course of time establish with them new bonds which it might not be in his or her interests to disturb or interrupt by reversing a previous decision as to care. Such a state of affairs not only jeopardised the proper development of the applicant's ties with the child, but also set in motion a process which was likely to prove to be irreversible, thereby putting the applicant at a significant disadvantage in his contest with the prospective adopters for the custody of the child. The Government had advanced no reasons relevant to the welfare of the applicant's daughter to justify such a departure from the principles that governed respect for family ties. Thus, the interference with the applicant's right to respect for family life could not be found to be necessary in a democratic society. There has thus been a violation of A 8.

The adoption process had to be distinguished from the guardianship and custody proceedings. The applicant had no rights under Irish law to challenge the decision either before the Adoption Board or before the courts, nor did he have any standing in the adoption procedure generally. His only recourse to impede the adoption of his daughter was to bring guardianship and custody proceedings. By the time these proceedings had terminated, the scales concerning the child's welfare had tilted inevitably in favour of the prospective adopters. There had thus been a breach of A 6(1).

Having regard to the findings in respect of A 8 and A 6(1), it was not necessary to examine the complaint under A 14.

Non-pecuniary and pecuniary damage (IRP 12,000). Costs and expenses as calculated.

Cited: Berrehab v NL (21.6.1988), Eriksson v S (22.6.1989), Johnston and Others v IRL (18.12.1986), Marckx v B (13.6.1979), Open Door and Dublin Well Woman v IRL (29.10.1992), Powell and Rayner v UK (21.2.1990), W v UK (8.7.1987).

Kefalas and Others v Greece (1995) 20 EHRR 484 95/16

[Application lodged 23.8.1987; Commission report 17.1.1994; Court Judgment 8.6.1995]

The applicants were shareholders in Athinaïki Khartopiia, one of the largest Greek paper manufacturers and suppliers. On 30 March 1984, on a request by the National Bank of Greece acting as a creditor, the company was made subject, by a Ministerial order, to the provisions of Law concerning businesses 'in difficulties'. The applicants complained that no court had jurisdiction to determine the question whether the conditions for making Athinaïki Khartopiia subject to the regime for businesses in difficulties had been satisfied and, in particular, whether the company really had large debts. They relied on A 6.

Comm found by majority (10–4) NV 6(1).

Court found unanimously that it could not deal with the merits of the case.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr Thór Vilhjálmsson, Mr R Macdonald, Mr N Valticos, Mr SK Martens, Mrs E Palm, Mr AB Baka, Mr J Makarczyk.

The Government's preliminary argument was that the applicants' complaint lay outside the Court's jurisdiction *ratione temporis* because it related to facts that had occurred before 20 November 1985, the date when Greece's acceptance of the right of individual petition had taken effect. The Commission's admissibility decision defined the scope of the case before the Court. Within those bounds, the Court had jurisdiction to consider the complaint referred to it and was not bound by the Commission's interpretation of it. The applicants criticised the impossibility in Greek law of having Ministerial Order No 2544/84 reviewed by a judicial body with full jurisdiction. Even if that impossibility amounted to a breach of A 6, the applicants would have become victims of it on 30 March 1984, when the order in issue was published in the Official Gazette and thereby became binding. However, Greece had not by then recognised the right of individual petition. The facts possibly constituting a breach were therefore covered by the time

limitation in Greece's declaration of acceptance. It was not the Supreme Administrative Court's judgment of 13 March 1987 that deprived the applicants of their right of access to a court: it was Greece's legislation which did not afford them such a right at the time when the Ministerial Order was adopted. In duly carrying out its review of lawfulness, the Supreme Administrative Court merely highlighted the aforementioned impossibility.

Cited: Kamasinski v A (19.12.1989).

Kemmache v France (1992) 14 EHRR 520 91/49

[Applications lodged 1.8.1986 and 28.4.1989; Commission report 8.6.1990 and 3.7.1990; Court Judgment 27.11.1991 (merits) and 2.11.1993 (JS)]

Mr Michel Kemmache was charged on 16 February 1983 with others with importation of counterfeit money and unlawful circulation of counterfeit banknotes. On 20 February 1986, he was charged with conspiracy to suborn a witness. There were a number of sets of proceedings. On 25 April 1991, the Alpes-Maritimes Assize Court sentenced him to imprisonment and a fine. The applicant filed an appeal, which was still pending. The applicant complained under A 5(3) that he had not been informed promptly of the reasons for his arrest and charge against him in view of the length of his detention on remand, and under A 6(1) that the criminal proceedings had exceeded a reasonable time. He did not challenge the length of the related subornation proceedings.

Comm found by majority (13–3) V 5(3), unanimously V 6(1).

Court found unanimously V 5(3), V 6(1).

Judges (merits): Mr R Ryssdal, President, Mr F Gölcüklü, Mr L-E Pettiti, Mr C Russo, Mr R Bernhardt, Mr SK Martens, Mrs E Palm, Mr I Foighel, Mr R Pekkanen.

Judges (A 50): Mr R Ryssdal, President, Mr R Bernhardt, Mr F Gölcüklü, Mr L- E Pettiti, Mr C Russo, Mr SK Martens, Mrs E Palm, Mr I Foighel, Mr R Pekkanen.

The periods to be taken into consideration lasted a total of 2 years, 10 months and 10 days. It was for national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person did not exceed a reasonable time. They had to examine all the circumstances arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on the applications for release. It was essentially on the basis of the reasons given in these decisions and of the true facts mentioned by the applicant in his appeals that the Court was called upon to decide whether or not there had been a violation of A 5(3). The first detention lasted approximately six weeks, during which the case was investigated by the judge. The nature of the offences to be investigated and the requirements of the investigation could justify the detention in question. The second detention lasted nearly two years, nine months. The existence and persistence of serious indications of the guilt of the person concerned constitute relevant factors, but they alone could not justify such a long period of pre-trial detention. By reason of their particular gravity and public reaction to them, certain offences could give rise to a social disturbance capable of justifying pre-trial detention, at least for a time. However, that was not the position in the present case. After the investigation into the main offence was concluded by the investigating judge, the risk of pressure on witnesses disappeared and could no longer serve as a justification for detention. With regard to the risk of the applicant's absconding, once that was no longer relied on, the detention could not be justified on that account. Therefore the contested detention infringed A 5(3).

A 6: The period to be taken into consideration began on 16 February 1983, the date on which the applicant was charged, and had not yet ended. It had therefore already lasted more than eight and a half years. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case, in particular the complexity of the case and the conduct of the parties. The applicant had caused some delay. Although the subornation proceedings, which were themselves very long, had some effect on the course of the main proceedings, that did not justify the length of the latter proceedings. The Court was not convinced by the argument that a

separation of the cases could not be envisaged. Examination of the case-file did not disclose any insurmountable obstacle which would have prevented the trial from being held sooner. A reasonable time under A 6(1) had been exceeded.

Non-pecuniary damage (FF 75,000), costs and expenses (FF 150,000).

Cited: Manzoni v I (19.2.1991), Neumeister v A (7.5.1974), Letellier v F (26.6.1991), Ringeisen v A (22.6.1972).

Kemmache (No 3) v France (1995) 19 EHRR 349 94/40

[Application lodged 28.12.1990; Commission report 21.10.1993; Court Judgment 24.11.1994]

Mr Michel Kemmache was detained in connection with criminal proceedings. In August 1985, he was committed for trial in the Alpes-Maritimes Assize Court and a delivery into custody order was issued. He had previously been at liberty until he reported to be taken into custody on 11 June 1990. An application for an adjournment was granted by the Assize Court on 12 June 1990. A third defendant chose to be tried immediately and his case was separated from that of the applicant and another accused. The applicant's application for release on the same day was rejected. He complained that his continued detention after the decision to adjourn the proceedings on 12 June 1990 violated A 5(1).

Comm found unanimously V 5(1).

Court found by majority (8–1) NV 5(1).

Judges: Mr R Ryssdal, President, Mr L-E Pettiti, Mr B Walsh (d), Mr A Spielmann, Mr MA Lopes Rocha, Mr L Wildhaber, Mr J Makarczyk, Mr D Gotchev, Mr B Repik.

The period to be taken into consideration began on 12 June 1990, the date on which the Assize Court ordered the separation of the cases of the applicant and another co-accused from that of a third and adjourned the cases of the former to a subsequent session. The period ended on the date of the applicant's actual release, namely 10 August 1990, when the first instalment of the security was paid, rather than on the day when the Court ordered his release subject to payment of the security. The deprivation of the applicant's liberty had a legal basis in French law. The Convention required that every deprivation should be lawful. Lawfulness implied conformity with the substantive and the procedural rules of domestic law and also with the purpose of A 5, namely to protect individuals from arbitrariness. The decisions of the national courts to keep the applicant in detention did not disclose abuse of authority, nor bad faith, nor arbitrariness. They could not therefore be held to be unlawful, especially in view of the fact that once an Assize Court had adjourned the trial, applications for release could be made to the Indictment Division at any time. Therefore there had been no violation of A 5(1).

Cited: Bouamar v B (29.2.1988), Bozano v F (18.12.1986), Guzzardi v I (6.11.1980), Wassink v NL (27.9.1990), Winterwerp v NL (24.10.1979).

Kerojärvi v Finland 95/25

[Application lodged 25.8.1990; Commission report 11.1.1994; Court Judgment 19.7.1995]

Mr Erkki Kerojärvi applied for compensation under the 1948 Military Injuries Act in respect of certain conditions which he claimed resulted from his service in the wars between 1939 and 1945 between Finland and the Soviet Union. The Compensation Office accepted some of his claim, but considered that the degree of his disability was less than 10%, the minimum required to qualify for a life annuity, and therefore refused to grant him the benefit. He appealed to the Insurance Court, which dismissed his request. That decision was upheld by the Supreme Court on 15 December 1987. In January 1988, the applicant asked the Compensation Office to adjust the degree of his disability. The Compensation Office rejected the request on 23 August 1988 on the ground that the applicant had failed to show a fundamental change in the circumstances on the basis of which his disability had initially been assessed. His subsequent appeals to the Insurance Court and Supreme

Court were dismissed. He complained about the non-communication of documents in the proceedings before the Supreme Court.

Comm found unanimously V 6(1).

Court unanimously found V 6(1).

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr I Foighel, Mr R Pekkanen (c), Sir John Freeland, Mr AB Baka, Mr L Wildhaber, Mr K Jungwiert, Mr P Kûris.

The Court had to ascertain whether there was a dispute over a right which could be said, at least on arguable grounds, to be recognised under domestic law. The dispute had to be genuine and serious; it could relate not only to the actual existence of a right, but also to its scope and the manner of its exercise; and, finally, the result of the proceedings had to be directly decisive for the right in question. It was not contested by the parties that, with the exception of the last criterion, the above-mentioned conditions for applicability of A 6(1) were fulfilled. The Court found that the outcome of the proceedings in the Supreme Court was directly decisive, for the purposes of A 6(1) for the applicant's asserted right to compensation. Disputes over benefits under a social-security scheme concerned 'civil rights'. A 6(1) therefore applied to the present case.

The manner of application of A 6 to proceedings before courts of appeal depended on the special features of the proceedings involved; account had to be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein. The Court lacked jurisdiction *ratione temporis* to review the proceedings in the Insurance Court (as they had taken place prior to the ratification of the Convention by Finland on 10 May 1990). However, they could be taken into account as background to the issue whether those in the Supreme Court were fair. The Insurance Court had rejected the applicant's claims without transmitting to him the opinion and files which it had obtained from the Compensation Office and the Headquarters of the Military District. Although it was open to the applicant to consult those documents on the case file in the Insurance Court, it was apparently only as a result of their being mentioned in its decision that the applicant was made aware that they had been included in the case file. At the time of the notification of its decision, the Insurance Court had already returned the master and medical files to the Headquarters. The possibility available to the applicant of consulting the documents in the Insurance Court was not of significance for the assessment of the fairness of the proceedings in the Supreme Court. The applicant, who did not have the assistance of a lawyer, would not be aware of the court practice. The Supreme Court, which could consider the merits of the case, did not take any measures to make the documents available to the applicant. The procedure followed before the Supreme Court was not such as to allow proper participation of the applicant. He could not therefore be said to have received a fair trial in the procedure before the Supreme Court.

Finding of violation constituted sufficient just satisfaction for non-pecuniary damage. Legal fees and expenses (FIM 73,144 less FF 7,350).

Cited: Feldbrugge v NL (29.5.1986), Helmers v S (29.10.1991), Hokkanen v SF (23.9.1994), Maxwell v UK (28.10.1994), McMichael v UK (24.2.1995), Monnell and Morris v UK (2.3.1987), Salesi v I (26.2.1993), Schuler-Zgraggen v CH (24.6.1993), Zander v S (25.11.1993).

Keus v The Netherlands (1991) 13 EHRR 700 90/28

[Application lodged 13.6.1986; Commission report 4.10.1989; Court Judgment 25.10.1990]

Mr Jacobus Keus was sentenced by the District Court of The Hague on 15 December 1981 for murder and attempted armed robberies, to four years' imprisonment, to be followed by two years' placement at the Government's disposal (to receive treatment for mental illness). While he was serving his sentence, he absconded on several occasions. In February 1983, he was placed in a psychiatric clinic from which he absconded regularly. In May 1984, the Ministry of Justice wrote to various authorities informing them that, unless extended, the applicant's placement would come to an end in January 1986. Neither the applicant nor his counsel had any knowledge of the letter. In December 1985, whilst the applicant was absent from the clinic, the Crown Prosecutor requested the District Court of The Hague to extend the applicant's placement by two years. On 7 January

1986, the court granted the extension. The applicant was notified of the decision on 19 January when he telephoned the clinic. After having returned to it, he was held there from 22 February in pursuance of the court's order. The applicant complained that neither he nor his lawyer had been informed of these proceedings and that the District Court had not heard him. He also complained that he had been unable to challenge in the courts the lawfulness of his continued confinement in the psychiatric hospital.

Comm found unanimously opinion V 5(4), NV 5(1), NV 6(1), NV 6(3), no separate examination required under 5(2).

Court found unanimously NV 5(2), by majority (5–4) NV 5(4), unanimously not necessary to examine 6(1) and 6(3).

Judges: Mr R Ryssdal (jd), President, Mr Thór Vilhjálmsson, Mr L-E Pettiti (jd), Mr B Walsh, Mr R Bernhardt (jd), Mr A Spielmann (jd), Mr N Valticos, Mr SK Martens, Mr I Foighel.

The complaints under A 5(1) all related to the proceedings which led to the extension of the contested confinement and it was appropriate, therefore, to examine them under A 5(4).

The applicant, who had absconded, acquired knowledge of the extension of his confinement as soon as he contacted the hospital by telephone, 12 days later, and it was confirmed to him on the date of his return. Accordingly, there was no violation of A 5(2).

There did not appear to exist a national legal rule requiring the authorities to indicate to a person placed at the Government's disposal when his placement would finish, or to inform him when an application to extend his confinement was introduced and of the reasons relied on in support of it. The police were unable to notify the applicant of the summons to appear because he was in hiding following his escape. No rule of Netherlands law required the authorities to do more, and in particular to inform the fugitive's lawyer. The applicant was informed of the decision as soon as possible. The court could not be criticised for failing to comply with the Convention. Constrained by both national law and A 5(4) to give a ruling speedily, it was entitled to take a decision on the extension, as the applicant was a fugitive. Nevertheless, a measure depriving a person of his liberty did not afford the fundamental guarantees against arbitrariness if it was taken following proceedings in which neither the person concerned himself nor a person representing him had participated. Notwithstanding the extension of his placement at the Government's disposal, the applicant therefore retained the right protected by A 5(4) to institute proceedings, on his return to the clinic, in a court to obtain a speedy decision on the lawfulness of his detention. There was an effective remedy to the District Court satisfying the requirements of A 5(4) available to the applicant; whether or not he considered it advisable to have recourse thereto made no difference in that respect.

A 5(5) could not apply as the Court had not found a breach of any other provision of A 5.

The complaints under A 6(1) and 6(3) were withdrawn before the Court, which did not therefore consider it necessary to examine them of its own motion.

Cited: Winterwerp v NL (24.10.1979), X v UK (5.11.1981).

Khalfaoui v France 99/98

[Application lodged 27. 1.1997; Court Judgment 14.12.1999]

Mr Faouzi Khalfaoui, the applicant, was accused of indecently assaulting a patient while he worked as a houseman in a hospital. He was committed for trial and sentenced to imprisonment by the criminal court. The Court of Appeal subsequently upheld his conviction and increased his sentence. The applicant appealed on points of law. The public prosecutor's office of the Court of Appeal informed him that he had a duty to surrender to custody at the latest the day before the appeal hearing in the Court of Cassation listed for 24 September 1996. The applicant who was then in Tunisia requested the Court of Appeal to grant him an exemption, submitting a medical certificate dated 2 September 1996 in support of his application. The medical certificate noted that the appellant required 12 months' sick leave and rest because of a contagious condition. The Court

of Appeal dismissed the application for an exemption. In a judgment of 24 September, the Court of Cassation held that the application had forfeited his right to appeal on the ground that he had not surrendered to custody and had not obtained an exemption from the duty to surrender.

Court found by majority (6–1) V 6(1).

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr L Loucaides (d), Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert.

The compatibility of the limitations provided for in domestic law with the right of access to a court depended on the particular features of the proceedings. All the proceedings had to be taken into account; Cassation proceedings were crucial, since they were decisive for the accused. The obligation to surrender to custody could not be justified by the special features of the examination of an appeal on points of law. The proceedings in the Court of Cassation were mainly written and it had not been submitted that the applicant's presence at the hearing was necessary. In view of the importance of the review undertaken by the Court of Cassation in criminal matters and the stakes involved for those sentenced to lengthy custodial sentences, the forfeiture of the right of appeal was a particularly severe penalty in the light of the right of access to a court. Respect for the presumption of innocence, taken together with the suspensive effect of an appeal on points of law, made it wrong to oblige a defendant at liberty to surrender to custody, for however short a period of incarceration. The fact that after his request for an exemption had been dismissed by the Court of Appeal, which had tried and convicted him, he did not surrender, did not imply any waiver on his part as forfeiture was automatic. Waiver of a right guaranteed under the Convention had to be conclusively established. The rejection of the application was not subject to appeal. Thus, the possibility of requesting an exemption from the obligation to surrender was not a factor which made forfeiture less disproportionate.

Non-pecuniary damage (FF 20,000), costs and expenses (FF 43,898).

Cited: Ashingdane v UK (28.5.1985), Bellet v F (4.12.1995), Colozza v I (12.2.1985) Delcourt v B (17.1.1970), Fayed v UK (21.9.1994), Golder v UK (21.2.1975), Guérin v F (29.7.1998) Levages Prestations Services v F (23.10.1996), Monnell and Morris v UK (2.3.1987), Omar v F (29.7.1998) Poitrimol v F (23.11.1993) Tolstoy Miloslavsky v UK (13.7.1995).

Khan v United Kingdom 00/148

[Application lodged 1.1.1997; Court Judgment 12.5.2000]

Whilst Mr Sultan Khan, the applicant, visited a friend, B, who was under investigation for dealing in heroin, a conversation in which he admitted to being a party to the importation of drugs was covertly recorded by police. The police had not been expecting the applicant to visit B. The applicant pleaded not guilty to drugs offences, although he admitted that his voice was one of those recorded on the tape. The prosecution admitted that the attachment of the listening device had involved a civil trespass, had occasioned some damage to the property and that without the recording there was no case against the applicant. The trial judge ruled that the evidence was admissible and the applicant pleaded guilty to an alternative charge. He was sentenced to three years' imprisonment. His appeals were dismissed by the Court of Appeal and the House of Lords.

Court found unanimously V 8, by majority (6–1) NV 6, unanimously V 13.

Judges: Mr J-P Costa, President, Mr W Fuhrmann, Mr L Loucaides (pc/pd), Mr P Kûris, Sir Nicolas Bratza, Mrs HS Greve, Mr K Traja.

The surveillance carried out by the police amounted to an interference with the applicant's rights under A 8(1). The phrase 'in accordance with the law' not only required compliance with domestic law, but also related to the quality of that law, requiring it to be compatible with the rule of law. In the context of covert surveillance by public authorities, in this instance the police, domestic law had to provide protection against arbitrary interference with an individual's right under A 8. Moreover, the law had to be sufficiently clear in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which public authorities were

entitled to resort to such covert measures. At the time of the events in question, there was no statutory system to regulate the use of covert listening devices and the Home Office Guidelines were neither legally binding nor directly publicly accessible. There was, therefore, no domestic law regulating the use of covert listening devices at the relevant time. The interference could not therefore be considered to be 'in accordance with the law' and, accordingly, there had been a violation of A 8.

While A 6 guaranteed the right to a fair hearing, it did not lay down any rules on the admissibility of evidence, which was therefore primarily a matter for regulation under national law. It was not the role of the Court to determine, as a matter of principle, whether particular types of evidence may be admissible or whether the applicant was guilty or not. The question which had to be answered was whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. That involved an examination of the unlawfulness in question and, where violation of another Convention right was concerned, the nature of the violation found. The fixing of the listening device and the recording of the applicant's conversation were not unlawful in the sense of being contrary to domestic criminal law. The unlawfulness in the case related to the fact that there was no statutory authority for the interference with the applicant's right to respect for private life and that, accordingly, such interference was not in accordance with the law, under A 8(2). The contested material in the case was the only evidence against the applicant and his plea of guilty was tendered only on the basis of the judge's ruling that the evidence should be admitted. However, in the circumstances, where the tape recording was acknowledged to be very strong evidence, and where there was no risk of it being unreliable, the need for supporting evidence was correspondingly weaker. The central question in the present case was whether the proceedings as a whole were fair. The applicant had ample opportunity to challenge both the authenticity and the use of the recording. At each level of jurisdiction, the domestic courts assessed the effect of admission of the evidence on the fairness of the trial and discussed the non-statutory basis for the surveillance. Had the domestic courts been of the view that the admission of the evidence would have given rise to substantive unfairness, they would have had a discretion to exclude it. In those circumstances, the use at the applicant's trial of the secretly taped material did not conflict with the requirements of fairness under A 6(1).

With regard to the A 13 claim, the domestic courts were not capable of providing a remedy because, although they could consider questions of the fairness of admitting the evidence in the criminal proceedings, it was not open to them to deal with the substance of the Convention, nor was it open to them to grant appropriate relief. The system of investigation of complaints by the Police Complaints Authority did not meet the requisite standards of independence needed to constitute sufficient protection against the abuse of authority and thus provide an effective remedy within the meaning of A 13. There had therefore been a violation of A 13 of the Convention.

Costs and expenses (by majority (6–1) GBP 11,500 less FF 11,090.30). No claim for pecuniary or non-pecuniary damage made.

Cited: Halford v UK (25.6.1997), Malone v UK (2.8.1984), Schenk v CH (12.7.1988), Smith and Grady v UK (27.9.1999), Teixeira de Castro v P (9.6.1998).

Kiefer v Switzerland 00/105

[Application lodged 13.4.1995; Commission report 21.10.1998; Court Judgment 28.3.2000]

Erich Kiefer, the applicant, was a lorry driver and paid contributions to the Swiss social security insurance. In 1983, he suffered an injury and became partly disabled. On 7 November 1985, he requested pension benefits from the Compensation Office, but his request was dismissed on 23 December 1987 on the basis of 10 medical reports. On 28 January 1988, he appealed to the Federal Appeals Commission for Old Age, Survivors and Invalidity Insurance, which, on 25 October 1988, upheld his appeal and referred the case back to the Compensation Office for renewed examination. Further medical reports were obtained. On 30 October 1992, the applicant was issued a preliminary decision and on 7 April 1993, the Compensation Office dismissed his claim. His appeal was dismissed by the Federal Appeals Commission for Old Age, Survivors and Invalidity

Insurance on 21 February 1994 and his administrative law appeal was dismissed on 18 November 1994 by the Federal Insurance Court. He complained of the length of proceedings.

Comm found unanimously V 6(1).

Court unanimously dismissed the Government's preliminary objection, found V 6(1).

Judges: Mr M Fischbach, President, Mr L Wildhaber, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska.

In his administrative law appeal before the Federal Insurance Court, the applicant had complained, *inter alia*, that it had taken nearly 10 years to determine that he had not been insured. He had therefore sufficiently raised in substance his complaint about the length of proceedings and consequently the Government's preliminary objection of non-exhaustion was dismissed.

The period to be taken into consideration began on 28 January 1988, when the applicant contested the administrative decision refusing him a pension. It ended on 25 November 1994 when the final decision of the Federal Insurance Court was served on the applicant. It had therefore lasted 6 years, 9 months and 28 days at three levels of jurisdiction. The reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and that of the authorities dealing with the case. In addition, what was at stake for the applicant in the litigation had to be taken into account in certain cases. What was at stake for the applicant were pension benefits intended to compensate his disablement and loss of working capacity and therefore expedition was called for. Even if the case had been of some complexity, that could not reasonably explain the length of the proceedings lasting over 6 years and 9 months. The applicant himself contributed only to a minor extent to the length of the proceedings when he requested a prolongation of the time limit of one month before filing his observations on 4 January 1993. The main delay, attributable to the authorities, lasted approximately 4 years, which could not be considered reasonable. In the circumstances, the reasonable time requirement was not satisfied and there had been a breach of A 6(1).

Non-pecuniary damage (CHF 5,000), legal costs (CHF 6,000).

Cited: Cardot v F (19.3.1991), Duclos v F (17.12.1996), König v D (28.6.1978), Pélissier and Sassi v F (25.3.1999), Bladet Tromsø and Stensaas v N (20.5.1999).

Kiliç v Turkey 00/109

[Application lodged 3.8.1993; Court Judgment 28.3.2000]

Kemal Kiliç, the applicant's brother, was a journalist working for the newspaper *Özgür Gündem*. In December 1992, referring to attacks made to those associated with the newspaper, he requested the Governor to take measures to protect him and others. His request was refused. He issued a press release in which, *inter alia*, he condemned the Governor for not ensuring the safe distribution of the newspaper and called upon him and the police to fulfil their responsibilities. He was charged with insulting the Governor and taken into detention, but was released the same day. On 18 February 1993, he was found shot dead with two bullet wounds in the head. He had been gagged and had a rope round his neck. A gendarme took photographs and made a sketch of the scene. Ballistic tests were conducted. An individual was arrested and convicted of being a member of the outlawed Hizbollah organisation, but it was found that he could not be held responsible for the attack on Kemel Kiliç as other members of the group could have shared the pistol. The applicant complained, *inter alia*, of violation of A 2.

Court found by majority (6–1) V 2 regarding failure to protect life, unanimously V 2 regarding failure to conduct effective investigation, unanimously not necessary to examine 10, by majority (6–1) V 13, unanimously not necessary to examine 14.

Judges: Mrs E Palm, President, Mr J Casadevall, Mr L Ferrari Bravo, Mr B Zupancic, Mrs W Thomassen, Mr R Maruste, Mr F Gölcüklü (pd), ad hoc judge.

The Court found no elements to require it to exercise its own powers to verify the facts and accordingly accepted the facts as established by the Commission. There was no satisfactory or convincing explanation by the Government as to the non-attendance of an important official witness at the hearings before the Commission's delegates and consequently, the Government had fallen short of its obligations to furnish all necessary facilities.

It had not been established beyond reasonable doubt that any State agent or person acting on the behalf of the State authorities was involved in the killing of Kemel Kiliç and the question to be determined was whether the authorities failed to comply with their positive obligation to protect him from a known risk to his life. Kemal Kiliç had made a request for protection. The authorities were aware that those involved in the publication and distribution of *Özgür Gündem* feared that they were falling victim to a concerted campaign tolerated, if not approved, by State officials. A significant number of serious incidents occurred involving killings of journalists, attacks on newspaper kiosks and distributors of the newspaper and Kemal Kiliç was at real and immediate risk of falling victim to an unlawful attack. The authorities were aware of that risk and were aware, or ought to have been aware, of the possibility that this risk derived from the activities of persons or groups acting with the knowledge or acquiescence of elements in the security forces. There was a framework of law in place with the aim of protecting life. However, the implementation of the criminal law in respect of unlawful acts allegedly carried out with the involvement of the security forces disclosed particular characteristics in the south-east region in that period which undermined the effectiveness of criminal law (such as the transfer of jurisdiction to administrative councils, the series of failures to investigate allegations of wrongdoing by the security forces and the attribution of responsibility for incidents to the PKK, resulting in the matter falling within the jurisdiction of State Security courts). This permitted or fostered a lack of accountability of members of the security forces for their actions which was not compatible with the rule of law in a democratic society. In addition, there was an absence of any operational measure of protection. There were a wide range of preventive measures available which would have assisted in minimising the risk to Kemal Kiliç's life and which would not have involved an impractical diversion of resources, but there was no evidence that any steps were taken in response to his request for protection. The authorities failed to take reasonable measures available to them to prevent a real and immediate risk to the life of Kemal Kiliç and accordingly, there had been a violation of A 2.

The investigation did not include any inquiries as to the possible targeting of Kemal Kiliç due to his job as a journalist. There was no indication that any steps had been taken to investigate any collusion by security forces in the incident. Having regard, therefore, to the limited scope and short duration of the investigation, the Court found that the authorities had failed to carry out an effective investigation into the circumstances surrounding Kemal Kiliç's death. There had been therefore been a violation of A 2 in that respect.

The applicant's complaints under A 10 arose out of the same facts as those considered under A 2 and it was not, therefore, necessary to examine the complaint separately.

It had not been proved beyond reasonable doubt that agents of the State carried out, or were otherwise implicated in, the killing of the applicant's brother. That did not preclude the complaint in relation to A 2 from being an arguable one for the purposes of A 13. It was not in dispute that the applicant's brother was the victim of an unlawful killing and he could therefore be considered to have an arguable claim. No effective criminal investigation could be considered to have been conducted in accordance with A 13, the requirements of which were broader than the obligation to investigate imposed by A 2. The applicant had therefore been denied an effective remedy in respect of the death of his brother and thereby access to any other available remedies at his disposal, including a claim for compensation. Consequently, there had been a violation of A 13.

Having regard to the findings under A 2 and 13, it was not necessary to determine whether the failings identified in the case were part of a practice adopted by the authorities.

The complaints under A 14 arose out of the same facts considered under A 2 and 13 and it was not therefore necessary to examine them separately.

Non-pecuniary damage (by majority (6–1) GBP 15,000 for applicant's brother's heirs, unanimously GBP 2,500 for applicant), costs and expenses (unanimously GBP 20,000 less FF 4,200).

Cited: Aksoy v TR (18.12.1996), Aydin v TR (25.9.1997), Boyle and Rice v UK (27.4.1988), Cakici v TR (8.7.1999), Ergi v TR (28.7.1998), Güleç v TR (27.7.1998), Incal v TR (9.6.1998), Kaya v TR (19.2.1998), Kurt v TR (25.5.1998), LCB v UK (9.6.1998), McCann and Others v UK (27.9.1995), Mentes and Others v TR (28.11.1997), Ogur v TR (20.5.1999), Osman v UK (28.10.1998), Selçuk and Asker v TR (24.4.1998), Tanrikulu v TR (8.7.1999), Tekin v TR (9.6.1998), Yasa v TR (2.9.1998).

Kjeldsen, Busk Madsen and Pedersen v Denmark (1979-80) 1 EHRR 711 76/4

[Applications lodged 4.4.1971 and 7.10.1972; Commission report 21.3.1975; Court Judgment 7.12.1976]

The applicants were: Mr Viking Kjeldsen, a galvaniser, and his wife Annemarie, a schoolteacher, who had a child of school age; Mr Arne Busk Madsen, a clergyman, and his wife Inger, a schoolteacher, who had four children; Mr Hans Pedersen, a clergyman, and Mrs Ellen Pedersen, who had five children. They objected to integrated, and hence compulsory, sex education which was introduced into State primary schools in Denmark by an Act of 1970. They sought unsuccessfully to have their children exempted from sex instruction. They complained, *inter alia*, that the compulsory sex education introduced into State schools by the 1970 Act was contrary to the beliefs they held as Christian parents and constituted a violation of P1A2.

Commission found by majority (7–7 with President exercising casting vote) NV P1A2 regarding Danish system of sex education, unanimously NV 8, NV 9, by majority (7–4 with 3 abstentions) NV 14.

Court found by majority (6–1) NV P1A2, NV 14+P1A2, unanimously NV 8+P1A2, 9+P1A2.

Judges: Mr G Balladore Pallieri, President, Mr A Verdross (so), Mr M Zekia, Mrs H Pedersen, Mr S Petren, Mr R Ryssdal, Mr D Evrigenis.

In Denmark, private schools co-existed with a system of public education. The second sentence of P1A2 was binding upon the Contracting States in the exercise of each and every function that they undertook in the sphere of education and teaching, including that consisting of the organisation and financing of public education. The second sentence of P1A2 had to be read together with the first, which enshrined the right of everyone to education. There was no distinction between State and private teaching. The Danish State schools did not fall outside the province of Protocol 1. P1A2, which applied to each of the State's functions in relation to education and to teaching, did not permit a distinction to be drawn between religious instruction and other subjects. The provisions of the Convention and Protocol had to be read as a whole and accordingly, the two sentences of P1A2 had to be read not only in the light of each other but also, in particular, of A 8, 9 and 10. The setting and planning of the curriculum fell in principle within the competence of the Contracting States. The second sentence of P1A2 did not prevent States from imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind. It did not permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalised teaching would run the risk of proving impracticable. However, the State, in fulfilling the functions assumed by it in regard to education and teaching, had to take care that information or knowledge included in the curriculum was conveyed in an objective, critical and pluralistic manner and could not pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. The Danish legislator obtained beforehand the advice of qualified experts. The instruction on the subject given in State schools was aimed less at instilling knowledge than at giving such knowledge more correctly, precisely, objectively and scientifically. The instruction, as provided for and organised by the contested legislation, was principally intended to give pupils better information. The legislation in dispute did not amount to an attempt at indoctrination aimed at advocating a specific kind of sexual behaviour or make a point of exalting sex or inciting pupils to indulge precociously in practices that were dangerous for their stability, health or future or that many parents considered reprehensible. Further, it did not affect the right of parents to enlighten and advise their children, to exercise with regard to their children natural parental functions as educators, or to guide their children on a path in line with the

parents' own religious or philosophical convictions. The disputed legislation in itself in no way offended the applicants' religious and philosophical convictions to the extent forbidden by the second sentence of P1A2, interpreted in the light of its first sentence and of the whole of the Convention. In addition, the Danish State allowed parents who wished to dissociate their children from integrated sex education, either to entrust their children to private schools, which were bound by less strict obligations and moreover heavily subsidised by the State, or to educate them or have them educated at home, subject to suffering the undeniable sacrifices and inconveniences caused by recourse to one of those alternative solutions. There was therefore no violation of P1A2.

A 14 prohibited discriminatory treatment having as its basis or reason a personal characteristic by which persons or groups of persons were distinguishable from each other. However, there was nothing in the contested legislation which could suggest that it envisaged such treatment. There was a difference in kind between religious instruction and the sex education concerned in the case. The former of necessity disseminated tenets and not mere knowledge; the same did not apply to the latter. Accordingly, the distinction objected to by the applicants was founded on dissimilar factual circumstances and was consistent with the requirements of A 14.

There was no breach of A 8 or A 9, which the Court had also taken into account when interpreting P1A2.

Cited: 'Belgian Linguistics' case (9.2.1967), De Becker v B (27.3.1962).

Klaas v Germany (1994) 18 EHRR 305 93/39

[Application lodged 11.7.1989; Commission report 21.5.1992; Court Judgment 22.9.1993]

Mrs Hildegard Klaas, a social worker, and her daughter Monika Klaas, who was eight years old at the time of the incident, were the first and second applicant respectively. At about 7.30 pm on 28 January 1986, the first applicant was stopped by two police officers who accused her of having driven through a red traffic light and of having tried to get away – an allegation denied by the applicant. She failed to provide a specimen of breath satisfactorily and was therefore told that she would have to accompany the police officers to the local hospital in order to have a blood test. An altercation followed, during which the first applicant was arrested. Criminal proceedings instituted against her for driving under the influence of drink and resisting arrest were discontinued, but she was nonetheless fined for the regulatory offence of driving with excess alcohol in her blood. An information laid against the police officers by the first applicant alleging that they had assaulted her and caused her injuries was withdrawn some weeks later. She complained that the treatment to which she had been subjected by the police officers in the course of her arrest constituted inhuman and degrading treatment and further that, as the treatment took place on private property in the presence of her eight year old daughter, it had also given rise to a breach of her right to respect for her private and family life under A 8. The second applicant complained that, having regard to the police officers' excessive use of force against her mother in her presence, she suffered inhuman and degrading treatment contrary to A 3 as well as a violation of her right to respect for her private and family life under A 8.

Comm found by majority (10–5) V 3 in respect of the first applicant and no separate issue had arisen under A 8 in respect of the first applicant, (14–1) NV 3 in respect of the second applicant, (8–7) V 8 in respect of the second applicant.

Court found by majority (6–3) NV 3 in respect of the first applicant, not necessary to consider separately A 8 regarding first applicant, unanimously NV 3 in respect of the second applicant, by majority (6–3) NV 8 in respect of the second applicant.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr Thór Vilhjálmsson, Mr L-E Pettiti (d), Mr B Walsh (d), Mr A Spielmann (d), Mr I Foighel, Mr JM Morenilla, Mr AB Baka.

There was a dispute on the facts by the parties. The establishment and verification of the facts was primarily a matter for the Commission. The Court was not, however, bound by the Commission's findings of fact and remained free to make its own appreciation in the light of all the material before it. It was not normally within the province of the European Court to substitute its own

assessment of the facts for that of the domestic courts and, as a general rule, it was for those courts to assess the evidence before them. Regarding the injuries sustained, the national courts had found against the first applicant. In particular, the Regional Court had the benefit of seeing the various witnesses give their evidence and of evaluating their credibility. No material has been adduced in the course of the Strasbourg proceedings which could call into question the findings of the national courts and add weight to the applicant's allegations either before the Commission or the Court. No cogent elements had been provided which could lead the Court to depart from the findings of fact of the national courts. Accordingly, no violation of A 3 could be found to have occurred.

The first applicant's complaint under A 8 was essentially based on the same disputed facts considered in connection with A 3 and found not to have been established. The complaint did not therefore call for separate examination.

The facts on which the second applicant relied were not established. Accordingly, her complaints were likewise unfounded.

Cited: Cruz Varas and Others v S (20.3.1991), Edwards v UK (16.12.1992), Stocké v D (19.3.1991), Tomasi v F (27.8.1992), Vidal v B (22.4.1992).

Klass and Others v Germany (1979–80) 2 EHRR 214 78/4

[Application lodged 11.6.1971; Commission report 9.3.1977; Court Judgment 6.9.1978]

The applicants were Gerhard Klass, an Oberstaatsanwalt, Peter Lubberger, a lawyer, Jürgen Nussbruch, a judge, Hans-Jürgen Pohl and Dieter Selb, lawyers. They complained that German legislation which permitted the State to monitor their correspondence and telephone communications without obliging the authorities to inform them subsequently of the measures taken against them and which excluded the possibility of challenging such measures before the ordinary courts was contrary to the Convention. Their appeal to the Federal Constitutional Court was dismissed.

Comm found by majority (11 with two abstentions) NV 6(1) regarding 'civil rights', unanimously NV 6(1) regarding 'criminal charge', by majority (12 with one abstention) NV 8 or 13.

Court found unanimously that the applicants could claim to be victims within the meaning of 25, NV 8, NV 13, NV 6.

Judges: Mr G Balladore Pallieri, President, Mr G Wiarda, Mr H Mosler, Mr M Zekia, Mr J Cremona, Mr P O'Donoghue, Mr Thór Vilhjálmsson, Mr W Ganshof Van Der Meersch, Sir Gerald Fitzmaurice, Mrs D Bindschedler-Robert, Mr P-H Teitgen, Mr G Lagergren, Mr L Liesch, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha (so).

A 25 required that an individual applicant should claim to have been actually affected by the violation alleged. It did not institute for individuals a kind of *actio popularis* for the interpretation of the Convention; it did not permit individuals to complain against a law *in abstracto* simply because they felt that it contravened the Convention. It was necessary that the law should have been applied to the individual's detriment. Nevertheless, a law might by itself violate the rights of an individual if the individual was directly affected by the law in the absence of any specific measure of implementation. An individual could, under certain conditions, claim to be the victim of a violation occasioned by the mere existence of secret measures or of legislation permitting secret measures, without having to allege that such measures were in fact applied to him. The relevant conditions were to be determined in each case according to the Convention right or rights alleged to have been infringed, the secret character of the measures objected to, and the connection between the applicant and those measures. Where a State instituted secret surveillance, the existence of which remained unknown to the persons being controlled, with the effect that the surveillance remained unchallengeable, A 8 could to a large extent be reduced to a nullity. It was unacceptable that the assurance of the enjoyment of a right guaranteed by the Convention could be removed by the simple fact that the person concerned is kept unaware of its violation. The disputed legislation directly affected all users or potential users of the postal and telecommunication services in the Federal Republic of Germany. The menace of surveillance could be claimed in itself to restrict free communication through the postal and telecommunication

services, thereby constituting for all users or potential users a direct interference with the right guaranteed by A 8. Although the Government informed the Court that at no time had surveillance measures been ordered or implemented in respect of the applicants, that retrospective clarification did not bear on the appreciation of the applicants' status as 'victims'. Each of the applicants was entitled to claim to be the victim of a violation of the Convention, even though he was not able to allege in support of his application that he has been subject to a concrete measure of surveillance.

The secret surveillance amounted to an interference with the exercise of the right in A 8(1). The interference was in accordance with the law. The aim of the legislation was to safeguard national security and/or to prevent disorder or crime. The domestic legislature enjoyed a certain discretion. Under the law there existed an administrative procedure designed to ensure that measures were not ordered haphazardly, irregularly or without due and proper consideration. There were also strict conditions with regard to the implementation of the surveillance measures and to the processing of the information thereby obtained. While recourse to the courts in respect of the ordering and implementation of measures of surveillance was excluded, subsequent control or review was provided instead, by two bodies appointed by the people's elected representatives, namely, the Parliamentary Board and the legislative Commission. In a field where abuse was potentially so easy in individual cases and could have such harmful consequences for democratic society as a whole, it was in principle desirable to entrust supervisory control to a judge. Nevertheless, having regard to the nature of the supervisory and other safeguards provided for by German legislation in the present case, the exclusion of judicial control did not exceed the limits of what might be deemed necessary in a democratic society. The two supervisory bodies could, in the circumstances of the case, be regarded as enjoying sufficient independence to give an objective ruling. The fact of not informing the individual once surveillance had ceased could not itself be incompatible with A 8(2), as it was that very fact which ensured the efficacy of the interference. According to German case-law, the person concerned had to be informed after the termination of the surveillance measures as soon as notification could be made without jeopardising the purpose of the restriction. Some compromise between the requirements for defending democratic society and individual rights was inherent in the system of the Convention. The measures taken could be considered to be necessary in a democratic society in the interests of national security and for the prevention of disorder or crime. Accordingly, there was no breach of A8.

The applicants enjoyed an effective remedy under A 13 in so far as they challenged before the Federal Constitutional Court the conformity of the relevant legislation with their right to respect for correspondence and with their right of access to the courts. The authority referred to in A 13 might not necessarily in all instances be a judicial authority in the strict sense. Nevertheless, the powers and procedural guarantees an authority possessed were relevant in determining whether the remedy before it was effective. It was the secrecy of the measures which rendered it difficult, if not impossible, for the person concerned to seek any remedy of his own accord, particularly while surveillance was in progress. The lack of notification did not, in the circumstances of the case, entail a breach of A 13. For the purposes of the present proceedings, an effective remedy under A 13 meant a remedy that was as effective as could be having regard to the restricted scope for recourse inherent in any system of secret surveillance. In the particular circumstances of the case, the aggregate of remedies provided for under German law (complaining to the Commission and to the Constitutional Court, or after notification instituting an action for a declaration, bringing an action for damages in a civil court or an action for the destruction or, if appropriate, restitution of documents, applying to the Federal Constitutional Court for a ruling as to whether there has been a breach of the legislation) satisfied the requirements of A 13.

As long as it remained validly secret, the decision placing someone under surveillance was incapable of judicial control on the initiative of the person concerned, within the meaning of A 6; as a consequence, it of necessity escaped the requirements of that article. The decision could come within the ambit of the said provision only after discontinuance of the surveillance. The individual concerned, once he has been notified of such discontinuance, had at his disposal several legal remedies against the possible infringements of his rights; these remedies would satisfy the requirements of A 6. Accordingly, even if it was applicable, A 6 had not been violated.

Cited: De Wilde, Ooms and Versyp v B (18.6.1971), 'Belgian Linguistic' Case (9.2.1967), Engel and Others v NL (8.6.1976), Golder v UK (21.2.1975), Handyside v UK (7.12.1976), Ireland v UK (18.1.1978), Kjeldsen, Busk Madsen and Pedersen v DK (7.12.1976), Swedish Engine Drivers' Union v S (6.2.1976).

Klein v Germany 00/189

[Application lodged 9.1.1996; Court Judgment 27.7.2000]

On 6 December 1985, the Rhineland Westphalia electricity supply company instituted proceedings before the Moers District Court against Mr Edgar Klein, the applicant, claiming outstanding payments for electricity. On 28 April 1986, the District Court ordered the applicant to pay a sum of about DM 141 as well as interest to the plaintiff. On 8 June 1986, the applicant lodged a constitutional complaint with the Federal Constitutional Court. On 11 October 1994, the Federal Constitutional Court quashed the District Court's decision of April 1986 and sent the case back to that court. On 15 February 1995, the District Court ordered the applicant to pay a sum of about DM 80 as well as interest to the plaintiff. On 22 August 1995, the Federal Constitutional Court refused a constitutional complaint by the applicant lodged on 24 May 1995. The applicant received the decision on 2 September 1995. He complained of the length of proceedings.

Court found unanimously V 6(1).

Judges: Mr A Pastor Ridruejo, President, Mr G Ress, Mr L Caflisch, Mr J Makarczyk, Mr I Cabral Barreto, Mrs N Vajic, Mr M Pellonpää.

The case concerned not only the length of proceedings before the Federal Constitutional Court, but also the length of proceedings before the civil courts. Proceedings came within the scope of A 6(1), even if they were conducted before a Constitutional Court, where their outcome was decisive for civil rights and obligations. The Federal Constitutional Court had declared the relevant parts of the law at issue unconstitutional, quashed the District Court's decision of April 1986 and sent the case back to that court. Its proceedings were therefore directly decisive for a dispute over the applicant's civil right. The dispute before the civil courts as to the amount of the electricity supply which was due by the applicant, and which comprised the coal-mining contribution, was of a pecuniary nature and undeniably concerned a civil right within the meaning of A 6 § 1.

The period to be taken into consideration began on 6 December 1985, when the Rhineland Westphalia electricity supply company instituted proceedings against the applicant before the Moers District Court. It ended on 22 August 1995, when the Federal Constitutional Court rendered its decision. It had therefore lasted approximately nine years and eight months. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case and having regard to the complexity of the case, the conduct of the parties and of the authorities, and the importance of what was at stake for the applicant in the litigation. The main delay in the procedure occurred before the Federal Constitutional Court in the first round of constitutional proceedings, which lasted for more than 8 years. The constitutional issues raised were of some complexity. The applicant's conduct did not cause any delay in the proceedings. A 6(1) imposed on the Contracting States the duty to organise their judicial systems in such a way that their courts could meet each of its requirements, including the obligation to hear cases within a reasonable time. Although this obligation could not be construed in the same way for a constitutional court as for an ordinary court, it was for the European Court in the last instance to verify that it had been complied with, having regard to the particular circumstances of each case and the criteria laid down in its case-law. A temporary backlog of court business did not entail a Contracting State's international liability if that State took appropriate remedial action with the requisite promptness. However, a chronic overload, like the one the Federal Constitutional Court had laboured under since the end of the 1970s, could not justify an excessive length of proceedings. What was at stake in the proceedings for the applicant was a material consideration, the sum of money was minor, but the constitutionality of the law in issue raised a question of principle for a great number of German citizens. Accordingly, despite the complexity of the case, the length of the constitutional proceedings could not satisfy the reasonable-time requirement laid down in A 6(1).

Judgment constituted sufficient just satisfaction for non-pecuniary damage. Costs and expenses (DM 7,000)

Cited: Gast and Popp v D (23.2.2000), Pammel v D (1.7.1997), Probstmeier v D (1.7.1997), Süssmann v D (16.9.1996).

Koendjbiharie v The Netherlands (1991) 13 EHRR 820 90/27

[Application lodged 18.3.1985; Commission report 12.10.1989; Court Judgment 25.10.1990]

Mr Jonas Mohamed Rafiek Koendjbiharie was sentenced by the Court of Appeal on 22 June 1979 to a term of nine months' imprisonment, to be followed by two years' placement at the Government's disposal, for rape aggravated by a previous conviction for the same offence. On 22 January 1980, the Supreme Court dismissed his appeal on a point of law. On coming out of prison, he was committed to the State psychiatric clinic. His placement had been extended by the Court of Appeal until 2 April 1984. On 17 May 1984, he filed an interlocutory application for his immediate release with the President of the District Court. His application was dismissed and he appealed. On 21 September 1984, the court extended his placement by one year. The applicant, who had absconded on around 17 September, was informed of this decision by his lawyer. His subsequent appeals were rejected. He complained of this detention.

Comm found unanimously V 5(1), 5(4), NV 6(1), 6(3), 14, 3.

Court found unanimously V 5(4), by majority (8–1) not necessary to examine the other complaints based on A 5, unanimously not necessary to examine the complaints based on 3, 6 and 14.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr L-E Pettiti, Mr B Walsh, Mr R Bernhardt (d), Mr A Spielmann, Mr N Valticos, Mr SK Martens, Mr I Foighel.

The relevant period began on 17 May 1984, when the application to extend the confinement was filed with the Court of Appeal, and ended on the day on which the order of 21 September 1984 was communicated to the applicant or to his lawyer, probably late September, as the decision was not delivered in public. A lapse of time of more than four months appeared incompatible with the notion of speediness and that impression was not dispelled by a more detailed study of the facts of the case. Accordingly, there was a failure to comply with the requirement of speediness in A 5(4). That conclusion made it unnecessary to consider whether there had also been a breach of A 5(1) or to examine the other complaints made by the applicant under A 5.

The applicant withdrew his complaints under A 3, 6 and 14 at the hearing before the Court, which did not consider it necessary to examine them of its own motion.

Finding of violation sufficient satisfaction for damage. Costs and expenses (NLG 18,989.62 less FF 12,397.50).

Cited: X v UK (5.11.1981).

Kokkinakis v Greece (1994) 17 EHRR 397 93/18

[Application lodged 22.8.1988; Commission report 3.12.1991; Court Judgment 25.5.1993]

Mr Minos Kokkinakis, a retired businessman, was born into an Orthodox family in 1919 and became a Jehovah's Witness in 1936, after which he was arrested more than 60 times for proselytism. He was also interned on various islands in the Aegean for periods of 6 to 13 months and imprisoned on several occasions for proselytism, conscientious objection and holding a religious meeting in a private house. On 2 March 1986, he and his wife were arrested and prosecuted for proselytism. They were found guilty and sentenced to four months' imprisonment, convertible into a pecuniary penalty. The court also ordered the confiscation and destruction of four booklets. On appeal, the Court of Appeal quashed Mrs Kokkinakis's conviction and upheld her husband's, but reduced his prison sentence. The Court of Cassation dismissed the applicant's appeal on 22 April 1988. He complained that his conviction for proselytism was in breach of the rights secured, *inter alia*, in A 7, 9 and 10.

Comm found by majority (11–2) NV 7, unanimously V 9, by majority (12–1) no separate issue arose under A 10.

Court found by majority (6–3) V 9, (8–1) NV 7, unanimously that it is unnecessary to examine A 10 or A 14+9.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr L-E Pettiti (pc), Mr J De Meyer (c), Mr N Valticos (d), Mr SK Martens (pd), Mr I Foighel (jd), Mr AN Loizou (jd), Mr MA Lopes Rocha.

The sentence passed by the domestic courts amounted to an interference with the exercise of the applicant's right to freedom to manifest his religion or belief. The wording of many statutes was not absolutely precise. The need to avoid excessive rigidity and to keep pace with changing circumstances meant that many laws were inevitably couched in terms which, to a greater or lesser extent, were vague. Criminal law provisions on proselytism fell within that category. The interpretation and application of such enactments depended on practice. There was case-law, which had been published and was accessible, supplemented the legislation and was such as to enable the applicant to regulate his conduct. The measure complained of was prescribed by law within the meaning of A 9(2). The impugned measure was in pursuit of a legitimate aim under A 9(2), namely the protection of the rights and freedoms of others. A certain margin of appreciation was to be left to the Contracting States in assessing the existence and extent of the necessity of an interference, but that margin was subject to European supervision. The Court's task was to determine whether the measures taken at national level were justified in principle and proportionate. In their reasoning, the Greek courts established the applicant's liability by merely reproducing the wording of the legislation and did not sufficiently specify in what way the accused had attempted to convince his neighbour by improper means. None of the facts they set out warranted that finding. That being so, it had not been shown that the applicant's conviction was justified in the circumstances of the case by a pressing social need. The contested measure therefore did not appear to have been proportionate to the legitimate aim pursued or, consequently, necessary in a democratic society for the protection of the rights and freedoms of others. There had therefore been a breach of A 9.

A 7(1) was not confined to prohibiting the retrospective application of the criminal law to an accused's disadvantage. It also embodied, more generally, the principle that only the law can define a crime and prescribe a penalty and the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy; it followed that an offence had to be clearly defined in law. That condition was satisfied where the individual could know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions would make him liable. That was so in the present case. There had therefore been no breach of A 7.

Having regard to the decision on A 9, it was unnecessary to examine the complaint under A 10.

Although not raised before the Commission, the complaint under A 14+9 related to the same facts as do those made under A 7 and 9 and having regard to the conclusion in those respects, it was unnecessary to deal with it.

Non-pecuniary damage (GRD 400,000), costs and expenses (GRD 2,789,500).

Cited: Barfod v DK (22.2.1989), De Geouffre de la Pradelle v F (16.12.1992), Hadjianastassiou v GR (16.12.1992), Müller and Others v CH (24.5.1988).

Kolompar v Belgium (1993) 16 EHRR 197 92/59

[Application lodged 10.6.1985; Commission report 26.2.1991; Court Judgment 24.9.1992]

Mr Djula Kolompar, a Yugoslavian national, was sentenced *in absentia* by the Florence Assize Court on 13 June 1980 to imprisonment, for, *inter alia*, attempted rape and attempted murder. In May 1983, Italy requested the Belgian authorities to extradite the applicant. On 22 January 1984, the applicant was arrested in Belgium on suspicion of aggravated theft and attempted theft committed in that country and remanded in custody in respect of those charges. On 4 January 1985, the

Antwerp Criminal Court sentenced him to one year's imprisonment for the offences committed in Belgium. That judgment was upheld by the Antwerp Court of Appeal and became final a month later. On 2 May 1984, the Belgian Minister of Justice authorised the applicant's extradition to Italy. There were several proceedings. By a letter from his lawyer, dated 13 September 1987, the applicant informed the Minister of Justice, *inter alia*, that he no longer opposed his extradition in view of the length of the proceedings instituted both at national and international level.

Comm found by majority (8–3) V 5(1), (10–1) V 5(4).

Court unanimously dismissed the Government's preliminary objection, found NV 5(1), NV 5(4).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr Thór Vilhjálmsson, Mr F Matscher, Mr B Walsh, Mr A Spielmann, Mr J De Meyer, Mr I Foighel, Mr F Bigi.

The Government criticised the applicant for having failed to take to their conclusion the urgent application proceedings instituted by him. However, as the defendant in those proceedings, the Belgian State had contested the jurisdiction of the President of the Brussels First Instance Court. They could not put to the Court arguments which were inconsistent with the position they had adopted before the national courts. Accordingly, the preliminary objection of non-exhaustion had to be dismissed.

The detention on remand and the detention pending extradition partly overlapped. The detention in respect of the offences committed in Belgium lasted from 22 January 1984 to 20 January 1985 and satisfied the requirements of A 5(1)(a) and 5(1)(c). The detention with a view to extradition was in principle justified under A 5(1)(f), but, as it lasted for over two years and eight months, it was necessary to determine whether it remained compatible with that provision to the end. The period spent in detention pending extradition was unusually long. There were successive applications for a stay of execution or for release lodged by the applicant. In addition, the Belgian authorities required time to verify the applicant's alibi in Denmark. The applicant had delayed for three months before replying to the submissions of the Belgian State and, on appeal, he requested that the hearing of the case be postponed and failed to notify the authorities that he was unable to pay a lawyer. The Belgian State could not be held responsible for the delays to which the applicant's conduct gave rise. The applicant could not validly complain of a situation which he largely created. Accordingly, there had been no violation of A 5(1).

The mere fact that the Court had found no breach of the requirements of A 5(1) did not mean that it was dispensed from carrying out a review of compliance with A 5(4); the two paragraphs were separate provisions and observance of the former did not necessarily entail observance of the latter. In addition, the Court had consistently stressed the importance of A 5 (4), in particular in extradition cases. The applicant did not argue that the passing of time had rendered his detention unlawful. In so far as the length of the deprivation gave rise to a problem under A 5(4), it had already been dealt with in relation to A 5(1), in having had regard, *inter alia*, to the applicant's dilatory conduct. Therefore no violation of A 5(4) in this instance.

Cited: De Wilde, Ooms and Versyp v B (18.6.1971), Moreira de Azevedo v P (23.10.1990), Pine Valley Developments Ltd and Others v IRL (29.11.1991), Sanchez-Reisse v CH (21.10.1986), Tomasi v F (27.8.1992).

König v Germany (1979–80) 2 EHRR 170 78/3

[Application lodged 3.7.1973; Commission report 14.12.1976; Court Judgment 28.6.1978 (merits), 10.3.1980 (A 50)]

Dr Eberhard König was an ear, nose and throat specialist. In 1960, he opened a clinic. He was the only medical practitioner working at the clinic which he ran and managed himself and where he performed, in particular, plastic surgery. On 16 October 1962, proceedings were instituted against him for unprofessional conduct by the Regional Medical Society before the Tribunal for the Medical Profession attached to the Frankfurt Administrative Court and he was declared unfit to practise on 9 July 1964. The Regional Tribunal for the Medical Profession attached to the Hessen Administrative Court of Appeal rejected his appeal on 14 October 1970. On 12 April 1967 the

applicant had his authorisation to run his clinic withdrawn and on 12 May 1971, his authorisation to practise was withdrawn. Actions brought by him to challenge both of those withdrawals had been in progress before the competent administrative courts since November 1967 and October 1971, respectively. He complained of the length of the proceedings taken by him against the withdrawals of the authorisations.

Comm found by majority (10–6) 6 applicable to the rights claimed by the applicant before the administrative courts, (9–6 with one abstention) V 6(1).

Court found by majority (15–1) 6(1) applicable to the proceedings relative to the withdrawal of the applicant's authorisation to run his clinic, (14–2) 6(1) applicable to the proceedings relative to the withdrawal of the applicant's authorisation to practise, (15–1) V 6(1) as regards the duration of the proceedings regarding the withdrawal of the authorisation to run the clinic and to practise.

Judges (merits): Mr G Balladore Pallieri, President, Mr G Wiarda (so), Mr H Mosler, Mr M Zekia, Mr P O'Donoghue, Mrs H Pedersen Mr Thór Vilhjálmsson, Mr R Ryssdal, Mr W Ganshof Van Der Meersch, Mrs D Bindschedler-Robert, Mr D Evrigenis, Mr P-H. Teitgen, Mr L Liesch, Mr F Gölcüklü, Mr F Matscher (so), Mr J. Pinheiro Farinha (so).

Judges (A 50): Mr G Balladore Pallieri, President, Mr G Wiarda, Mr H Mosler, Mr M Zekia, Mr J Cremona, Mr Thór Vilhjálmsson, Mr W Ganshof Van Der Meersch, Mrs D Bindschedler-Robert, Mr D Evrigenis, Mr P-H. Teitgen, Mr G Lagergren, Mr L Liesch, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha.

The concept of 'civil rights and obligations' was autonomous, however, the legislation of the State concerned was not without importance. Whether or not a right was to be regarded as civil within the meaning of this expression in the Convention had to be determined by reference to the substantive content and effects of the right – and not its legal classification – under the domestic law of the State concerned. In the exercise of its supervisory functions, the Court had to also take account of the object and purpose of the Convention and of the national legal systems of the other Contracting States. For A 6(1) to be applicable to a case it was not necessary that both parties to the proceedings should be private persons. If the case concerned a dispute between an individual and a public authority, whether the latter had acted as a private person or in its sovereign capacity was not conclusive. Accordingly, in ascertaining whether a case concerned the determination of a civil right, only the character of the right at issue was relevant. An activity presenting, under the law of the State concerned, the character of a private activity could not automatically be converted into a public-law activity by reason of the fact that it was subject to administrative authorisations and supervision, including if appropriate the withdrawal of authorisations, provided for by law in the interests of public order and public health. The responsibility which the medical profession bore towards society at large did not alter the private character of the medical practitioner's activity. All that was relevant under A 6(1) was the fact that the object of the cases in question was the determination of rights of a private nature. Since the rights affected by the withdrawal decisions and forming the object of the cases before the administrative courts were private rights, A 6(1) was applicable, it was not necessary in the present case to decide whether the concept of 'civil rights and obligations' within the meaning of that provision extended beyond those rights which had a private nature. Once a case was duly referred to it, the Court could take cognisance of every question of law arising in the course of the proceedings and concerning facts submitted to its examination by a Contracting State or by the Commission. The Court did not consider that it had to examine whether in this case A 6(1) was also relevant under the 'criminal charge' head. For, although the requirements of A 6 as regards cases concerning civil rights were less onerous than they were for criminal charges, that difference was of no consequence here: all proceedings covered by A 6 were subject to the requirement of a reasonable time.

It was conceivable that in civil matters the reasonable time might begin to run, in certain circumstances, even before the issue of the writ commencing proceedings before the court to which the plaintiff submitted the dispute. That was the situation in the applicant's case, since he could not seise the competent court before having the lawfulness and the expediency of the impugned administrative acts examined in preliminary proceedings before the administrative authority.

Consequently, in the present case, the reasonable time stipulated by A 6 (1) started to run on the day on which the applicant lodged an objection against the withdrawals of his authorisations. The period to which A 6 was applicable covered the whole of the proceedings in question, including appeal proceedings. The reasonableness of the duration of proceedings covered by A 6(1) had to be assessed in each case according to its circumstances, having regard, inter alia, to the complexity of the case, to the applicant's conduct and to the manner in which the matter was dealt with by the administrative and judicial authorities. The proceedings relative to the withdrawal of the authorisation to run the clinic began on 13 July 1967 when the applicant filed an objection against the withdrawal of the authorisation and had still not been concluded. More than ten years and ten months had elapsed without a decision on the merits of the case and it had been necessary to wait for almost ten years for the judgment at first instance. The delays occasioned by the difficulties in the investigation and by the applicant's behaviour did not of themselves justify the length of the proceedings. The principal reason for the length of the proceedings was to be found in the conduct of the case: It would have been possible for the 4th Chamber to bring the proceedings to an end at an earlier date. Taking into account the fact that the proceedings began on 13 July 1967 and ended on 22 June 1977, the reasonable time stipulated by A 6(1) was exceeded. The proceedings relative to the withdrawal of the authorisation to practise began on 18 May 1971 when the applicant lodged his objection against the withdrawal of the authorisation to practise. The Second Chamber of the Frankfurt Administrative Court gave judgment on 9 June 1976, that is after more than five years of proceedings, and the Hessen Administrative Court of Appeal on 2 May 1978. In an overall assessment of the various factors and taking into account what was at stake in the proceedings, namely the applicant's whole professional livelihood, the Court considered that, notwithstanding the delays attributable to the applicant's behaviour, the investigation of the case was not conducted with the necessary expedition. Accordingly, the reasonable time stipulated by A 6(1) was exceeded.

Compensation (DM 39,789.95).

Cited: 'Belgian Linguistic' case (23.7.1968), De Wilde, Ooms and Versyp v B (18.6.1971), Delcourt v B (17.1.1970), Engel and Others v NL (8.6.1976), Golder v UK (21.2.1975), Handyside v UK (7.12.1976), Ireland v UK (18.1.1978), Neumeister v A (27.6.1968), Ringeisen v A (16.7.1971), Wemhoff v D (27.6.1968).

Kopp v Switzerland (1999) 27 EHRR 91 98/16

[Application lodged 15.12.1993; Commission report 16.10.1996; Court Judgment 25.3.1998]

Mr Hans W Kopp, the applicant, was formerly a lawyer. His wife, Mrs Elisabeth Kopp, was a member of the Federal Council and head of the Federal Department of Justice and Police from 1984 until her resignation in January 1989. In November 1989, the applicant and his wife, together with others, had their telephone lines monitored in connection with an investigation into disclosure of official secrets. The monitoring was discontinued in December 1989 when no evidence was found. In March 1990, in accordance with Swiss law, the applicant was informed of the fact of the telephone tapping, the duration and that the recordings had been destroyed. The applicant's complaint to the Federal Department of Justice and Police about breaches of the legislation on telephone tapping and of A 8 of the Convention was dismissed. His appeals to the Federal Council and the Federal Court were also dismissed. He complained of the monitoring of his telephone lines and of the lack of an effective remedy in that connection.

Comm found unanimously V 8, NV 13.

Court unanimously dismissed the Government's preliminary objection, found V 8, not necessary to examine A 13.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr L-E Pettiti (c), Mr C Russo, Mr A Spielmann, Mr JM Morenilla, Mr AB Baka, Mr L Wildhaber, Mr M Voicu.

The applicant raised in substance, before the national authorities, his complaint relating to A 8 of the Convention, in his administrative appeal to the Federal Council. The preliminary objection therefore had to be dismissed.

Telephone calls made from or to business premises, such as those of a law firm, could be covered by the notions of private life and correspondence within the meaning of A 8(1). Interception of telephone calls constituted interference by a public authority, within the meaning of A 8(2), with the exercise of a right guaranteed to the applicant. The subsequent use of the recordings made had no bearing on that finding. The expression 'in accordance with the law', within the meaning of A 8(2), required first that the impugned measure should have some basis in domestic law; it also referred to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him, and compatible with the rule of law. The legislation concerned the Federal Criminal Procedure Act. It was primarily for the national authorities to interpret and apply domestic law. However, the Court could not ignore the opinions of academic writers and the Federal Court's case-law on the question. In relation to A 8(2), 'law' had always been understood in its substantive sense, not its formal one, and had in particular included unwritten law therein. The interference complained of had a legal basis in Swiss law. The second requirement which emerged from the phrase 'in accordance with the law', the accessibility of the law, did not raise any problem in the instant case. With regard to the law's foreseeability as to the meaning and nature of the applicable measures, A 8(2) required the law in question to be compatible with the rule of law. In the context of secret measures of surveillance or interception of communications by public authorities, because of the lack of public scrutiny and the risk of misuse of power, the domestic law had to provide some protection to the individual against arbitrary interference with A 8 rights. It had to be sufficiently clear in its terms to give citizens an adequate indication as to the circumstances in and conditions on which public authorities were empowered to resort to any such secret measures. The applicant was monitored as a third party. There were some safeguards built into the law. However, there was a contradiction between the clear text of legislation which protected legal professional privilege when a lawyer was being monitored as a third party and the practice followed in the present case. Astonishingly, the task of distinguishing legal professional privilege and other work was assigned to an official of the Post Office's legal department, who was a member of the executive, without supervision by an independent judge, especially in this sensitive area of the confidential relations between a lawyer and his clients, which directly concerned the rights of the defence. Swiss law, whether written or unwritten, did not indicate with sufficient clarity the scope and manner of exercise of the authorities' discretion in the matter. Consequently, the applicant, as a lawyer, did not enjoy the minimum degree of protection required by the rule of law in a democratic society. There had therefore been a breach of A 8. It was therefore not necessary to review compliance with the other requirements of A 8(2) in this case.

The applicant stated that he did not intend to pursue his complaint under A 13 before the Court, and the Court considered that it was not required to consider it of its own motion.

Judgment constituted sufficient just satisfaction for non-pecuniary damage, costs and expenses (CHF 15,000).

Cited: Ankerl v CH (23.10.1996), Halford v UK; (25.6.1997), Huvig v F (24.4.1990), K-F v D (27.11.1997), Kruslin v F (24.4.1990), Malone v UK (2.8.1984), Niemietz v D (16.12.1992).

Kosiek v Germany (1987) 9 EHRR 328 86/8

[Application lodged 20.2.1982; Commission report 11.5.1984; Court Judgment 28.8.1986]

Mr Rolf Kosiek worked in teaching posts. He was dismissed twice from teaching jobs because of doubts about his loyalty to the free democratic constitutional system of the Republic. He had signed declarations of loyalty, as required, on appointment to the Civil Service. This was based on his election to senior posts in the National Democratic Party of Germany as well as election to the Regional Parliament and to alleged views expressed in two books on politics. His appeals to the Administrative Court, the Administrative Court of Appeal and the Federal Constitutional Court were dismissed. He complained that his dismissal was contrary to A 10.

Comm found by majority (10–7) NV 10.

Court found by majority (16–1) NV 10.

Judges: Mr R Ryssdal, President, Mr W Ganshof van der Meersch, Mr J Cremona (c), Mr G Wiarda, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert (jc), Mr G Lagergren, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha (jc), Mr L-E Pettiti (declaration/jc), Mr B Walsh (jc), Sir Vincent Evans, Mr R Macdonald, Mr C Russo (jc), Mr R Bernhardt (jc), Mr A Spielmann (pd).

While under the Convention and its Protocols there was no right of recruitment to the Civil Service, it did not follow that in other respects civil servants fell outside the scope of the Convention. It was not for the European Court to review the correctness of the findings of domestic courts which had decided that the applicant did not meet the requirements for employment in the Civil Service. In refusing the applicant access to the Civil Service, the responsible Ministry of the Land took account of his opinions and activities merely in order to determine whether he had proved himself during his probationary period and whether he possessed one of the necessary personal qualifications for the post in question. That being so, there had been no interference with the exercise of the right protected under A 10(1).

Cited: Abdulaziz, Cabales and Balkandali v UK (28.5.1985), Airey v IRL (9.10.1979), Barthold v D (25.3.1985), 'Belgian Linguistic' case (9.2.1967), Engel and Others v NL (8.6.1976), Swedish Engine Drivers' Union (6.2.1976), Schmidt and Dahlström v S (6.2.1976).

Koster v The Netherlands (1992) 14 EHRR 396 91/52

[Application lodged 31.3.1987; Commission report 3.9.1990; Court Judgment 28.11.1991]

Mr Jacobus Koster, the applicant, was arrested on 11 March 1987, while completing his compulsory military service, for repeatedly refusing to obey an order that he should take receipt of a weapon and a uniform. He was questioned by the military police. On Friday 13 March, the applicant, assisted by a lawyer appointed to act for him, appeared before the investigating officer assigned to the case. Before the Military Court, which sat in private on Monday 16 March, the applicant's lawyer pleaded that the length of his detention contravened A 5(3) and that the Military Court did not have the necessary independence and impartiality to rule on the case. The Military Court confirmed the earlier detention and extended it by 30 days to maintain military discipline. On 9 September 1987, the Supreme Military Court sentenced the applicant to a term of one year's imprisonment, from which was deducted the time which he had already spent in detention. The applicant complained that he had not been brought promptly before the Military Court, as was required under A 5(3).

Comm found unanimously V 5(3).

Court found unanimously V 5(3).

Judges: Mr J Cremona, President, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr L-E Pettiti, Mr J De Meyer (so), Mr SK Martens, Mrs E Palm, Mr AN Loizou.

Promptness had to be assessed in each case according to its special features. The significance to be attached to those features could never be taken to the point of impairing the very essence of the right guaranteed by A 5(3), that is to the point of effectively negativing the State's obligation to ensure a prompt release or a prompt appearance before a judicial authority. Even taking into account the demands of military life and justice, the applicant's appearance before the judicial authorities did not comply with the requirement of promptness laid down in A 5(3).

The complaint of independence/impartiality had not been raised before the Commission and the Court therefore found no jurisdiction to examine it.

Finding of violation constituted sufficient just satisfaction for any damage. Costs and expenses (NLG 11,626 less FF 9,382.50).

Cited: Brogan v UK (29.11.1988), De Jong Baljet and Van den Brink v NL (22.5.1984), Van der Sluijs v NL (22.5.1984).

Kostovski v The Netherlands (1990) 12 EHRR 434 89/20

[Application lodged 18.3.1985; Commission report 12.5.1988; Court Judgment 20.11.1989 (merits), 29.3.1990 (JS)]

Mr Slobodan Kostovski was convicted of armed robbery and sentenced to six years' imprisonment. The conviction was based to a large extent on reports of statements by two anonymous witnesses, both of whom were heard by the police in the absence of the applicant and his counsel. One of them was heard by an examining magistrate, also in the absence of the applicant and his counsel. Neither of the witnesses was heard by the trial court. The applicant complained under A 6(1) and (3).

Comm found unanimously V 6(1)+ 6(3)(d).

Court found unanimously V 6(1)+6(3)(d).

Judges (merits): Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer, Mr JA Carrillo Salcedo, Mr N Valticos, Mr SK Martens.

Judges (A 50): Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr C Russo, Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer, Mr SK Martens.

The admissibility of evidence was primarily a matter for regulation by national law. As a general rule, it was for the national courts to assess the evidence before them. The Court's task was to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair. In principle, all the evidence had to be produced in the presence of the accused at a public hearing with a view to adversarial argument. That did not mean, however, that in order to be used as evidence, statements of witnesses should always be made at a public hearing in court: to use as evidence such statements obtained at the pre-trial stage was not in itself inconsistent with A 6(3)(d) and 6(1) provided the rights of the defence had been respected. As a rule, those rights required that an accused should be given an adequate and proper opportunity to challenge and question a witness against him, either at the time the witness was making his statement or at some later stage of the proceedings. The applicant was not afforded such an opportunity. At no stage could they be questioned directly by him or on his behalf. The applicant was able to question the police officer and examining magistrates who had taken the statements and was able to submit written questions to one of the witnesses through the examining magistrate, but the nature and scope of the questions was restricted by the decision that the anonymity of the witnesses be preserved. This compounded the applicant's difficulty; if the applicant was unaware of the witness's identity, he could be deprived of testing hostility, unreliability, prejudice and credibility. The handicaps under which the defence laboured were not counterbalanced by the procedures followed by the judicial authorities. The importance of the struggle against organised crime could not be underestimated and demanded the introduction of appropriate measures to protect against, for example, witness intimidation. However, the right to a fair administration of justice held so prominent a place in a democratic society that it could not be sacrificed to expediency. The Convention did not preclude reliance, at the investigation stage of criminal proceedings, on sources such as anonymous informants. However, the subsequent use of anonymous statements as sufficient evidence to found a conviction, as in the present case, was a different matter. It involved limitations on the rights of the defence which were irreconcilable with the guarantees contained in A 6. In the circumstances of the case, the constraints affecting the rights of the defence were such that the applicant could not be said to have received a fair trial.

FS (NLG 150,000 for non-pecuniary damage), therefore A 50 struck from the list.

Cited: Barberà, Messegué and Jabardo v E (6.12.1988), Bönisch v A (6.5.1985), Ciulla v I (22.2.1989), Delcourt v B (10.11.1969), Schenk v CH (12.7.1988), Unterpertinger v A (24.11.1986).

Kraska v Switzerland (1994) 18 EHRR 188 93/15

[Application lodged 2.4.1988; Commission report 15.10.1991; Court Judgment 19.4.1993]

Mr Martin Kraska, the applicant, practised mostly as an assistant doctor. In the course of proceedings concerning his authorisation to practise independently in the canton, the applicant complained that a judge of the Federal Court had expressed his view on the applicant's public law appeal without having examined the file.

Comm found by majority (14–5) V 6(1).

Court found by majority (6–3) NV 6(1).

Judges: Mr R Ryssdal (jd), President, Mr F Matscher (c), Mr J De Meyer (c), Mrs E Palm (jd), Mr R Pekkanen (jd), Mr JM Morenilla, Mr AB Baka, Mr MA Lopes Rocha, Mr L Wildhaber.

The Swiss Constitution guaranteed the freedom of professional activity, construed by the Federal Court as embracing the medical profession. The dispute therefore concerned the very existence of a right which could be said, on arguable grounds, to be recognised under domestic law. In addition, the dispute was genuine and of a serious nature. On the question of whether the right in issue was a 'civil right', the Court recalled its case-law concerning the medical profession. In Switzerland, the profession had features which were of a public law nature: it was subject to administrative rules, enacted in the public interest, and its exercise depended on the issue of an authorisation by the Cantonal Health Authority. Nevertheless, the applicant wished to work in the private sector, on the basis of contracts concluded between him and his patients. The dispute between him and the Zürich Government therefore concerned a 'civil right'. As to whether A 6(1) also applied to the examination of the public law appeal, the proceedings came within the scope of that provision, even if they were conducted before a constitutional court, where their outcome was decisive for civil rights, and in order to determine whether this is so in a given case, it was necessary to have regard to all the circumstances. The Zürich Administrative Court had denied the applicant the right to practise medicine independently. It was open to the Federal Court to quash the contested judgment, or to grant the authorisation which the applicant was seeking. The direct effect of the recognition of the right claimed was consequently beyond question. A 6(1) was applicable.

The Health Authority, the Cantonal Government and the Administrative Court of Zürich had carefully studied the applicant's application for an authorisation. The judges of the Federal Court all had access to the file of the cantonal proceedings and the rapporteur communicated to them his opinion a few days before the deliberations. They were also able, in principle, to consult their own court's file and, in particular, the appeal memorial. However, one of the judges complained, at the public deliberations, that he had received it only the previous day and that he had been able to read thoroughly only half of the memorial, which was moreover much too long in his view. The Court stressed the importance of appearances in the administration of justice, but made clear that the standpoint of the persons concerned was not in itself decisive. The misgivings of the individuals before the courts, for instance with regard to the fairness of the proceedings, had in addition to be capable of being held to be objectively justified. The judge in question had taken an active part in the deliberations. However, there was no evidence to suggest that the appeal was not examined with due care before the decision was taken. The applicant's complaint did not prove to be well founded. Even though the judge's comment was open to criticism, the manner in which the Federal Court dealt with the case did not give rise to any reasonable misgivings. There had therefore been no violation of A 6(1).

Cited: Albert and Le Compte v B (10.2.1983), Barberà, Messegué and Jabardo v E (6.12.1988), Benthem v NL (23.10.1985), Bock v D (29.3.1989), Cruz Varas and Others v S (20.3.1991), De Wilde, Ooms and Versyp v B (18.6.1971), H v B (30.11.1987), Hauschildt v DK (24.5.1989) König v D (28.6.1978), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Ringeisen v A (16.7.1971).

Krèmáø and Others v Czech Republic 00/88

[Application lodged 17.3.1997; Court Judgment 3.3.2000]

The applicants, Mr Roman Krèmá, Mrs Marie Hanusová, Mrs Jaroslava Bartosová, Mrs Eduarda Ottová, Mrs Dagmar Rydlová, Mrs Eva Kaòoková, Mrs Michaela Krèmáøová, were successors in title to a company which belonged to members of their family until it was nationalised by the former communist regime in 1945 pursuant to a Presidential Decree. On 22 July 1991, the Czech Government approved a privatisation plan to sell the company to a foreign company. In November 1991, pursuant to the Extra-Judicial Rehabilitations Act and the Transfer of the State's Property to Other Persons Act, the applicants commenced an action for restitution of the Company against the Ministry for Administration of National Property and its Privatisation. They claimed that the company had been nationalised in a way which violated generally recognised human rights and freedoms and that the Decree had been wrongly applied to their family's company because the nationalisation conditions laid down in the Decree, in particular the condition that the company should have more than 150 employees, were not satisfied and that the company had therefore been nationalised after February 1948, the decisive date for restitution under the Restitution Act. The Prague 1 District Court found against the applicants. The applicants' appeals to the Prague Municipal Court, the High Court and the Constitutional Court were dismissed. The applicants complained that they did not have a fair hearing in the proceedings before the Constitutional Court, as the court based its decision on documents which were not considered at the hearing and were not shown to or discussed by the parties.

Court found unanimously V 6(1).

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr L Loucaides, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

A 6(1) applied in the present case. The applicants had a right to claim restitution, a right which was of a pecuniary nature, and there was a serious dispute about whether they were actually entitled to restitution. Moreover, A 6(1) applied to proceedings before Constitutional Courts.

In itself, the gathering of additional evidence by a court was not incompatible with the requirements of a fair hearing. In the present case, only the fact that the documentary evidence collected by the Constitutional Court on its own initiative was not communicated to the applicants raised a problem. The documentary evidence in issue was not communicated to either of the parties to the dispute before the Constitutional Court and therefore no infringement of equality of arms had been established. However, the concept of a fair hearing also implied the right to adversarial proceedings, according to which the parties had to have the opportunity not only to make known any evidence needed for their claims to succeed, but also to have knowledge of, and comment on, all evidence adduced or observations filed, with a view to influencing the court's decision. It was of paramount importance to give the applicants an opportunity to comment on the documentary evidence concerning the number of employees if they wished to do so. Even if the documentary evidence was submitted and read during the oral hearing, that would not have satisfied the right of the applicants to adversarial proceedings, given the character and importance of this evidence. A party to the proceedings had to have the possibility to familiarise itself with the evidence before the court, as well as the possibility to comment on its existence, contents and authenticity in an appropriate form and within an appropriate time, if need be, in a written form and in advance. The parties to a dispute might legitimately expect to be consulted as to whether a specific document called for their comments. What was particularly at stake here was the applicants' confidence in the workings of constitutional justice, which was based on, *inter alia*, the assumption that they were afforded the opportunity to express their views on every document in the file concerning their constitutional appeal. In the present case, respect for the right to a fair hearing, guaranteed by A 6(1), required that the applicants be given the opportunity to comment on the documentary evidence produced at the request of the Constitutional Court by the national authorities. There had accordingly been a breach of A 6(1).

Damages (CZK 1,350,000 to each of the applicants), costs and expenses (CZK 80,000).

Cited: Ankerl v CH (23.10.1996) Baskaya and Okçuoglu v TR (8.7.1999), Colozza v I (12.2.1985), Editions Périscope v F (26.3.1992), Helle v SF (19.12.1997), Mantovanelli v F (18.3.1997), Nideröst-Huber v CH (18.2.1997), Nikolova v BG (25.3.1999, Pammel v D (1.7.1997), Philis v GR (No 1) (27.8.1991), Probstmeier v D (1.7.1997), Ruiz-Mateos v E (23.6.1993), Süßmann v D (16.9.1996), Tolstoy Miloslavsky v UK (13.7.1995), Zieinski and Pradal and Gonzales and Others v F (28.10.1999).

Kremzow v Austria (1994) 17 EHRR 322 93/38

[Application lodged 1.8.1986; Commission report 20.5.1992; Court Judgment 21.9.1993]

Mr Friedrich Wilhelm Kremzow was a judge until 1978, when he retired for health reasons. He then worked as a consultant for various practising lawyers. On 18 December 1984, he was found guilty of murder of one of the lawyers and of unlawful possession of a firearm by the Assize Court. He was sentenced to 20 years' imprisonment and ordered to be committed to an institution for mentally deranged criminals. He filed a plea of nullity with the Supreme Court complaining, *inter alia*, that he had been denied the right to defend himself and that the trial had not been fair. Other appeals against sentence were also filed. The Attorney General submitted a position paper on the nullity plea. The pleas of nullity and the appeals were heard by the Supreme Court in the absence of the applicant. He was represented by his official defence counsel. The court rejected the applicant's pleas of nullity and sentenced him to life imprisonment to be served in an ordinary prison. He complained, *inter alia*, about the trial proceedings before the Assize Court, that he was not allowed to be present in person at the Supreme Court's hearing, that the Supreme Court proceedings were unfair in that the court's judgment was prepared and communicated to the Attorney General before the hearing and that he did not have sufficient time to prepare his defence.

Comm found by majority (11–3) V 6(1) and 6(3)(c) in that the applicant was not allowed to be present in person at the Supreme Court's hearing, not necessary to examine 14+6 in respect of the same complaint, unanimously NV 6(1) with regard to the fact that a draft judgment had been prepared before the Supreme Court's hearing, (8–6) V 6(1)+6(3)(b) in that he had not been granted sufficient opportunities to obtain, and to comment on, the Attorney General's position paper, unanimously NV 6 as regards his remaining complaints concerning the fairness of the Supreme Court's proceedings, unanimously NV 13, NV 14+5.

Court found unanimously not necessary to decide the Government's preliminary objection in respect of the applicant's complaint that he was not present at the hearing of the pleas of nullity, dismissed the Government's preliminary objection in respect of the applicant's complaint that he was not present at the hearing of the appeals, found NV 6(1)+6(3)(b), NV 6(1)+6(3)(c) as regards the applicant's absence at the hearing of the pleas of nullity, V 6(1)+6(3)(c) as regards the applicant's absence at the hearing of the appeals, NV 6(1) in respect of the remaining complaints under that provision, NV 6(2), not necessary to examine the applicant's complaints under 13 and 14.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Mr R Macdonald, Mr C Russo, Mrs E Palm, Mr R Pekkanen, Sir John Freeland, Mr J Makarczyk.

The Attorney General's position paper of 49 pages was served on counsel on 9 June 1986, some three weeks before the date fixed for the oral hearing, giving sufficient opportunity to formulate a reply in time for the oral hearing of 2 July 1986. Although the applicant may have been to some extent disadvantaged in the preparation of his defence, he nevertheless had 'adequate time and facilities' to formulate his response to the Attorney General's position paper and accordingly, there had been no breach of A 6(1) and 6(3)(b).

Restriction of the right to inspect the court file to an accused's lawyer was not incompatible with the rights of the defence under A 6. There was no indication that the notification of the Supreme Court's decision on the day of the hearing unduly hampered the defence in the preparation of its case. There had therefore been no breach in that regard.

A 6 extended to nullity and appeal. However, the personal attendance of the defendant did not necessarily take on the same significance for an appeal or nullity hearing as it did for a trial

hearing. Even where an appeal court had full jurisdiction to review the case on questions both of fact and of law, A 6 did not always require a right to a public hearing and a right to be present in person. Regard had to be had to the special features of the proceedings involved and the manner in which the defence's interests were presented and protected before the appellate court, particularly in the light of the issues to be decided by it and their importance for the appellant. The nullity proceedings were primarily concerned with questions of law that arose in regard to the conduct of the trial and other matters. As the applicant was legally represented, neither A 6(1) nor 6(3)(c) required his presence at the nullity proceedings. His lawyer was able to make submissions. There had been no breach on that point. The appeal proceedings were of crucial importance for the applicant and involved an assessment of his character and state of mind at the time of the offence and his motive. Given the gravity of what was at stake for the applicant, he ought to have been able to defend himself in person as required by A 6(3)(c). The State was under a positive duty, notwithstanding his failure to make a request, to ensure his presence in court in such circumstances. There had been a breach of A 6(1) and 6(3)(c).

A draft judgment prepared in advance and then discussed informally by members of the Chamber need not in any way bind the Supreme Court or preclude it from amending the draft and reaching a different view after hearing the parties. Therefore, no infringement of A 6(1) in that respect.

There was no time limit for the submission of the Attorney General's position paper. Although the Attorney General's office was required to familiarise itself with the case at a later and separate phase of the procedure, the defence was not in any way prejudiced by the difference in that regard. Although the name of the judge rapporteur was wrongfully disclosed to the Attorney General's office, that in itself could not render the proceedings unfair. There was no evidence that a copy of the draft judgment was forwarded to the Attorney General's office. Accordingly, there had been no breach of A 6(1) in respect of those matters.

The applicant had already been found guilty of murder and the Supreme Court's remarks regarding financial misdeeds related solely to the question of his motive for the offence and could not be construed as a finding that the applicant was guilty of a specific offence. No question of a violation of the presumption of innocence arose.

In view of the Court's finding of a violation concerning the applicant's absence at the hearing of the appeals, it did not consider it necessary to examine his allegation of a breach of A 14+6. The applicant did not appear to have maintained before the Court the other complaints raised before the Commission.

Costs and expenses (ATS 230,000).

Cited: Brandstetter v A (28.8.1991), Fejde v S (29.10.1991) Helmers v S (29.10.1991), Kamasinski v A (19.12.1989).

Kristinsson v Iceland (1991) 13 EHRR 238 90/4

[Application lodged 10.4.1986; Commission report 8.3.1989; Court Judgment 1.3.1990]

Jón Kristinsson was summonsed to appear before the criminal court for two offences of speeding and failing to observe a stop sign. The investigation was instigated by the chief of police, who was also the town magistrate. The applicant complained about impartiality. He was convicted, fined and ordered to pay costs. He appealed to the Supreme Court, who acquitted him of the charge of non-observance of the stop sign, but upheld the speeding charge and rejected the complaint of impartiality.

Comm found unanimously V 6(1).

Court unanimously struck case out of the list.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr F Matscher, Mr N Valticos, Mr SK Martens, Mrs E Palm.

The Court took formal note of the friendly settlement reached by the Government and the applicant and had regard to the changes in Icelandic law creating new posts of district court judge and also noted its own case-law on the matter.

FS (Icelandic State Treasury reimbursed the applicant for his fine and the costs the sum of ISK 80,003, costs in respect of his application to the European Commission of Human Rights, totalling ISK 461,130), therefore case struck out of the list.

Cited: De Cubber v B (26.10.1984), Hauschildt v DK (24.5.1989), Piersack v B (1.10.1982).

Kroon and Others v The Netherlands (1995) 19 EHHR 263 94/34

[Application lodged 15.5.1991; Commission report 7.4.1993; Court Judgment 27.10.1994.]

The first applicant, Catharina Kroon, and the second applicant, Ali Zerrouk, were not living together at the time, but had a stable relationship from which the third applicant, Samir M'Hallem-Driss, was born in 1987. The first applicant had been previously married to Mr Omar M'Hallem-Driss, but the marriage had broken down in 1980. Samir was registered as the son of Mrs Kroon and Mr M'Hallem-Driss. One month after Samir's birth, the first applicant instituted divorce proceedings in the Amsterdam Regional Court, which became final in July 1988. In October 1988, Mrs Kroon and Mr Zerrouk requested the Amsterdam registrar of births, deaths and marriages to allow Mrs Kroon to make a statement before him to the effect that Mr M'Hallem-Driss was not Samir's father and thus make it possible for Mr Zerrouk to recognise the child as his. The registrar refused, noting that Samir had been born while Mrs Kroon was still married to Mr M'Hallem-Driss, so that unless the latter brought proceedings to deny paternity recognition by another man, was impossible under Netherlands law as it stood. The applicants applied to the Amsterdam Regional Court for an order directing the registrar to add to the register of births Mrs Kroon's statement that Mr M'Hallem-Driss was not Samir's father and with Mr Zerrouk's recognition of Samir. The Regional Court refused their request. Their subsequent appeals to the Amsterdam Court of Appeal and the Supreme Court were also rejected. They complained that they were unable under Netherlands law to obtain recognition of Mr Zerrouk's paternity of Samir and that while a married man might deny the paternity of a child born in wedlock, it was not open to a married woman to do so.

Comm found by majority (12–6) V 8, unanimously NV 14+8.

Court found by majority (8–1) A 8 applicable, (7–2) V 8, unanimously no separate issue arises under 14+8.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr SK Martens, Mr I Foighel, Mr AN Loizou, Mr JM Morenilla (d), Mr AB Baka, Mr G Mifsud Bonnici (d), Mr D Gotchev.

The notion of 'family life' in A 8 was not confined solely to marriage-based relationships and might encompass other *de facto* family ties where parties were living together outside marriage. Although, as a rule, living together may be a requirement for such a relationship, exceptionally other factors could also demonstrate that a relationship had sufficient constancy to create *de facto* family ties. That was the case here as, since 1987, four children had been born to the first and second applicants. A child born of such a relationship was *ipso jure* part of that 'family unit' from the moment of its birth and by the very fact of it. There was thus, between the second and third applicants, a bond amounting to family life, whatever the contribution of the latter to his son's care and upbringing, and A 8 was therefore applicable. The essential object of A 8 was to protect the individual against arbitrary action by public authorities. There may additionally be positive obligations inherent in effective 'respect' for family life, although the boundaries between the State's positive and negative obligations did not lend themselves to precise definition. However, the applicable principles were similar: in both contexts, regard had to be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoyed a certain margin of appreciation. Where the existence of a family tie with a child had been established, the State had to act in a manner calculated to enable that tie

to be developed, and legal safeguards had to be established that rendered possible as from the moment of birth or as soon as practicable thereafter the child's integration in his family. In this case, there was a positive obligation to allow complete legal family ties to be formed between the second applicant and his son S as expeditiously as possible. Under Netherlands law, the ordinary instrument for creating family ties between the second and third applicants was recognition. However, since Samir was the legitimate child of Mr M'Hallem-Driss, the second applicant would only be in a position to recognise Samir after Mr M'Hallem-Driss's paternity had been successfully denied. Except for Mr M'Hallem-Driss himself, who was untraceable, only the first applicant could deny Mr M'Hallem-Driss's paternity. However, under Netherlands law, the possibility for the mother of a legitimate child to deny the paternity of her husband was only open in respect of a child born within a specified time within the dissolution of the marriage. This was not open to the first applicant, since Samir was born when she was still married. Respect for family life required that biological and social reality prevailed over a legal presumption which flew in the face of both established fact and the wishes of those concerned without actually benefiting anyone. The Netherlands had failed to secure to the applicants respect for their family life, and there was accordingly a violation of A 8.

The complaint under A 14 was essentially the same as that under A 8, and a violation of A 8 having been found, no separate issue arose under that article in conjunction with A 14.

Finding of violation constituted sufficient just satisfaction for non-pecuniary damage. Costs and expenses (by majority (8–1) NLG 20,000 less FF 13,855.85).

Cited: Keegan v IRL (26.5.1994).

Kruslin v France (1990) 12 EHRR 547 90/8

[Application lodged 16.10.1985; Commission report 14.12.1988; Court Judgment 24.4.1990]

Mr Jean Kruslin, the applicant, was convicted of armed robbery. Evidence against him included a taped record of his telephone conversation on a line which had been tapped in relation to other proceedings. He complained of the interception and recording of his telephone conversation.

Comm found by majority (10–2) V 8.

Court found unanimously V 8.

Judges: Mr R Ryssdal, President, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans.

Although it was the line of a third party which was being tapped, the tapping amounted to an interference by a public authority of the applicant's right to respect for his correspondence and private life. 'In accordance with the law' required the measure to have some basis in domestic law, referred to the quality of the law and required it to be accessible, foreseeable and compatible with the rule of law. 'Prescribed by law' covered not only statute, but also unwritten law. In this case, the interference had a legal basis in French law. Accessibility to law did not raise a problem in this case. Regarding the quality of evidence, there had to be protection against arbitrary interference by public authorities, sufficient clarity and the scope of any discretion had to be indicated. There were some safeguards in the Code and in judgments, but there were not adequate safeguards against various possible abuses. There was no definition of the categories of people who could have their phones tapped or the offences which could give rise to such an order. There was no limit on the duration of the tapping. The procedure for drawing up summary reports of the intercepted conversations was not specified. The precautions for communicating the recordings and their handling and circumstances for their destruction were also unspecified. French law did not indicate with reasonable clarity the scope and manner of the discretion on the authorities and did not provide the applicants with a minimum degree of protection to which they were entitled under the rule of law in a democratic society. They suffered little or no harm, as the tapping did not serve as a basis for the prosecution, but a violation was conceivable even in the absence of any detriment. There had been a breach of A 8.

Judgment constituted sufficient just satisfaction for damage. Costs and expenses (FF 20,000).

Cited: Chappell v UK (30.3.1989), De Wilde, Ooms and Versyp v B (18.6.1971), Dudgeon v UK (22.10.1981), Eriksson v S (22.6.1989), Malone v UK (2.8.1984), Markt Intern Verlag GmbH and Klaus Beermann judgment v D (20.11.1989), Müller and Others v CH (24.5.1988), Salabiaku v F (7.10.1988), Sunday Times v UK (26.4.1979).

Kuopila v Finland 00/130

[Application lodged 23.11.1994; Court Judgment 27.4.2000]

Ms Kaija Kuopila, the applicant, was an art dealer. At the beginning of November 1990, she obtained through a transfer of a sales commission a painting that was to be sold by the end of November. A statement of 1955, according to which the painting was an authentic work of Helene Schjerfbeck (a famous Finnish artist), was attached on the back of the painting. The applicant sold the painting to a third person, but did not pay the owner the amount due. She was charged with aggravated fraud and embezzlement in autumn 1991. In February 1992, the applicant, who had doubts as to whether the painting was authentic, requested the court to authorise and order the examination of its authenticity. The District Court refused, and in May 1992, it convicted her and sentenced her to imprisonment totaling two years and six months. She appealed to the Court of Appeal. Following a further investigation, the police obtained from the National Gallery of Finland a statement according to which the painting was not authentic. The Prosecutor submitted a supplementary police report, including the National Gallery's statement, to the Court of Appeal. On 14 September 1993, the Court of Appeal upheld the judgment of the District Court without inviting the applicant to submit comments or holding an oral hearing. The court did not make any separate decision as to whether the supplementary police report had been taken into account as evidence or not. The applicant found out about the National Gallery's statement in the autumn of 1993. On 14 November 1993, she requested leave to appeal to the Supreme Court referring to the fresh statement and maintaining that if that information had been available in the lower courts, the outcome of the case would have been different. On 24 May 1994, the Supreme Court refused the applicant leave to appeal. Her subsequent petition with the Parliamentary Ombudsman resulted in a critical remark being addressed to the Prosecutor. The applicant complained that she was not afforded a fair trial due to the fact that vital evidence, in this case the statement from the National Gallery of Finland, was withheld from her.

Court found unanimously V 6(1).

Judges: Mr G Ress, President, Mr M Pellonpää, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mr V Butkevych, Mrs N Vajic.

The supplementary police report, including the National Gallery's statement concerning the authenticity of the painting, was submitted to the Court of Appeal by the prosecutor only about a month before it delivered its judgment. The latter did not refer to that report in its reasoning. Whether the Court of Appeal put any emphasis on the report in its assessment of the case was not known. However, that was not decisive from the point of view of the applicant's right to adversarial proceedings. Under the principle of equality of arms, as a feature of the wider concept of a fair trial, each party had to be afforded a reasonable opportunity to present its case in conditions that did not place him at a disadvantage vis à vis his opponent. In the present case, the prosecutor had expressed his opinion on the relevance of the report to the Court of Appeal, thereby intending to influence the court's judgment. Procedural fairness required that the applicant, too, should have been given an opportunity to assess the relevance and weight of the supplementary police report and to formulate any such comment as she deemed appropriate. Consequently, the procedure did not enable the applicant to participate properly and in conformity with the principle of equality of arms in the proceedings before the Court of Appeal. Accordingly, there has been a violation of A6.

Non pecuniary damage (FIM 15,000), costs and expenses (FIM 30,000, less FF 5,100).

Cited: Borgers v B (30.10.1999), Bulut v A (22.2.1996), Foucher v F (18.3.1997), Pullar v UK (10.6.1996).

Kurt v Turkey (1999) 27 EHRR 373 98/39

[Application lodged 11.5.1994; Commission report 5.12.1996; Court Judgment 25.5.1998]

The applicant, Mrs Koçeri Kurt, brought her application on behalf of herself and her son, Üzeyir Kurt. On 30 November 1993, she complained to the public prosecutor that her son had been taken into custody following a clash between the gendarmes and the PKK in her village and that she was concerned about his fate. Following an inquiry from the public prosecutor, the district gendarmerie stated that her son had not been taken into custody and that he may have been kidnapped by the PKK. The applicant made a further request for information about her son. She complained to the commission that he had been taken into custody and subsequently disappeared.

Comm found unanimously V 5 in respect of the disappearance of the applicant's son, by majority (19–5) V 3 in respect of the applicant, unanimously not necessary to examine separately 2 and 3 in relation to the applicant's son, V 13, NV 14, NV 18, Turkey had failed to comply with its obligations under 25(1).

Court unanimously dismissed the Government's preliminary objections, found not necessary to decide on 2 or 3 in respect of applicant's son, by majority (6–3) V 5, V 3 in respect of the applicant herself, (7–2) V 13, unanimously NV 14+2, 14+3, 14+5 taken together with 2, 3 and 5, unanimously NV 18, by majority (6–3) failure to comply with 25(1).

Judges: Mr R Bernhardt, President, Mr F Gölcüklü (d), Mr F Matscher (pd), Mr L-E Pettiti (d), Mr I Foighel, Mr JM Morenilla, Mr G Mifsud Bonnici, Mr K Jungwiert, Mr U Lohmus.

The applicant confirmed her intention to take part in the proceedings, designated her legal representatives and was present at the hearing before the Court. The Government's preliminary objection that the applicant had never intended to lodge a complaint against the authorities before the Convention institutions was therefore dismissed. The Government's objection of non-exhaustion was not raised in their memorial, but only at the hearing, and therefore outside the time limit prescribed by the procedural rules. The objection therefore had to be dismissed. In any event, the applicant had done everything that could be expected of her to seek redress for the complaint.

The Commission meticulously addressed the discrepancies in the applicant's account as well as each of the Government's counter-arguments. The establishment and verification of the facts were primarily a matter for the Commission. The Court was not persuaded that there existed any exceptional circumstances which would compel it to reach a conclusion different from that of the Commission. There was sufficient factual and evidentiary basis on which the Commission could properly conclude, beyond reasonable doubt, that the applicant's son was detained in the circumstances alleged.

A 2: There was no concrete evidence to prove beyond reasonable doubt that the applicant's son was killed by the authorities either while in detention in the village or at some subsequent stage. The applicant's case rested entirely on presumptions deduced from the circumstances of her son's initial detention bolstered by more general analyses of an alleged officially tolerated practice of disappearances and associated ill-treatment and extra-judicial killing of detainees in the respondent State. Those arguments were not in themselves sufficient to compensate for the absence of more persuasive indications that her son did in fact meet his death in custody.

A 3 in respect of son: The applicant had not presented any specific evidence that her son was the victim of ill-treatment in breach of A 3; nor any evidence to substantiate her claim that an officially tolerated practice of disappearances and associated ill-treatment of detainees existed in the respondent State.

A 5: The Court noted the fundamental importance of the guarantees contained in A 5 and recalled its case-law. The unacknowledged detention of an individual was a complete negation of those guarantees and a most grave violation of A 5. Having assumed control over that individual, it was incumbent on the authorities to account for his or her whereabouts. For that reason, A 5 had to be seen as requiring the authorities to take effective measures to safeguard against the risk of disappearance and to conduct a prompt effective investigation into an arguable claim that a person

had been taken into custody and had not been seen since. The absence of data recording such matters as the date, time and location of detention, the name of the detainee as well as the reasons for the detention and the name of the person effecting it had to be seen as incompatible with the purpose of A 5. The authorities failed to offer any credible and substantiated explanation for the whereabouts and fate of the applicant's son after he was detained in the village and no meaningful investigation was conducted into the applicant's insistence that he was in detention and that she was concerned for his life. They failed to discharge their responsibility to account for him and it had to be accepted that he had been held in unacknowledged detention in the complete absence of the safeguards contained in A 5. There had, therefore, been a particularly grave violation of the right to liberty and security of person guaranteed under A 5.

A 3 in respect of applicant: Ill-treatment had to attain a minimum level of severity to fall within the scope of A 3. The public prosecutor had given no serious consideration to the applicant's complaint. As a result, she had been left with the anguish of knowing that her son had been detained, an anguish endured over a prolonged period of time. She was the mother of the victim of a human rights violation and herself the victim of the authorities' complacency in the face of her anguish and distress. The respondent State was therefore in breach of A 3 in respect of the applicant.

A 13 guaranteed the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The scope of the obligation under A 13 varied depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by A 13 had to be 'effective' in practice as well as in law, in particular in the sense that its exercise should not be unjustifiably hindered by the acts or the omissions of the authorities of the respondent State. Where the relatives of a person had an arguable claim that the latter had disappeared at the hands of the authorities, the notion of an effective remedy for the purposes of A 13 entailed, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the relatives to the investigatory procedure. Seen in those terms, the requirements of A 13 were broader than a Contracting State's obligation under A 5 to conduct an effective investigation into the disappearance of a person who had been shown to be under their control and for whose welfare they were accordingly responsible. In view, in particular, of the lack of any meaningful investigation, the applicant was denied an effective remedy in respect of her complaint that her son had disappeared in circumstances engaging the responsibility of the authorities. There had therefore been a violation of A 13.

A 14: The evidence presented by the applicant did not substantiate her allegation that her son was the deliberate target of a forced disappearance on account of his ethnic origin. Accordingly, there had been no violation of the Convention under A 14.

The applicant had not substantiated her complaint under A 18 (limitation on use of restrictions on rights).

A 25: It was of the utmost importance for the effective operation of the system of individual petition instituted by A 25 that applicants or potential applicants were able to communicate freely with the Commission without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. The expression 'any form of pressure' had to be taken to cover not only direct coercion and flagrant acts of intimidation of applicants or potential applicants or their families or legal representatives, but also other improper indirect acts or contacts designed to dissuade or discourage them from pursuing a Convention remedy. Whether or not contacts between the authorities and an applicant or potential applicant were tantamount to unacceptable practices from the standpoint of A 25 had to be determined in the light of the particular circumstances at issue. Regard had to be had to the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities. Villagers in the south-east of Turkey were in a vulnerable position as complaints against the authorities might give rise to a legitimate fear of

reprisals. The applicant was subjected to indirect and improper pressure to make statements in respect of her application to the Commission which interfered with the free exercise of her right of individual petition guaranteed under A 25. The moves made by the authorities to institute criminal proceedings against the applicant's lawyer, even though they were not followed up, had to be considered an interference with the exercise of the applicant's right of individual petition and incompatible with the respondent State's obligation under A 25.

The Court had rejected the applicant's complaints that there existed a practice of violation of A 2 and 3, being of the view that the applicant had not substantiated her allegations. It was not persuaded either that the evidence which she had adduced substantiated her allegations as to the existence of a practice of violation of either A 5 or A 13 of the Convention.

Non-pecuniary damage (by majority (8–1) GBP 15,000 for applicant's son and his heirs GBP 10,000 for applicant), costs and expenses, (GBP 15,000 less FF 27,763).

Cited: Akdivar and Others v TR (16.9.1996), Aksoy v TR (18.12.1996), Aydin v TR (25.9.1997), Chahal v UK (15.11.1996), Cruz Varas and Others v S (20.3.1991), Kaya v TR (19.2.1998), McCann and Others v UK (27.9.1995), Olsson v S (No 1) (24.3.1988), Quinn v F (22.3.1995), Tomasi v F (27.8.1992), Mentes and Others v TR (28.11.1997).

Kurt Nielsen v Denmark 00/70

[Application lodged 23.9.1996; Court Judgment 15.2.2000]

On 12 November 1986, Mr Kurt Nielsen, the applicant, was involved in a car accident which left him severely injured and partly disabled. On 26 February 1988, the applicant instituted proceedings against three insurance companies in the City Court. The applicant made a number of requests to the National Board of Industrial Injuries for expert opinions. On 25 January 1995, the case was heard by the City Court which, in a judgment of 15 February 1995, held that the defendant companies were held liable to make payment to the applicant. The defendants appealed to the High Court of Western Denmark. By judgment of 9 September 1996, the High Court upheld the judgment of the City Court. The applicant complained about the length of the civil proceedings.

Court found unanimously V 6(1).

Judges: Mr CL Rozakis, President, Mr M Fischbach, Mr G Bonello, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska, Mr AB Baka, Mr E Levits.

The relevant period began on 26 February 1988 when the applicant instituted proceedings before the City Court. It ended on 9 September 1996 with the judgment of the High Court of Western Denmark. It therefore lasted eight years, six months, 13 days for two levels of jurisdiction. The reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of parties. On the latter point, what was at stake for the applicant in the litigation had to be taken into account in certain cases. Even if the case was of some complexity, that could not reasonably explain the length of the proceedings exceeding eight years and six months for two instances. What was at stake for the applicant was a considerable amount mainly intended to compensate his disablement and loss of working capacity. Under those circumstances, special expedition was called for. The applicant's conduct could not justify the total duration of the proceedings. Only delays imputable to the relevant judicial and administrative authorities could justify a finding that a reasonable time has been exceeded, contrary to the Convention. The Contracting Parties were, however, also responsible for delays attributable to public law organs, like municipal authorities, which, although they were not organs of the State, performed official duties assigned to them by law. The fact that delays to some extent were caused by the conduct of the defendants in the proceedings did not in itself lead to the finding that those delays could not be attributed to the State. Even in legal systems applying the principle that the procedural initiative lies with the parties, the latter's attitude does not absolve

the courts from the obligation to ensure the expeditious trial required by A 6(1). The applicant's requests to the National Board of Industrial Injuries were all approved by the City Court, and the last one also approved by the High Court. Having regard to the delays imputable to the State, the overall duration of the proceedings and what was at stake for the applicant, the reasonable time requirement was not satisfied.

Non-pecuniary damage (DKK 70,000). No claim made for costs and expenses.

Cited: Duclos v F (17.12.1996), H v UK (8.7.1987), Pafitis and Others v GR (26.2.1998), Pélissier and Sassi v F (25.3.1999), Portington v GR (23.9.1998), Zana v TR (25.11.1997).

L

L v Finland 00/132

[Application lodged 7.9.1994; Court Judgment 27.4.2000]

The first applicant was the adopted son of the second applicant ('the applicant grandfather'). The applicant father had two daughters, born in 1985 and 1991, whose mother was hospitalised several times after the birth of the second child on account of her mental health. In January 1992, the children were placed in provisional public care, on suspicion that the older child had been sexually abused and that the younger child was in serious danger of being subjected to similar abuse. The Social Welfare Board restricted the parents' right of access to the older child to two weekly visits at the hospital and decided not to disclose the younger child's whereabouts. The parents appealed to the County Administrative Court which dismissed their appeals without holding an oral hearing. Their subsequent appeal to the Supreme Administrative Court was also rejected. The parents divorced in 1996. The restrictions remained in force. The applicant grandfather appealed against access prohibitions imposed on him; his appeals were dismissed by the courts. In 1996, the older child stated that she did not wish to meet her father as often as the visits were taking place and did not wish to meet her grandparents at all. In 1998, the access restrictions were continued on the ground that both applicants had sexually abused the older girl. They did not appeal that decision. The applicants complained that the taking of the children into public care was too drastic a measure and that especially after that measure, the authorities had not aimed at effectively reuniting the family. They also complained that their right to a fair trial had been violated as the Country Administrative Court refused to hold an oral hearing. They further complained that they had been deprived of an effective remedy under A 13.

Court found unanimously NV 8, NV 13, V 6(1).

Judges: Mr G Ress, President, Mr M Pellonpää, Mr I Cabral Barreto, Mr V Butkevych, Mrs N Vajic, Mr J Hedigan, Mr S Botoucharova.

The mutual enjoyment by parent and child, as well as by grandparent and child, of each other's company constituted a fundamental element of family life, and domestic measures hindering such enjoyment amounted to an interference with the right protected by A 8 of the Convention. The impugned measures amounted to interference with the applicants' right to respect for their family life unless they were in accordance with the law, pursued an aim or aims that was legitimate under A 8(2) and could be regarded as necessary in a democratic society. The impugned measures had a basis in national law. The relevant Finnish law was aimed at protecting health or morals and the rights and freedoms of children. The children were taken into care for reasons which were not only relevant but also sufficient for the purposes of A 8(2), the national authorities having acted within the margin of appreciation afforded to them. The appeals open to the applicants before the County Administrative Court and the Supreme Administrative Court satisfied the conditions of A 13. Accordingly, the taking into public care did not constitute a violation of A 8 and 13. Taking a child into care should normally be regarded as a temporary measure to be discontinued as soon as circumstances permitted, any measures of implementation of temporary care had to be consistent with the ultimate aim of reuniting the natural parent and the child. The question of whether the continuation of the implementation of the care measures was justified had to be assessed in the light of the circumstances and their development since 1992. In that regard, it was observed that the applicant father and the mother of the children had separated before the request was made and did not constitute a family any more. The rights and interests of the mother had also to be taken into account. In these circumstances the national authorities could, in the exercise of their discretion, consider the maintenance of the care order to be in the best interest of the children. The rejection of the applicant father's request of September 1994 satisfied the requirements of A 8(2). The failure of the authorities to terminate the care at a later date did not violate that article. The continuation of the public care did not constitute a violation of A 8 and 13. While the applicant father's access has been considerably restricted, he had been able to meet the children regularly. The decisions concerning the applicant father's access could be regarded as fulfilling the principle of proportionality and therefore as necessary in a democratic society. The applicant grandfather

had been suspected of the sexual abuse of the older child and both children had later indicated that they did not wish to meet him at all. In those circumstances, the national authorities could reasonably consider that restriction to be necessary in a democratic society. In addition, the appeals which were open to the applicants before the County Administrative Court met the conditions of A 13. Accordingly, those measures did not constitute a violation of A 8 and 13.

The instrument of ratification of the Convention deposited by the Finnish Government on 10 May 1990 contained a reservation according to which Finland could not guarantee a right to an oral hearing before the courts mentioned in the reservation. The reservation was, however, withdrawn, in so far as administrative courts were concerned as from 1 December 1996, ie, before the proceedings leading to the decision of the County Administrative Court of 17 March 1997 had been instituted. At no stage of the previous proceedings had there been an oral hearing. In view of that, the nature of the issues and of what was at stake for the applicants, the Court was not satisfied that there were exceptional circumstances which would have justified dispensing with a hearing. Accordingly, there had been a violation of A 6(1) on account of the lack of an oral hearing before the County Administrative Court in the proceedings ending on 17 March 1997.

Judgment constituted sufficient just satisfaction for any non-pecuniary damage. Legal fees and expenses (FIM 35,000 less FF 24,560.60).

Cited: Margareta and Roger Andersson v S (22.4.1992), Barthold v D (25.3.1985), Fischer v A (26.4.1995), Fredin v S (No 2) (23.2.1994), Hokkanen v SF (23.9.1994), Allan Jacobsson v S (No 2) (19.2.1998), Johansen v N (7.8.1996), Olsson v S (No 1) (24.3.1988), Olsson v S (No 2) (27.11.1992), Scott v UK (8.2.2000), W v UK (8.7.1987).

L srl v Italy 00/39

[Application lodged 15.10.1996; Court Judgment 25.1.2000]

L srl company complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration lasted more than 17 years, six months at one level of jurisdiction. The period could not be considered reasonable.

No claim in respect of non-pecuniary damage, claim in respect of pecuniary damage rejected due to lack of causal link.

Cited: Bottazzi v I (28.7.1999).

LCB v United Kingdom (1999) 27 EHRR 212 98/44

[Application lodged 21.4.1993; Commission report 26.11.1996; Court Judgment 9.6.1998]

Between 1952 and 1967 the UK carried out a number of atmospheric tests of nuclear weapons in the Pacific Ocean and at Maralinga, Australia, involving over 20,000 servicemen. Among these tests were a series of six detonations at Christmas Island in the Pacific Ocean (November 1957–September 1958) of weapons many times more powerful than those discharged at Hiroshima and Nagasaki. During the Christmas Island tests, service personnel were ordered to line up in the open and to face away from the explosions with their eyes closed and covered until 20 seconds after the blast. Ms LCB, the applicant, alleged that the purpose of this procedure was deliberately to expose servicemen to radiation for experimental purposes. The Government denied this and stated that it was believed at the time of the tests, and was the case, that personnel were sufficiently far from the centre of the detonations to avoid being exposed to radiation at any harmful level and that the purpose of the line-up procedure was to ensure that they avoided eye damage and other physical injury caused by material blown about by the blast. While the applicant's father was serving as a catering assistant in the Royal Air Force, he was present at

Christmas Island during four nuclear tests in 1957 and 1958. He also participated in the clean-up programme following the tests. The applicant was born in 1966 and in about 1970 she was diagnosed as having leukaemia. She received chemotherapy treatment which lasted until she was 10 years old. Because of her illness and associated treatment she missed half of her primary school education and was unable to participate in sports or other normal childhood activities. In December 1992, she became aware of the contents of a report prepared by the British Nuclear Tests Veterans' Association indicating a high incidence of cancers including leukaemia in the children of Christmas Island veterans. The applicant complained, *inter alia*, under A 2 and 3 of the Convention that she had not been warned of the effects of her father's alleged exposure to radiation.

Comm found unanimously NV 2, NV 3.

Court found unanimously no jurisdiction to consider the applicant's complaint under 2 concerning the State's failure to monitor the extent of her father's exposure to radiation, NV 2 in relation to the State's failure to advise the applicant's parents and monitor her health prior to her diagnosis with leukaemia, NV 3, no jurisdiction to consider the applicant's complaints under 8 and 13 concerning the State's failure to create individual dose records of her father's exposure to radiation and the withholding of contemporaneous records of levels of radiation, not necessary to consider 8 concerning the State's failure to advise the applicant's parents and monitor her health prior to her diagnosis with leukaemia.

Judges: Mr R Bernhardt, President, Mr F Gölcüklü, Mr F Matscher, Mr I Foighel, Sir John Freeland, Mr MA Lopes Rocha, Mr B Repik, Mr K Jungwiert, Mr J Casadevall.

The applicant's complaint about the failure of the respondent State to monitor the extent of her father's exposure to radiation on Christmas Island was not raised before the Commission and as the scope of the Court's jurisdiction was determined by the Commission's decision on admissibility, the Court had no power to entertain a new and separate complaint. In any case, the complaint was based on events which took place in 1958, before the UK's A 25 and 46 declarations of 14 January 1966. The Court therefore had no jurisdiction to consider it.

A 2(1) enjoined the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. It could not be known with any certainty whether, in the course of his duties, the applicant's father was exposed to dangerous levels of radiation. Contemporaneous measurements of radiation on Christmas indicated that radiation did not reach dangerous levels in the areas in which ordinary servicemen were stationed. The State authorities could reasonably have been confident that her father had not been dangerously irradiated. The State could only have been required of its own motion to take steps in relation to the applicant if it had appeared likely at that time that any exposure of her father to radiation might have engendered a real risk to her health. It had not been established that there was a causal link between the exposure of a father to radiation and leukaemia in a child subsequently conceived. It was not established that, given the information available to the State at the relevant time concerning the likelihood of the applicant's father having been exposed to dangerous levels of radiation and of this having created a risk to her health, it could have been expected to act of its own motion to notify her parents of these matters or to take any other special action in relation to her. There had been no violation of A 2.

For the reasons referred to in connection with A 2 it had not been established that there had been a violation by the respondent State of A 3.

The complaints under A 8 and 13 were not raised before the Commission and the Court therefore had no jurisdiction to consider them. However, having examined the question of the State's failure of its own motion to advise her parents and monitor her health prior to her diagnosis with leukaemia from the standpoint of A 2, no relevant separate issue could arise under A 8, and it was therefore unnecessary to examine the complaint further.

Cited: Findlay v UK (25.2.1997), Guerra and Others v I (19.2.1998).

LG v Italy 99/77

[Application lodged 16.12.1995; Commission report 8.7.1998; Court Judgment 2.11.1999]

Mrs LG complained of the length of civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr L Ferrari Bravo, Mr G Bonello, Mrs V Stráznická, Mrs P Lorenzen, Mr Ab Baka, Mr E Levits.

The period to be taken into consideration began on 9 February 1985, and ended on 21 September 1995. It had lasted more than 10 years 7 months and could not be considered reasonable.

Non-pecuniary damage (ITL 15,000,000).

Cited: Bottazzi v I (28.7.1999).

LGS Spa v Italy 00/117

[Application lodged 19.2.1997; Court Judgment 5.4.2000]

The applicant complained about the length of civil proceedings.

Court found unanimously V 6(1).

The period under consideration began on 21 January 1984 and ended on 5 September 1996. It has lasted more than 12 years, seven months at three levels of jurisdiction, which could not be considered reasonable.

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mrs M Tsatsa-Nikolovska, Mr A B Baka.

Non-pecuniary damage (ITL 15,000,000), costs and expenses (ITL 1,000,000).

Cited: Bottazzi v I (28.7.1999).

Labita v Italy 00/125

[Application lodged 10.4.1994; Commission report 29.10.1998; Court Judgment 6.4.2000]

Mr Benedetto Labita, the applicant, was arrested on 21 April 1992 on suspicion of being a member of a mafia-type organisation on the basis of statements made by a *pentito* (a former mafioso who has decided to co-operate with the authorities). The applicant was initially detained at Palermo Prison and then transferred to the prison on the island of Pianosa. His applications for bail were refused. In November 1994, the applicant was acquitted and his release was ordered. An appeal by the prosecutor was dismissed in December 1995. The applicant complained that whilst detained in Pianosa Prison he was subject to ill-treatment by warders which included slapping, squeezing of testicles, beatings, body searches when showering, handcuffing during medical examinations, intimidation. He complained about the ill-treatment, but criminal proceedings were discontinued, as the perpetrators could not be identified. The applicant had been detained under a special security regime and his correspondence was censored. After his acquittal, preventive measures were applied (including curfew, reporting weekly to the police, prohibition on going to public meetings or associating with persons with a criminal record, prohibited from travelling abroad). The measures had the effect of depriving him of his voting rights. His attempts to have the measures lifted were rejected. In January 1998, he was awarded ITL 64 million compensation for his 'unjust' detention. He complained of his detention and treatment.

Comm found unanimously V 3, V 5(3), 5(1), V 8, no separate issue under 6(3), by majority (21–7) V P4A2, (23–5) V P1A3.

Court found by majority (9–8) NV 3 as regards the applicant's allegations of ill-treatment in prison, unanimously V 3 as regards lack of effective official investigation into allegations, NV 3 on account of the conditions of transfer from prison, applicant could claim to be a 'victim' for the purposes of 34 as

regards the length of his pre-trial detention, V 5(3) on account of the length of detention pending trial, V 5(1) on account of the applicant's detention after 12.25 am on 13 November 1994, V 8 on account of the censorship of the applicant's correspondence, not necessary to examine the issue of censorship of the applicant's correspondence with his lawyers under A 6(3), V P4A2 on account of the preventive measures imposed on the applicant, V P1A3 on account of the applicant's disenfranchisement.

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr A Pastor Ridruejo (JPD), Mr L Ferrari Bravo, Mr G Bonello (JPD), Mr J Makarczyk (JPD), Mr P Kûris, Mr J-P Costa, Mrs F Tulkens (JPD), Mrs V Stráznická (JPD), Mr V Butkevych (JPD), Mr J Casadevall (JPD), Mr B Zupancic (JPD), Mrs HS Greve, Mr AB Baka, Mr R Maruste, Mrs S Botoucharova.

Ill-treatment had to attain a minimum level of severity to fall within the scope of A 3. The assessment of that minimum was relative: it depended on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, recourse to physical force which had not been made strictly necessary by his own conduct diminished human dignity and was in principle an infringement of A 3. Allegations of ill-treatment had to be supported by appropriate evidence. To assess that evidence, the Court adopted the standard of proof 'beyond reasonable doubt', but such proof could follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. The applicant had not produced any conclusive evidence in support of his allegations of ill-treatment or supplied a detailed account of the abuse to which the warders at Pianosa Prison allegedly subjected him. The Court recognised that it may prove difficult for prisoners to obtain evidence of ill-treatment by their prison warders and that they could fear reprisals from warders who were denounced. However, the applicant had not suggested that he was ever refused permission to see a doctor, yet he did not complain about his treatment until the preliminary hearing a year after the most recent incidents and had not given any explanation for that delay. The material available did not constitute sufficient evidence to support that conclusion that the applicant was subjected to physical and mental ill-treatment and that finding was not called into question by the judge's report on the general conditions in Pianosa prison. There was insufficient evidence to conclude that there had been a violation of A 3.

Where an individual made a credible assertion that he had suffered treatment infringing A 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under A 1, required by implication that there should be an effective official investigation. Such investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity. The State authorities conducted certain investigations; however, the Court was not satisfied that those investigations were sufficiently thorough and effective to satisfy the requirements of A 3. The investigation was very slow. Although the applicant maintained that he would be able to recognise the warders concerned if he could see them in person, nothing was done to enable him to do so. The applicant's complaint was not an isolated one. In those circumstances, having regard to the lack of a thorough and effective investigation into the credible allegation made by the applicant that he had been ill-treated by warders when detained at Pianosa Prison, there had been a violation of A 3.

With regard to the applicant's complaint about the conditions in which prisoners were transferred from Pianosa to other prisons, he had not supplied detailed information and there was insufficient evidence to conclude that there had been a violation of A 3 on that account.

Despite the payment of a sum as reparation for the time he spent in detention pending trial, the applicant could still claim to be a 'victim' within the meaning of A 34 of a violation of A 5(3). The period to be taken into consideration began on 21 April 1992, when the applicant was taken into custody. The end of the period referred to in A 5(3) was the day on which the charge was determined, even if only by a court of first instance. The applicant's detention pending trial for the

purposes of A 5(3) therefore ended on 12 November 1994. The period to be taken into consideration therefore lasted almost two years and seven months. Whether it was reasonable for an accused to remain in detention had to be assessed in each case according to its special features. Continued detention could be justified in a given case only if there were specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighed the rule of respect for individual liberty. In refusing to release the applicant, the authorities relied on the existence of serious evidence of his guilt, the danger of pressure being brought to bear on witnesses and the risk of evidence being tampered with and on the presumption created by the Code of Criminal Procedure. The allegations against the applicant came from the single source of a *pentito*. Although the co-operation of *pentiti* was a very important weapon in the fight against the Mafia, the risk that a person might be accused and arrested on the basis of unverified allegations should not be underestimated. Statements of *pentiti* had to be corroborated by other evidence and hearsay to be supported by objective evidence, especially when a decision was being made whether to prolong detention pending trial, as such statements necessarily became less relevant with the passage of time. As the applicant had been acquitted due to the absence of other evidence, very compelling reasons would be required for the applicant's lengthy detention to be justified. The other grounds relied on stated in the relevant decisions were reasonable initially, but they referred to the prisoners as a whole and did not point to any factor capable of showing that the risks relied on actually existed and failed to establish that the applicant, who had no record and whose role in the mafia-type organisation concerned was said to be minor, posed a danger. No account was taken of the fact that the accusations against the applicant were based on evidence which, with time, had become weaker rather than stronger. Accordingly, the grounds stated in the decisions were not sufficient to justify the applicant's being kept in detention for two years and seven months.

A 5(1): The applicant maintained that he should have been freed immediately after his acquittal, whereas he was held in detention unlawfully for 12 hours after his acquittal. The list of exceptions to the right to liberty secured in A 5(1) was an exhaustive one and only a narrow interpretation of those exceptions was consistent with the aim of that provision, namely, to ensure that no one was arbitrarily deprived of his or her liberty. While some delay in carrying out a decision to release a detainee was often inevitable, it had to be kept to a minimum. The delay in the applicant's release was only partly attributable to the need for the relevant administrative formalities to be carried out; the additional delay was caused by the registration officer's absence. In those circumstances, the applicant's continued detention after his return to prison did not amount to a first step in the execution of the order for his release and therefore did not come within any of the sub-paragraphs of A 5.

A 8: There had been an interference by a public authority in the exercise of the applicant's right to respect for his correspondence. With regard to the period when the censorship of the applicant's correspondence was based on Law No 354 of 1975 it did not comply with A 8 due to the lack of clarity in the relevant provisions. With regard to the period when the censorship was based on an order of the Minister of Justice under the special regime provisions, the Italian Constitutional Court had held that the Minister of Justice had no power to take measures concerning prisoners' correspondence and the interference in that period was not therefore in accordance with the law. For one period, there was no legal basis whatsoever.

A 6(3): In the light of the conclusion regarding A 8, this complaint was absorbed by the preceding complaint.

P4A2: The applicant maintained that the fact that he had been placed under special police supervision despite his acquittal amounted to a breach of P4A2. He was subjected to very severe restrictions on his freedom of movement for three years, which undoubtedly amounted to an interference with his rights under P4A2. Those measures were in accordance with law and pursued legitimate aims of maintenance of public order and the prevention of crime. It was legitimate for preventive measures, including special supervision, to be taken against persons suspected of being members of the Mafia, even prior to conviction, as they were intended to

prevent crimes being committed. Furthermore, an acquittal did not necessarily deprive such measures of all foundation, as concrete evidence gathered at trial, though insufficient to secure a conviction, could nonetheless justify reasonable fears that the person concerned may in the future commit criminal offences. In the present case, the decision to put the applicant under special supervision was taken at a time when there existed some evidence that he was a member of the Mafia, but the measure was not put into effect until after his acquittal by the District Court. The grounds relied on by the Italian courts for refusing to rescind the measure after the applicant's acquittal could not be regarded as having been necessary in a democratic society.

The rights under P1A3 were important, but not absolute. Temporarily suspending the voting rights of persons against whom there was evidence of Mafia membership pursued a legitimate aim. However, when the applicant's name was removed from the electoral register, after his acquittal, there was no concrete evidence on which a 'suspicion' that the applicant belonged to the Mafia could be based and the measure could not be regarded as proportionate.

Non-pecuniary damage (ITL 75,000,000), costs (ITL 6,000,000).

Cited: Amuur v F (25.6.1996), Assenov and Others v BG (28.10.1998), Brogan and Others v UK (29.11.1988), Diana, Calogero v I (15.11.1996), Campbell v UK (25.3.1992), Chahal v UK (15.11.1996), Contrada v I (24.8.1998), Dalban v RO (28.9.1999), Domenichini v I (15.11.1996), Erdagöz v TR (22.10.1997), Fox, Campbell and Hartley v UK (30.8.1990), Gitonas and Others v GR (1.7.1997), Guzzardi v I (6.11.1980), IA v F (23.9.1998), Ireland v UK (18.1.1978), Kaya v TR (19.2.1998), Klaas v D (22.9.1993), Giulia Manzoni v I (1.7.1997), McCann and Others v UK (27.9.1995), Mathieu-Mohin and Clerfayt v B (2.3.1987), Matthews v UK (18.2.1999), Papageorgiou v GR (22.10.1997), Petra v RO, (23.9.1998), Quinn v F (22.3.1995), Raimondo v I (22.2.1994), Raninen v SF (16.12.1997), Selmouni v F (28.7.1999), Silver and Others v UK (25.3.1983), Tekin v TR (9.6.1998), V v UK (16.12.1999), W v CH (26.1.1993), Wemhoff v D (27.6.1968), Yasa v TR (2.9.1998).

Laghi v Italy 97/56

[Application lodged 11.5.1993; Commission report 28.11.1995; Court Judgment 2.9.1997]

Mr Luciano Laghi, an officer in the revenue police, instituted proceedings on 24 July 1985 in the Consiglio di Stato for judicial review of a decision of the Ministry of Finance assigning him to a rank lower than the one to which he considered himself to be entitled. He also sought a stay of execution of that decision. In a decision of 5 November 1985, the Consiglio di Stato allowed the application for a stay of execution. After a hearing on 2 February 1988, the Consiglio di Stato ordered the Ministry of Finance to produce various documents. In a judgment of 8 March 1994, the text of which was deposited with the registry on 14 July 1994, the Consiglio di Stato gave judgment against the applicant. The applicant complained about the length of proceedings.

Comm found by majority (23–6) V 6.

Court found by majority (8–1) 6(1) did not apply.

Judges: Mr R Bernhardt, President, Mr C Russo, Mr N Valticos, Mr R Pekkanen (d), Mr AB Baka, Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr P Kûris, Mr E Levits.

In the law of many Member States there was a basic distinction between civil servants and employees governed by private law. That had led the Court to hold that 'disputes relating to the recruitment, careers and termination of service of civil servants were as a general rule outside the scope of A 6(1)'. In the present case the applicant sought only judicial review of the decision of the Ministry of Finance to assign him to a rank lower than the one to which he considered himself to be entitled. The dispute raised by him clearly related to his career and did not concern a 'civil' right within the meaning of A 6(1). Accordingly, A 6(1) was not applicable in the case.

Cited: Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993), Neigel v F (17.3.1997).

Laino v Italy 99/12

[Application lodged 12.6.1996; Commission report 16.9.1997; Court Judgment 18.2.1999]

Mr Michele Laino, the applicant, petitioned the Naples District Court for judicial separation from his wife on 15 March 1990. He also requested the court to determine the arrangements for custody of the children and use of the family home. In a judgment of 27 May 1998, the text of which was deposited with the registry on that day, the court pronounced the couple judicially separated, confirmed the provisional measures regarding custody of the children and use of the family home and increased the maintenance. Neither party appealed. The applicant complained about the length of the proceedings and his right to respect for his family life.

Comm found unanimously V 6(1), not necessary to examine A 8.

Court found unanimously V 6(1), by majority (15–2) not necessary to examine A 8.

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr L Ferrari Bravo (pd), Mr G Bonello, Mr J Makarczyk, Mr P Kûris, Mr R Türmen, Mr J-P Costa, Mrs F Tulkens (jpd), Mrs V Stráznická, Mr P Lorenzen, Mr M Fischbach, Mr V Butkevych, Mr J Casadevall (jpd), Mrs HS Greve, Mr A Baka, Mr R Maruste.

The period to be taken into consideration began on 15 March 1990, when the applicant petitioned the Naples District Court for judicial separation. It ended on 27 May 1998, the date of the Nola District Court's judgment. It therefore lasted just over 8 years and 2 months. The reasonableness of the length of proceedings had to be assessed, in particular, in the light of the complexity of the case and of the conduct of the applicant and of the relevant authorities. In cases relating to civil status, what was at stake for the applicant was also a relevant consideration and special diligence was required in view of the possible consequences which the excessive length of proceedings might have, notably on enjoyment of the right to respect for family life. The respondent State could not be considered responsible for the delay caused by the attempt to reach an out-of-court settlement. The case was not particularly complex and the preparation for trial consisted essentially in hearing evidence from four witnesses at the hearing on 22 April 1993. Having regard to what was at stake for the applicant (judicial separation and determination of the arrangements for custody of the children and access rights), the domestic courts failed to act with the special diligence required by A 6(1). The various periods of inactivity attributable to the State failed to satisfy the reasonable time requirement. Having regard also to the total duration of the proceedings, the Court concluded that there has been a violation of A 6(1).

Having regard to the finding in respect of A 6(1), it was not necessary to examine A 8.

Non-pecuniary damage (by majority (16–1) ITL 25,000,000), costs and expenses (ITL 16,305,440).

Cited: Maciariello v I (27.2.1992), Paulsen-Medalen and Svensson v S (19.2.1998).

Lala v The Netherlands (1994) 18 EHRR 586 94/29

[Application lodged 8.3.1989; Commission report 4.5.1993; Court Judgment 22.9.1994]

Mr Radjinderpersad Roy Lala was convicted on 19 November 1986, after a trial *in absentia* by the Hague Regional Court for forgery in that he had concealed an income from work while enjoying social security benefits. He was sentenced to four weeks' imprisonment, two weeks of which were suspended for a probationary period of three years on condition, *inter alia*, that he co-operated in repaying the excess. He appealed to the Hague Court of Appeal. He failed to appear at the hearing of 7 September 1987, although his lawyer appeared. His conviction was upheld in part and sentence reduced. He appealed to the Supreme Court, complaining that his counsel had not had the last word in the proceedings before the Court of Appeal, that his counsel had not been allowed to conduct the defence and that the Court of Appeal had failed to determine whether the applicant had had a compelling and legitimate reason not to appear, in which case his counsel should have been entitled to conduct the defence in his client's absence. In its judgment of 27 September 1988, the Supreme Court dismissed his appeal. The applicant complained that he had not had a fair trial

in that his counsel had not been heard by the Court of Appeal and his conviction had been based exclusively on prosecution evidence.

Comm found unanimously V 6(1)+6(3)(c), no separate issue under 6(2).

Court found by majority (8–1) V 6(1)+6(3)(c), unanimously not necessary to consider 6(2).

Judges: Mr R Ryssdal (jc), President, Mr F Matscher (d), Mr B Walsh, Mr SK Martens, Mr R Pekkanen, Mr JM Morenilla, Mr AB Baka, Mr G Mifsud Bonnici (jc), Mr J Makarczyk.

The applicant's complaint was not that the appeal was heard in his absence (he had not availed himself of his right to attend), but rather that the Court of Appeal decided the case without his counsel, whom he had charged to conduct the defence and who attended the trial with the clear intention of doing so, being allowed to defend him. The case concerned a criminal appeal by way of rehearing, which was the last instance where, under domestic law, the case could be fully examined as to questions of both fact and law. In the interests of a fair and just criminal process, it was of capital importance that the accused should appear at his trial. As a general rule, that was equally true for an appeal by way of rehearing. However, it was also of crucial importance for the fairness of the criminal justice system that the accused be adequately defended, both at first instance and on appeal, the more so if, as is the case under Netherlands law, no objection could be filed against a default judgment given on appeal. The fact that the defendant, in spite of having been properly summoned, did not appear, could not, even in the absence of an excuse, justify depriving him of his right under A 6(3) to be defended by counsel. Everyone charged with a criminal offence had the right to be defended by counsel. For that right to be practical and effective, and not merely theoretical, its exercise should not be made dependent on the fulfilment of unduly formalistic conditions: it was for the courts to ensure that a trial was fair and, accordingly, that counsel who attended trial for the apparent purpose of defending the accused in his absence, was given the opportunity to do so. There had therefore been a violation of A 6(1) taken together with A 6(3)(c).

The complaint under A 6(2) was not repeated before the Court and the Court therefore saw no need to address the matter of its own motion.

Finding of violation constituted sufficient just satisfaction.

Cited: Poitrimol v F (23.11.1993).

Lambert v France 98/66

[Application lodged 8.2.1994; Commission report 1.7.1997; Court Judgment 24.8.1998]

In the course of a judicial investigation into offences of theft, burglary, handling the proceeds of theft, aggravated theft, and unlawful possession of weapons and ammunition, an investigating judge issued a warrant instructing the gendarmerie to arrange for the telephone line of a certain RB to be tapped. As a result of the tapping and the interception of some of his conversations, Mr Michel Lambert, the applicant, was charged with handling the proceeds of aggravated theft. He applied to the Indictment Division of the Riom Court of Appeal for a ruling against the validity of the telephone tapping. His application was dismissed. His appeal to the Court of Cassation was also dismissed. He complained that the interception of certain telephone conversations which were used against him amounted to interference with his private life and correspondence and that he had not had an effective remedy in the Court of Cassation.

Comm found by majority (20–12) V 8, (27–5) not necessary to consider 13.

Court found unanimously V 8, not necessary to examine 13.

Judges: Mr R Bernhardt, President, Mr L-E Pettiti (c), Mr A Spielmann, Mr N Valticos, Sir John Freeland, Mr L Wildhaber, Mr K Jungwiert, Mr M Voicu, Mr V Butkevych.

As telephone conversations were covered by the notions of 'private life' and 'correspondence' within the meaning of A 8, the admitted measure of interception amounted to interference by a public authority. It was of little importance that the telephone tapping in question was carried out

on the line of a third party. Such interference would contravene A 8 unless it was in accordance with the law, pursued one or more of the legitimate aims referred to in para 2 and was necessary in a democratic society in order to achieve them. The expression 'in accordance with the law' within the meaning of A 8(2) required the impugned measure to have some basis in domestic law and also required that it should be accessible to the person concerned, who had to be able to foresee its consequences for him, and compatible with the rule of law. The telephone tapping was on the basis of the Code of Criminal Procedure and so had a statutory basis in French law. The question of the accessibility of the law did not raise any problems in the present case. With regard to the 'foreseeability of the law', the Code of Criminal Procedure laid down clear, detailed rules and specified with sufficient clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities. The interference was designed to establish the truth in connection with criminal proceedings and therefore to prevent disorder. The Court of Cassation in its judgment held that the applicant had no *locus standi* to challenge the manner in which the duration of the monitoring of a third party's telephone line was extended and found the Indictment Division had been wrong to examine the objections of invalidity raised by the applicant, as the telephone line being monitored had not been his own. The applicant could have availed himself of a remedy in respect of the disputed point in the Indictment Division. However, the Court of Cassation's reasoning could lead to decisions whereby a very large number of people were deprived of the protection of the law, namely all those who had conversations on a telephone line other than their own. That would in practice render the protective machinery largely devoid of substance. That was the case with the applicant, who did not enjoy the effective protection of national law, which did not make any distinction according to whose line was being tapped. The applicant therefore did not have available to him the effective control to which citizens were entitled under the rule of law and which would have been capable of restricting the interference in question to what was necessary in a democratic society. There had therefore been a violation of A 8.

In view of the preceding conclusion regarding A 8, it was not necessary to consider A 13.

Non-pecuniary damage (FF 10,000), costs and expenses (FF 15,000).

Cited: Barfod v DK (22.2.1989), Halford v UK (25.6.1997), Huvig v F (24.4.1990), Klass and Others v D (6.9.1978), Kopp v CH (25.3.1998), Kruslin v F (24.4.1990), Malone v UK (2.8.1984), Silver and Others v UK (25.3.1983).

Lamguindaz v United Kingdom 93/27

[Application lodged 6.2.1990; Commission report 13.10.1992; Court Judgment 23.6.1993]

Mr Ahmed Lamguindaz was a Moroccan citizen. He went to the UK in about 1974 to join his father who had settled there and had indefinite leave to remain. His mother and three brothers and sisters also moved to the UK. The applicant had a long criminal record for offences of dishonesty and violence. On 17 May 1985, he was convicted of wounding. On 19 February 1986, the Secretary of State for the Home Department decided to make a deportation order against him on the ground that such an order was 'conducive to the public good'. His appeal to the Immigration Appeal Tribunal was rejected. A deportation order was signed on 22 October 1986 and his subsequent application to the High Court for leave to apply for judicial review of the tribunal's decision was dismissed. In February 1988, the applicant was taken by his father to Morocco and left there in an attempt to keep him out of trouble with the police. He returned to the UK in September 1989 and was eventually deported on 12 May 1990 to Tangier. He has since remained in Morocco. He complained that his deportation was in breach of A 8 and 14.

Comm found by majority (13–1) V 8, not necessary to consider 14.

Court noted the friendly settlement and struck the case from the list.

Judges: Mr R Ryssdal, President, Mr B Walsh, Mr C Russo, Mrs E Palm, Mr R Pekkanen, Sir John Freeland, Mr AB Baka, Mr MA Lopes Rocha, Mr G Mifsud Bonnici.

The Court took formal note of the friendly settlement reached by the Government and the applicant and discerned no reason of public policy why the case should not be struck out of the list.

FS (Government proposed to revoke the deportation order against the applicant, allow the applicant to re-enter the UK, grant him indefinite leave to remain, allow him to make an application for naturalisation, pay GBP 8,398.02 in respect of costs and expenses), therefore SO.

Lamy v Belgium (1989) 11 EHRR 529 89/4

[Application lodged 20.6.1983; Commission report 8.10.1987; Court Judgment 30.3.1989]

Mr José Lamy was a company director. On 29 November 1982, a private limited company of which he was the manager and which built industrial premises filed a declaration of insolvency with the registry of the Verviers Commercial Court, and the court adjudged the company bankrupt on the same day. On 18 February 1983, an investigating judge of the Verviers tribunal de première instance questioned Mr Lamy and issued a warrant for his arrest on charges of fraudulent bankruptcy and other criminal bankruptcy matters and trading without business registration. On 12 November 1987, the Verviers Criminal Court convicted and sentenced him to three years' imprisonment, suspended for five years and imposed fines on him. He complained that neither he nor his counsel had had access to the investigation file when the arrest warrant was first confirmed by the chambre du conseil of the Verviers tribunal de première instance or when he appealed to the Indictments Chamber of the Liège Court of Appeal.

Comm found by majority (7–3) V 5(4), unanimously not necessary to consider 5(2) and 5(3), unanimously NV 6(3)(b).

Court found unanimously V 5(4), NV 5(2), NV 5(3), not necessary to examine 6(3)(b).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr L-E Pettiti, Mr C Russo, Mr J De Meyer, Mr JA Carrillo Salcedo.

During the first 30 days of custody, the applicant's counsel was, in accordance with the law as judicially interpreted, unable to inspect anything in the file, and in particular the reports made by the investigating judge and the Verviers police. Access to those documents was essential for the applicant at the crucial first appearance stage in the proceedings, when the court had to decide whether to remand him in custody or to release him. It was therefore essential to inspect the documents in question in order to challenge the lawfulness of the arrest warrant effectively. The appraisal of the need for a remand in custody and the subsequent assessment of guilt were too closely linked for access to documents to be refused in the former case when the law required it in the latter case. Whereas Crown Counsel was familiar with the whole file, the procedure did not afford the applicant an opportunity of challenging appropriately the reasons relied upon to justify a remand in custody. Since it failed to ensure equality of arms, the procedure was not truly adversarial. There was therefore a breach of A 5(4).

A 5(2): The applicant's arguments, that the judicial investigation had begun as a result of a report of which he had had no knowledge and so he could not effectively and usefully prepare his defence and make ready for his appearance before the chambre du conseil, were devoid of foundation. Apart from his questioning by the investigating judge, on the day of his arrest, the applicant was given a copy of the arrest warrant. That document set out not only the reasons for depriving him of his liberty but also the particulars of the charges against him. There was accordingly no breach of A 5(2).

A 5(3): The investigating judge at Verviers issued a warrant containing reasons for the applicant's arrest on the day that he had questioned him, and the chambre du conseil upheld the arrest and likewise gave reasons for its successive orders. The detention on remand ended well before committal for trial and the subsequent conviction. The procedure therefore complied with the requirements of A 5(3).

The facts and arguments relied on by the applicant in support of the complaint under A 6(3)(b) were the same as those put forward under A 5(4). Accordingly, it was not necessary to consider the case under A 6(3)(b).

No causal link regarding pecuniary damage. Judgment constituted sufficient just satisfaction for any non-pecuniary damage. Costs and expenses (BEF 100,000).

Cited: Luberti v I (23.2.1984), Sanchez-Reisse v CH (21.10.1986).

Langborger v Sweden (1990) 12 EHRR 416 89/9

[Application lodged 7.9.1984; Commission report 8.10.1987; Court Judgment 22.6.1989.]

Mr Rolf Langborger, the applicant, sought the deletion from his lease of a 'negotiation clause' which fixed the rent and other conditions agreed upon on the basis of a negotiation agreement between a landlords' union and a tenants' union. His application was rejected by the Rent Review Board and then by the Housing and Tenancy Court. The court included lay assessors who were nominated respectively by the landlords' union and the tenants' union. The applicant alleged that he had not been given a public hearing by an independent and impartial tribunal. He also complained of a breach of his rights to respect for his home, his freedom of association and enjoyment of his possessions and of the lack of an effective remedy before a national authority.

Comm found unanimously V 6(1), NV 8, NV 11, NV P1A1 and not necessary to consider the other complaints.

Court found by a majority (17–3) V 6(1), unanimously NV 8, NV 11, NV P1A1 and not necessary to examine 13.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha (d), Mr L-E Pettiti (d), Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer, Mr JA Carrillo Salcedo, Mr N Valticos (d), Mr SK Martens (c), Mrs E Palm, Mr I Foighel.

In order to establish whether a body could be considered 'independent', regard had to be had, *inter alia*, to the manner of appointment of its members and their term of office, to the existence of guarantees against outside pressures and to the question whether the body presented an appearance of independence. As to the question of impartiality, a distinction had to be drawn between a subjective test, whereby it sought to establish the personal conviction of a given judge in a given case, and an objective test, aimed at ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect. The Housing and Tenancy Court was composed of two professional judges and two lay assessors. The independence and impartiality of the professional judges were not at issue. The lay assessors had specialised experience and were well qualified to participate in the adjudication of the disputes. There was no reason to doubt the personal impartiality of the lay assessors. However, as regards their objective impartiality, they had been nominated by and had close links with two associations which both had an interest in the continued existence of the negotiation clause. In the circumstances, the applicant could legitimately fear that the lay assessors had a common interest contrary to his own and therefore that the balance of interests inherent in the court's composition was liable to be upset. The fact that the court also included two professional judges, whose independence and impartiality were not in question, made no difference.

The complaints raised under A 8 (the power of the Tenants' Union to negotiate the rent on his behalf breached the right to respect for his home) and A 11 (that he had to accept against his will the services of the Tenants' Union in negotiations, for which he had to pay) did not come within the scope of the articles relied upon.

The obligation to pay the small financial contribution to the Tenants' Union could not be regarded as inconsistent with P1A1.

With regard to the alleged violations of A 6, it was not necessary to examine the case under A 13, whose requirements were less strict than and absorbed by those of A 6. In this case A 13 could not

be taken in conjunction with A 8 or 11 which were inapplicable or with P1A1, because the complaint based on that provision had not given rise to an 'arguable' claim.

Finding of breach constituted adequate just satisfaction for damages. Costs and expenses (by majority (19–1) SEK 63,475).

Cited: Campbell and Fell v UK (28.6.1984), De Cubber v B (26.10.1984), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Pudas v S (27.10.1987).

Lapalorcia v Italy 97/53

[Application lodged 12.5.1994; Commission report 28.11.1995; Court Judgment 2.9.1997]

Mrs Maria Rosaria Lapalorcia, the applicant, was a children's welfare officer. She instituted proceedings on 22 November 1988 in the Campania Regional Administrative Court seeking an order requiring the Provincial Council to pay her salary owed in full, after adjustment for inflation and the addition of interest at the statutory rate. In a judgment of 8 November 1994, the text of which was deposited with the registry on 24 November 1994, and which became final on 19 January 1995, the Administrative Court gave judgment in the applicant's favour. She complained about the length of proceedings.

Comm found by majority (24–5) V 6.

Court found majority (7–2) found V 6(1).

Judges: Mr R Bernhardt (d), President, Mr C Russo, Mr N Valticos, Mr R Pekkanen (c), Mr AB Baka (d), Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr P Kûris, Mr E Levits.

The applicant asserted a purely economic right legally derived from her work during her secondment to the Provincial Council. Accordingly, A 6(1) was applicable. The period to be taken into consideration began on 22 November 1988, the date of the application to the Regional Administrative Court and ended on 19 January 1995, when that court's judgment of 8 November 1994 became final, that is, approximately six years and two months. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and that of the relevant authorities. Despite the applicant's attempts to have a date fixed for the hearing for oral argument, the Administrative Court waited for nearly six years before giving judgment in a case which was of no particular complexity. Accordingly, a reasonable time was exceeded and there had therefore been a breach of A 6(1).

Pecuniary and non-pecuniary damage (ITL 15,000,000), costs and expenses (ITL 15,582,686).

Cited: Ceteroni v I (15.11.1996), Hussain v UK (21.2.1996), Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993), Scollo v I (28.9.1995).

Larissis and Others v Greece (1999) 27 EHRR 329 98/12

[Application lodged 28.1.1994; Commission report 12.9.1996; Court Judgment 24.2.1998]

The three applicants, Mr Dimitrios Larissis, Mr Savvas Mandalarides, and Mr Ioannis Sarandis, were officers in the same unit of the Greek air force. They were all followers of the Pentecostal Church, a Protestant Christian denomination which adhered to the principle that it was the duty of all believers to engage in evangelism. On 18 May 1992, the applicants appeared before the Permanent Air Force Court in Athens, composed of one officer with legal training and four other officers. They were tried for various offences of proselytism. In a decision delivered on the day of the hearing they were all found guilty of proselytism. The first applicant was sentenced to a total period of 13 months' imprisonment for proselytising airmen Antoniadis, Kokkalis, Voikos and Kafkas. The second applicant was sentenced to a total period of 12 months' imprisonment for proselytising Mrs Zounara, and the Baïramis family and their neighbours. The third applicant was sentenced to a total period of 14 months' imprisonment for proselytising airman Kokkalis, Mrs Zounara, Adjutant Tsikas and airman Kafkas. The court ordered that all the penalties be converted

to fines and not enforced provided the applicants did not commit new offences in the following three years. The applicants appealed to the Courts-Martial Appeal Court, which was composed of five military judges. The Appeal Court upheld most of their convictions, but reduced the sentences. The applicants appealed to the Court of Cassation, which dismissed their appeals.

Comm found unanimously V 9 regarding the second applicant's conviction for proselytising the Baïramis family and their neighbours, by majority (24–5) regarding second and third applicants' conviction for proselytising Mrs Zounara, by majority (28–1) NV 9 regarding first and second applicants conviction for proselytising airman Antoniadis and the first and third conviction for proselytising airman Kokkalis, (23–6) regarding first and third applicants conviction for proselytising airman Kafkas, (28–1) NV 7, unanimously no separate issue under 10 or 9+14 regarding second applicant conviction for proselytising the Baïramis family and neighbours and unanimously the second and third applicants conviction for proselytising Mrs Zounara, unanimously NV 9+14 regarding first and second applicants conviction for proselytising airman Antoniadis and the first and third applicants conviction for proselytising airmen Kokkalis and Kafkas.

Court found by majority (8–1) NV 7, NV 9, with regard to the measures taken against the first, second and third applicants for the proselytising of airmen Antoniadis and Kokkalis, (7–2) NV 9 with regard to the measures taken against the first and third applicants for the proselytising of airman Kafkas, (7–2) V 9 with regard to the measures taken against the second and third applicants for the proselytising of civilians, unanimously that no separate issue under 10, unanimously NV 9+14 in relation to the measures taken against the first, second and third applicants for the proselytising of the airmen, unanimously that no separate issue under 9+14 in relation to the measures taken against the second and third applicants for the proselytising of the civilians.

Judges: Mr F Gölcüklü, President, Mr R MacDonald, Mr J De Meyer (C), Mr N Valticos (PD), Mr R Pekkanen, Mr JM Morenilla (pd), Mr B Repik (PD), Mr P Kûris, Mr P Van Dijk (PD).

The Court recalled its finding in the *Kokkinakis* case that the definition of the offence of proselytism contained in the legislation, together with the settled body of national case-law interpreting and applying it, satisfied the conditions of certainty and foreseeability prescribed by A 7. There was no reason to reverse its previous decision. There had been no violation of A 7.

The prosecution, conviction and punishment of the applicants for offences of proselytism amounted to interferences with the exercise of their rights. The Court referred to its finding in *Kokkinakis* case that the measures taken against that applicant were prescribed by law. The position in Greek law had not changed and there was no reason to depart from the earlier assessment. The impugned measures essentially pursued the legitimate aim of protecting the rights and freedoms of others. A 9 did not, however, protect every act motivated or inspired by a religion or belief. It did not, for example, protect improper proselytism, such as the offering of material or social advantage or the application of improper pressure with a view to gaining new members for a Church. The Court's task was to determine whether the measures taken against the applicants were justified in principle and proportionate. The Convention applied in principle to members of the armed forces as well as to civilians. Nevertheless, when interpreting and applying its rules in cases such as the present, it was necessary to bear in mind the particular characteristics of military life and its effects on the situation of individual members of the armed forces. The hierarchical structures which were a feature of life in the armed forces might affect every aspect of the relations between military personnel, making it difficult for a subordinate to rebuff the approaches of an individual of superior rank or to withdraw from a conversation initiated by him. Thus, what would in the civilian world be seen as an innocuous exchange of ideas which the recipient was free to accept or reject, might, within the confines of military life, be viewed as a form of harassment or the application of undue pressure in abuse of power. Not every discussion about religion or other sensitive matters between individuals of unequal rank would fall within that category. Nonetheless, where the circumstances so required, States might be justified in taking special measures to protect the rights and freedoms of subordinate members of the armed forces. Airmen Antoniadis and Kokkalis had testified in the domestic proceedings that the applicants approached them on a number of occasions in order to persuade them to convert and to visit the Pentecostal Church. Mr Antoniadis stated that he felt obliged to take part in the discussions because the

applicants were his superior officers, and Mr Kokkalis said that the applicants' approaches bothered him. Although the applicants did not use threats or inducements, they were persistent in their advances such that the two airmen felt themselves constrained and subject to a certain degree of pressure owing to the applicants' status as officers, even if this pressure was not consciously applied. In those circumstances, the Greek authorities were in principle justified in taking some measures to protect the lower ranking airmen from improper pressure applied to them by the applicants in their desire to promulgate their religious beliefs. The measures taken were not particularly severe and were more preventative than punitive in nature; in all the circumstances of the case, the measures were not disproportionate. There had therefore been no violation of A 9 with regard to the measures taken against the applicants for the proselytising of airmen.

It was of decisive significance that the civilians whom the applicants attempted to convert were not subject to pressures and constraints of the same kind as the airmen. With regard to the Baïramis family and their neighbours, none of the evidence indicated that they felt obliged to listen to the applicant or that his behaviour towards them was improper in any way. Mrs Zounara had initially sought out the applicants in an attempt to understand the reasons behind her husband's behaviour (he had joined the Pentecostal Church, thus leading to a breakdown in the relationship). Although she was in a state of distress because of her marriage breakdown, her mental condition was not such that she was in need of any special protection from the evangelical activities of the applicants or that they applied improper pressure to her. The second and third applicants' convictions on the charges in question were not therefore justified in the circumstances of the case. There had been a violation of A 9 with regard to the measures taken against them for the proselytising of the Baïramis family and their neighbours and Mrs Zounara.

Having regard to the scrutiny of the case in the context of A 9, no separate issue arose in relation to A 10.

No evidence was produced to suggest that an officer in the armed forces who attempted to convert his subordinates to the Orthodox Church in a manner similar to that adopted by the applicants would have been treated any differently. It followed that no violation of A 9 and 14 taken together had been established in connection with the proselytising of the airmen. Having found a violation of A 9 with regard to the measures taken against the second and third applicants for the proselytising of the Baïramis family and Mrs Zounara, no separate issue arises in that connection under A 9 and 14 taken together.

Non-pecuniary damage (by majority (7–2) GRD 500,000 each to second and third applicants), costs and expenses (to second and third applicants GBP 6,000 less FF 11,149).

Cited: Engel and Others v NL (8.6.1976), Grigoriades v GR (25.11.1997), Kokkinakis v GR (25.5.1993), Sunday Times v UK (No 1) (26.4.1979).

Larkos v Cyprus 99/9

[Application lodged 21.11.1995; Commission report 14.1.1998; Court Judgment 18.2.1999]

Mr Xenis Larkos, a retired civil servant, rented his house from the Government of Cyprus on 1 May 1976 and had been living there ever since with his wife and four children. On 3 December 1986, the Ministry of Finance informed the applicant that the permission by virtue of which he occupied the premises was revoked and that he had to surrender the property by 30 April 1987. He failed to do so and, on 3 June 1987, the Attorney-General notified him that if he did not quit the house before 31 July 1987, legal action would be taken against him. The applicant claimed that he was a 'statutory tenant' within the meaning of the Rent Control Law 1983 and thus protected by law. In February 1992, the District Court of Nicosia gave judgment against the applicant, stating that the protection of the Rent Control Law did not extend to the applicant since it only bound private owners of property and not the Government of Cyprus. The applicant's appeal to the Supreme Court relying on the Convention was dismissed. He complained that because he was a tenant of the Government he did not enjoy the protection which the Rent Control Act gave persons who rented from private owners.

Comm found unanimously V 14+8, not necessary to examine 14+P1A1.

Court found unanimously V 14+8, not necessary to consider 14+P1A1.

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr A Pastor Ridruejo, Mr L Ferrari Bravo, Mr L Caflisch, Mr I Cabral Barreto (so), Mr J-P Costa, Mr K Jungwiert, Mr M Fischbach, Mr B Zupancic, Mrs N Vajic, Mrs W Thomassen, Mrs M Tsatsa-Nikolovska, Mr T Pantiru, Mr E Levits, Mr K Traja, Mr AN Loizou, ad hoc judge.

It was not disputed that the applicant could rely on the guarantee against unlawful discrimination contained in A 14. The applicant's complaint related to the manner in which the alleged difference in treatment adversely affected the enjoyment of his right to respect for his home guaranteed under A 8. He had not contended that there had been a breach of A 8 on account of the fact that, being a government tenant, he was faced with the threat of eviction from his home. However, it sufficed for the purposes of the application of A 14 that the facts relied on in the case fell within the ambit of A 8 and the relevance of that article could not be denied in view of the judgment of the District Court of Nicosia ordering the applicant to leave his home. A difference in treatment was discriminatory if it had no objective and reasonable justification, that is, if it did not pursue a legitimate aim or if there was not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Moreover, the Contracting States enjoyed a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justified a different treatment. The Court had to have close regard to the terms of the tenancy agreement which the applicant concluded with the authorities when assessing his claim to be in a relevantly similar or analogous situation to that of private tenants renting property from private landlords. The lease made no reference to the fact that the property was let to him in his capacity of civil servant or that the subsistence of the lease was dependent on his continued employment in the civil service. The terms of the lease indicated that the Government rented the property in a private law capacity; therefore, the applicant could claim with justification to be in a relevantly similar situation to that of other private tenants who rented accommodation from private landlords and whose property was situated in a regulated area within the meaning of the Rent Control Law 1983. While a measure which had the effect of treating differently persons in a relevantly similar situation could be justified on public interest grounds, in the present case the respondent Government had not provided any convincing explanation of how the general interest would be served by evicting the applicant. The legislation was intended as a measure of social protection for tenants living in particular areas of Cyprus. A decision not to extend that protection to government tenants living side by side with tenants in privately owned dwellings required specific justification, more so since the Government were themselves protected by the legislation when renting property from private individuals. However, the Government had not adduced any reasonable and objective justification for the distinction which would meet the requirements of A 14, even having regard to their margin of appreciation in the area of the control of property. Accordingly, there had been a violation of A 14 in conjunction with A 8.

Having regard to its decision on the applicant's complaint under A 14+8, it was not necessary to give separate consideration to the complaint under 14+P1A1.

Non-pecuniary damage (CYP 3,000), costs and expenses (CYP 5,000).

Cited: Gaygusuz v A (16.9.1996), Inze v A (28.10.1987).

Laskey, Jaggard and Brown v United Kingdom (1997) 24 EHRR 39 97/4

[Application lodged 14.12.1992; Commission report 26.10.1995; Court Judgment 19.2.1997]

In 1987, in the course of routine investigations into other matters, the police came into possession of a number of video films which were made during sado-masochistic encounters involving the applicants, Mr Colin Laskey, Mr Roland Jaggard and Mr Anthony Brown, and as many as 44 other homosexual men. As a result the applicants, with several other men, were charged with a series of offences, including assault and wounding, relating to sado-masochistic activities that had taken place over a 10 year period. The acts consisted in the main of maltreatment of the genitalia and

ritualistic beatings either with the assailant's bare hands or a variety of implements. There were instances of branding and infliction of injuries which resulted in the flow of blood and which left scarring. These activities were consensual and were conducted in private for no apparent purpose other than the achievement of sexual gratification. Video cameras were used to record events and the tapes copied and distributed amongst members of the group. The prosecution was largely based on the contents of those videotapes. There was no suggestion that the tapes had been sold or used other than by members of the group. The applicants pleaded guilty to the assault charges after the trial judge ruled that they could not rely on the consent of the victims as an answer to the prosecution case. On 19 December 1990, the defendants were convicted and sentenced to terms of imprisonment. The applicants appealed against conviction and sentence to the Court of Appeal, which dismissed the appeals against conviction but reduced the sentences as the applicants did not appreciate that their actions in inflicting injuries were criminal. The applicants' appeal to the House of Lords was dismissed by a majority. The applicants complained that their convictions were the result of an unforeseeable application of a provision of the criminal law which, in any event, amounted to an unlawful and unjustifiable interference with their right to respect for their private life.

Comm found by majority (11–7) NV 8.

Court found unanimously NV 8.

Judges: Mr R Bernhardt, President, Mr L-E Pettiti (c), Mr C Russo, Mr A Spielmann, Sir John Freeland, Mr MA Lopes Rocha, Mr L Wildhaber, Mr P Kûris, Mr E Levits.

The criminal proceedings against the applicants which resulted in their conviction constituted an interference by a public authority with the applicants' right to respect for their private life. The interference had been in accordance with the law and pursued the legitimate aim of the protection of health or morals, within the meaning of A 8(2). The notion of necessity implied that the interference corresponded to a pressing social need and, in particular, that it was proportionate to the legitimate aim pursued; in determining whether an interference was 'necessary in a democratic society', the Court would take into account that a margin of appreciation was left to the national authorities. The scope of this margin of appreciation was not identical in each case, but would vary according to the context. Relevant factors included the nature of the Convention right in issue, its importance for the individual and the nature of the activities concerned. One of the roles which the State was entitled to undertake was to seek to regulate, through the operation of the criminal law, activities which involved the infliction of physical harm. That was so whether the activities in question occurred in the course of sexual conduct or otherwise. The determination of the level of harm that should be tolerated by the law in situations where the victim consented was in the first instance a matter for the State concerned since what was at stake was related, on the one hand, to public health considerations and to the general deterrent effect of the criminal law, and, on the other, to the personal autonomy of the individual. The applicants' sado-masochistic activities involved a significant degree of injury or wounding which could not be characterised as trifling or transient. In deciding whether or not to prosecute, the State authorities were entitled to have regard not only to the actual seriousness of the harm caused, but also to the potential for harm inherent in the acts in question. The reasons given by the national authorities for the measures taken in respect of the applicants were relevant and sufficient for the purposes of A 8(2). The charges of assault were numerous and referred to illegal activities which had taken place over more than 10 years. However, only a few charges were selected for inclusion in the prosecution case. In recognition of the fact that the applicants did not appreciate their actions to be criminal, reduced sentences were imposed on appeal. In those circumstances, bearing in mind the degree of organisation involved in the offences, the measures taken against the applicants could not be regarded as disproportionate. The national authorities were entitled to consider that the prosecution and conviction of the applicants was necessary in a democratic society for the protection of health within the meaning of A 8(2). In view of that conclusion it was not necessary to determine whether the interference with the applicants' right to respect for private life could also be justified on the ground of the protection of morals.

Cited: Buckley v UK (25.9.1996), Dudgeon v UK (22.10.1981), Modinos v CYP (22.4.1993), Norris v IRL (26.10.1988), Olsson v S (No 1) (24.3.1988).

Lauko v Slovakia 98/73

[Application lodged 13.6.1994; Commission report 30.10.1997; Court Judgment 2.9.1998]

On 11 May 1994, Mr Ivan Lauko the applicant was accused by the local office of having committed a 'minor offence' in that without justification, he had accused family B of causing a nuisance. He was fined 300 SKK and ordered to pay costs of the proceedings. The applicant appealed against that decision to the district office, which dismissed his appeal on 28 July 1994. On 16 August 1994, the applicant brought a complaint before the Constitutional Court. On 24 November 1994, the Constitutional Court dismissed his complaint as being manifestly ill-founded. On 2 July 1997, the Constitutional Court rejected the applicant's request for the review of its decision of 24 November 1994. He complained in particular that his right to a hearing by an independent and impartial tribunal had been violated in the proceedings before the local and district offices.

Comm found unanimously V 6(1), no separate issue under 3.

Court unanimously found V 6(1), not necessary to examine 13.

Judges: Mr R Bernhardt, President, Mr F Gölcüklü, Mr R Pekkanen, Mr D Gotchev, Mr B Repik, Mr U Lôhmus, Mr J Casadevall, Mr P Van Dijk, Mr V Butkevych.

In order to determine whether an offence qualified as 'criminal' for the purposes of the Convention, the first matter to be ascertained was whether or not the text defining the offence belonged, in the legal system of the respondent State, to the criminal law; next, the nature of the offence and, finally, the nature and degree of severity of the penalty that the person concerned risked incurring had to be examined, having regard to the object and purpose of A 6, to the ordinary meaning of the terms of that article and to the laws of the Contracting States. The minor offence of which the applicant was convicted under the Minor Offences Act was not characterised under domestic law as 'criminal'. However, that was not conclusive. The legal rule infringed by the applicant was directed towards all citizens and not towards a given group possessing a special status. The general character of the legal provision infringed by the applicant together with the deterrent and punitive purpose of the penalty imposed on him showed that the offence in question was, in terms of A 6, criminal in nature. The relative lack of seriousness of the penalty at stake could not deprive an offence of its inherently criminal character. A 6(1) was therefore applicable.

In order to determine whether a body could be considered to be 'independent' of the executive, it was necessary to have regard to the manner of appointment of its members and the duration of their term of office, the existence of guarantees against outside pressures and the question whether the body presented an appearance of independence. The local office and the district office were charged with carrying out local State administration under the control of the government. The appointment of the heads of those bodies was controlled by the executive and their officers, whose employment contracts are governed by the provisions of the Labour Code, had the status of salaried employees. Therefore, the manner of appointment of the officers of the local and district offices together with the lack of any guarantees against outside pressures and any appearance of independence showed that those bodies could not be considered to be independent of the executive within the meaning of A 6(1). While entrusting the prosecution and punishment of minor offences to administrative authorities was not inconsistent with the Convention, the person concerned had to have an opportunity to challenge any decision made against him before a tribunal that offered the guarantees of A 6. In the present case, however, the applicant was unable to have the decisions of the local and district offices reviewed by an independent and impartial tribunal since his complaint was dismissed by the Constitutional Court on the ground that the minor offence in issue could not be examined by a court. There had therefore been an infringement of the applicant's right to a hearing by an independent and impartial tribunal and accordingly a violation of A 6(1).

The requirements of A 13 were less strict than, and were here absorbed by, those of A 6. Accordingly, having regard to the conclusion under A 6, it was not necessary to examine the case under A 13.

Non-pecuniary damage (SKK 5,000), costs and expenses (SKK 1,000).

Cited: AP, MP and TP v CH (29.8.1997), Bendenoun v F (24.2.1994), Campbell and Fell v UK (28.6.1984), De Cubber v B (26.10.1984), Garyfallou AEBE v GR (24.9.1997), Kamasinski v A (19.12.1989), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Lutz v D (25.8.1987), McGinley and Egan v UK (9.6.1998), Öztürk v D (21.2.1984), Socialist Party and Others v TR (25.5.1998).

Lawless v Ireland (1979–80) 1 EHRR 1 61/1

[Application lodged 8.11.1957; Commission report 19.12.1959; Court Judgment 14.11.1960 (preliminary question), 7.4.1961 (procedural question), 1.7.1961 (merits)]

The applicant, Gerald Richard Lawless, was a builder's labourer, who had become a member of the Irish Republican Army (IRA) in January 1956. He claimed to have left the IRA in June 1956 and a splinter group of the IRA in December 1956. He was arrested on 11 July 1957. He was held in a military detention camp until 11 December 1957. He was informed on 16 August that he would be released if he gave a written undertaking to respect the Constitution and laws of Ireland and not to be a member of or assist any unlawful organisation. He refused. His applications to the High Court and Supreme Court for release were dismissed. He gave a verbal undertaking to the Detention Commission that he would not engage in illegal activities and was thereafter released. He complained that he was detained without trial, between 13 July and 11 December 1957, in a military detention camp in the Republic of Ireland, claiming a violation of A 5, 6 and 7.

Commission found non-violation of the Convention.

Court (on preliminary question) by majority (6–1) rejected the objections relating to procedure raised by Irish Government, unanimously decided to proceed to the examination of the merits of the case.

Court (on merits) unanimously rejected Government's preliminary objection under 17 and found NV 5, 6, 7 and 15.

Judges (preliminary question): Mr R Cassin, President, Mr G Maridakis (d), Mr E Rodenbourg, Mr R McGonigal, ex officio member, Mr G Balladore Pallieri, Mr E Arnalds, Mr KF Arik.

Judges (merits): Mr R Cassin, President, Mr G Maridakis (c), Mr E Rodenbourg, Mr R McGonigal, ex officio member, Mr G Balladore Pallieri, Mr E Arnalds, Mr KF Arik.

The purpose of A 17 was to make it impossible for persons to derive from the Convention a right to engage or perform any act aimed at destroying in any activity any of the rights and freedoms in the Convention. The applicant had not relied on the Convention to justify or perform acts contrary to it.

A 5(1)(b) and 6 were irrelevant to the case as the applicant was not detained for non-compliance with the order of a court and there was no criminal charge against him. A 7 had no bearing on the case as his detention was a preventative measure to retrain him from engaging in activities prejudicial to the preservation of public peace and order or security; his detention was not due to him being held guilty of a criminal offence under A 7.

The expression in A 5(1)(c) 'effected for the purpose of bringing him before the competent legal authority' qualified every category of case of arrest or detention referred to in that sub-paragraph. Similarly A 5(3) entailed the obligation to bring everyone arrested or detained in any of the circumstances contemplated by para 1(c) before a judge promptly and entitled them to a trial within a reasonable time. The detention of the applicant was not effected for the purpose of bringing him before the competent legal authority and during his detention he was not brought before a judge for trial within a reasonable time. His detention under the Irish 1940 Act was therefore contrary to A 5(1)(c) and (3). However, consideration had to be given to whether his detention could be justified on any right of derogation under A 15.

The Irish government had reasonably deduced from a combination of factors (the existence in the

territory of a secret army involved in unconstitutional and violent activities, the fact that that army also operated outside the territory so affecting relations with neighbouring States and increase in terrorist activity) that there existed a public emergency threatening the life of the nation and were justified and entitled to apply A 15 to take measures to derogate from their obligations. The application of the ordinary law had not checked the growing danger. The measure of detention without trial was required by the circumstances and there were safeguards in the system to prevent abuse; the measure was strictly required by the exigencies of the situation within the meaning of A 15. The Irish Government had given the Secretary General of the Council of Europe sufficient information of the measures taken and the reasons for them without delay. States were not required to promulgate notice of derogation within their territories. The Irish Government had fulfilled its obligations under A 15(3).

Le Calvez v France 98/56

[Application lodged 9.7.1994; Commission report 26.2.1997; Court Judgment 29.7.1998]

On 22 August 1980 Mr Jean-Marie Le Calvez was recruited to the New Caledonian Civil Service as an agricultural technician. In 1991, he was declared unfit for work by a doctor. On 30 June 1992, the applicant sent the High Commissioner a letter requesting information on his administrative position and payment of sickness benefit and compensation for loss of salary with effect from 1 August 1991. He received no reply from the High Commissioner and on 15 July 1992, he lodged an application with the Rennes Administrative Court to quash the High Commissioner's implicit refusal to pay him sickness benefit and compensation for loss of salary. The High Commissioner lodged a defence, which was registered at the court registry on 11 July 1994. On 1 March 1995, the Rennes Administrative Court dismissed the applicant's application. His appeal to the Nantes Administrative Court of Appeal was rejected on 14 May 1998. On 20 May 1998, he appealed on points of law to the Conseil d'Etat. That appeal was still outstanding. The applicant complained about the length of proceedings.

Comm found unanimously V 6(1).

Court found by majority (8–1) V 6(1).

Judges: Mr Bernhardt, President, Mr L-E Pettiti (d), Mr AN Loizou, Sir John Freeland, Mr AB Baka, Mr K Jungwiert, Mr U Lôhmus, Mr E Levits, Mr V Butkevych.

The Court recalled its case-law, it had to first ascertain whether there was a dispute over a 'right' which could be said, at least on arguable grounds, to be recognised under domestic law. The dispute had to be genuine and serious; it could relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, lastly, the outcome of the proceedings had to be directly decisive for the right in question. There was a dispute between the applicant and his original department as to his entitlement to compensation. The Rennes Administrative Court and subsequently the Nantes Administrative Court of Appeal held the application to be admissible; although they did not find that the applicant had satisfied the eligibility condition laid down by the domestic legislation for payment of the benefit and compensation sought, in so doing they determined the dispute. Furthermore, the outcome of the proceedings in the administrative courts was directly decisive for the applicant's right to be paid sickness benefit while he was absent from work owing to illness. There was consequently a dispute over a 'right' within the meaning of A6(1). Disputes relating to the recruitment, careers and termination of service of civil servants were as a general rule outside the scope of A 6(1). That provision was nevertheless applicable where the claim in issue related to a 'purely economic' right such as payment of salary or pension or an 'essentially economic' one. The applicant's reinstatement in his original department was not possible. The issue of payment of benefit and compensation was economic in nature. His claim was a civil one for the purposes of A 6(1), which therefore applied in the case.

The period to be taken into consideration began on 30 June 1992 with the submission of the preliminary claim to the High Commissioner, the proceedings were still pending in the Conseil

d'Etat. To date they had lasted six years. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. While the applicant's conduct was not irreproachable, several delays were due to the authorities: two years between the application to the Administrative Court and the filing of the High Commissioner's pleading, nearly eight months between the filing of the pleading and the delivery of the Administrative Court's judgment with no preparatory measures being taken, three years in the Administrative Court of Appeal. In view of all those delays, the reasonable time requirement of A 6(1) was not satisfied.

Non-pecuniary damage (FF 15,000), costs and expenses (FF 10,000).

Cited: Abenavoli v I (2.9.1997), Acquaviva v F (21.11.1995), Balmer-Schafroth and Others v CH (26.8.1997), De Santa v I (2.9.1997), Duclos v F (17.12.1996), Editions Périscope v F (26.3.1992), Lapalorcia v I (2.9.1997), Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993), Neves e Silva v P (27.4.198), Neigel v F (17.3.1997), Nicodemo v I (2.9.1997), X v F (31.3.1992).

Le Compte, Van Leuven and De Meyere v Belgium (1982) 4 EHRR 1, (1983) 5 EHRR 183 81/2

[Applications lodged 28.10.1974 and 21.10.1975; Commission report 14.12.1979; Court Judgment 23.6.1981 (merits) and 18.10.1982 (JS)]

The applicants, Dr Herman Le Compte, Dr Frans Van Leuven and Dr Marc De Meyere were medical practitioners. They complained that the obligation to join the Ordre des médecins (medical association) and to be under the jurisdiction of its disciplinary organs contravened A 11. They further alleged that during the course of the disciplinary proceedings they had not had the benefit of the guarantees laid down by A 6.

Comm found unanimously NV 11(1) as the Ordre des médecins did not constitute an association, by majority (8–3) 6(1) applicable to the proceedings which led to the disciplinary measures, V 6(1) as applicants did not receive a public hearing (8–3) before an impartial tribunal (7–4).

Court found by majority (15–5) that 6(1) applicable, (16–4) V 6(1) as regards public hearing by competent tribunal, unanimously NV 6(1) as regards other complaints, NV 11.

Judges (merits): Mr G Wiarda, President, Mr R Ryssdal, Mr H Mosler, Mr M Zekia, Mr J Cremona (jc), Mr Thór Vilhjálmsson (d), Mrs D Bindschedler-Robert (jc), Mr D Evrigenis, Mr G Lagergren, Mr L Liesch (d), Mr F Gölcüklü, Mr F Matscher (pd), Mr J Pinheiro Farinha (d), Mr E Garcia de Enterria, Mr M Sørensen, Mr L-E Pettiti (c), Mr B Walsh, Sir Vincent Evans (d), Mr R MacDonald, Mr A Vanwelkenhuyzen, ad hoc judge.

Judges (A 50): Mr G Wiarda, President, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr L Liesch, Mr F Gölcüklü, Mr J Pinheiro Farinha, Mr A Vanwelkenhuyzen, ad hoc judge.

A 6 was applicable in that there was a dispute that related to 'civil rights and obligations'. The disciplinary proceedings directly and materially interfered with the right to continue to practise the medical profession. The fact that the result was a temporary suspension did not prevent it imparting that right. It was not necessary for the Court to consider whether 'civil rights' extended beyond private rights, as a private right was directly established between medical practitioners and their patients. A 6(1) could be relied upon by anyone who considered the interference with the exercise of one of his civil rights to be unlawful and complained of the inability to submit that claim to a tribunal meeting its requirements. Although an appeal on a point of law against the administrative body's decision lay to a judicial body, the judicial body had no jurisdiction to rectify factual errors or to examine whether the sanction was proportionate to the fault and, therefore, did not rectify the failure of the administrative body to satisfy the article's requirements.

A 6(1) provided for exceptions to the rule requiring publicity, but it made them subject to certain conditions. There was no evidence to suggest that any of those conditions was satisfied in the present case. The applicants were thus entitled to have the proceedings conducted in public. Conducting disciplinary proceedings of this kind in private did not contravene the Convention,

provided that the person concerned consented. In the present case, however, the applicants clearly wanted and claimed a public hearing. The public character of the proceedings before the Belgian Court of Cassation could not suffice to remedy this defect. There had been a breach of A 6(1) in this regard.

The Belgian Ordre des médecins was a public law institution and could not be considered as an association within the meaning of A 11. There were several associations formed to protect the professional interests of medical practitioners which they were completely free to join or not. In those circumstances, the existence of the Ordre and its attendant consequence (namely, the obligation on practitioners to be entered on the register of the Ordre and to be subject to the authority of its organs) had neither the object nor the effect of limiting or suppressing, the right guaranteed by A 11(1).

Costs and expenses (BEF 77,000 to Dr Le Compte, BEF 63,000 to Dr Van Leuven, BEF 42,000 to Dr De Meyere).

Cited (merits): De Wilde, Ooms and Versyp v B (18.6.1971), Delcourt v B (10.11.1969), Deweer v B (27.2.1980), Golder v UK (21.2.1975), König v D (28.6.1978), Neumeister v A (27.2.1968), Ringeisen v A (16.7.1971).

Cited (A 50): Airey v IRL (6.2.1981), Artico v I (13.5.1980), De Wilde, Ooms and Versyp v B (10.3.1972), Engel and Others v NL (23.11.1976), König v D (10.3.1980), Luedicke, Belkacem and Koç v D (10.3.1980), Marckx v B (13.6.1979), Neumeister v A (7.5.1974), Sunday Times v UK (6.11.1980).

Leander v Sweden (1987) 9 EHRR 433 87/4

[Application lodged 2.11.1980; Commission report 17.5.1985; Court Judgment 26.3.1987]

Mr Torsten Leander was a carpenter by profession. On 20 August 1979, he started work as a temporary replacement in the post of museum technician at the Naval Museum which was adjacent to a naval base, a restricted military security zone. He alleged that on 3 September, he was told to leave his work pending the outcome of a personnel check which had to be carried out on him in accordance with the Personnel Control Ordinance 1969. On 25 September, the Director informed him that the outcome of the personnel check had been unfavourable and that he could not therefore be employed at the Museum. On 22 October 1979, the applicant complained to the Government. The Supreme Commander of the Armed Forces gave an opinion which was accompanied by a secret annex, containing the information on the applicant. The annex was never communicated to the applicant. He complained that he had been prevented from obtaining permanent employment and dismissed from provisional employment on account of certain secret information which allegedly made him a security risk.

Comm found unanimously NV 8, no separate issue under 10, by majority (7–5) NV 13.

Court found unanimously NV 8, NV 10, by majority (4–3) NV 13.

Judges: Mr R Ryssdal (pd), President, Mr G Lagergren, Mr F Gölcüklü, Mr L-E Pettiti (pd), Sir Vincent Evans, Mr C Russo (pd), Mr R Bernhardt.

The secret police register contained information relating to the applicant's private life. Both the storing and the release of such information, which were coupled with a refusal to allow the applicant an opportunity to refute it, amounted to an interference with his right to respect for private life as guaranteed by A 8(1). The aim of the Swedish personnel check system was a legitimate one, namely, the protection of national security. The interference had a valid basis in domestic law, namely the Personnel Control Ordinance. The Ordinance, which was published in the Swedish Official Journal, met the requirement of accessibility. The law gave citizens an adequate indication as to the scope and the manner of exercise of the discretion conferred on the responsible authorities to collect, record and release information under the personnel check system. The interference was therefore 'in accordance with the law', within the meaning of A 8. The safeguards contained in the Swedish personnel check system (including the supervision of the proper implementation of the system being entrusted both to Parliament and to independent institutions, parliamentarians on the National Police Board and supervision effected by the

Chancellor of Justice, the Parliamentary Ombudsman and the Parliamentary Committee on Justice, including members of the opposition) met the requirements of A 8(2). Having regard to the wide margin of appreciation available to it, the respondent State was entitled to consider that in the present case, the interests of national security prevailed over the individual interests of the applicant. The interference to which the applicant was subjected could not therefore be said to have been disproportionate to the legitimate aim pursued. Accordingly, there had been no breach of A 8.

The right of recruitment to the public service was not in itself recognised by the Convention, but it did not follow that in other respects civil servants, including probationary civil servants, fell outside the scope of the Convention and notably of the protection afforded by A 10. The purpose of the Ordinance was to ensure that persons holding posts of importance for national security had the necessary personal qualifications. The relevant authorities had taken into account the relevant information merely in order to satisfy themselves as to whether or not the applicant possessed one of the necessary personal qualifications for the post. Accordingly, there had been no interference with his freedom to express opinions, as protected by A 10. The right to freedom to receive information prohibited a Government from restricting a person from receiving information that others wished or might be willing to impart to him. A 10 did not, in circumstances such as those of the present case, confer on the individual a right of access to a register containing information on his personal position, nor did it embody an obligation on the Government to impart such information to the individual. There had thus been no interference with the applicant's freedom to receive information, as protected by A 10.

The Court recalled its case-law. The Convention had to be read as a whole and therefore any interpretation of A 13 had to be in harmony with the logic of the Convention. Consequently, the Court, consistently with its conclusion concerning A 8, held that the lack of communication of the information to the applicant did not, of itself and in the circumstances of the case, entail a breach of A 8. The Swedish personnel check system was compatible with A 8. Therefore, the requirements of A 13 would be satisfied if there existed domestic machinery whereby, subject to the inherent limitations of the context, the individual could secure compliance with the relevant laws. Both the Chancellor of Justice and the Parliamentary Ombudsman had the competence to receive individual complaints and had the duty to investigate such complaints in order to ensure that the relevant laws have been properly applied by the National Police Board. The applicant was also able to complain to the Government. The authority referred to in A 13 did not need to be a judicial authority in the strict sense, but the powers and procedural guarantees an authority possessed were relevant in determining whether the remedy was effective. An effective remedy under A 13 meant a remedy that was as effective as could be, having regard to the restricted scope for recourse inherent in any system of secret surveillance for the protection of national security. Even if, taken on its own, the complaint to the Government were not considered sufficient to ensure compliance with A 13, the aggregate of the remedies set out above satisfied the conditions of A 13 in the particular circumstances of the present case. Accordingly, there was no violation of A 13.

Cited: Gillow v UK (24.11.1986), Glasenapp v D (28.8.1986), James and Others v UK (21.2.1986), Klass and Others v D (6.9.1978), Kosiek v D (28.8.1986), Lithgow and Others v UK (8.7.1986), Malone v UK (2.8.1984), Silver and Others v UK (25.3.1983).

Lechner and Hess v Austria (1987) 9 EHRR 490 87/8

[Application lodged 18.2.1981; Commission report 2.7.1985; Court Judgment 23.4.1987]

The applicants, a married couple, Siegfried and Rosalia Lechner, and Mrs Lechner's mother, Mrs Rosalia Hess, bought a house in Vienna on 7 August 1970 from Mr and Mrs Josef Mayer who were involved in divorce proceedings. In order to pay the price they had to sell a house and a flat they owned. The applicants moved into the house on 9 September 1970 and were subsequently informed by Mr Mayer that the planning department had not given him permission for the house to be occupied. The applicants were unsuccessful in their application to the department for the necessary permission and they commenced proceedings. Mr Mayer brought proceedings against

the applicants for defamation (they had called him a crook) and they brought proceedings against him for fraud. The applicants also brought an action for damages against the municipality of Vienna on 6 August 1975, claiming compensation for breach of obligations. The municipality of Vienna brought administrative proceedings and enforcement proceedings against the applicants. As the applicants were eventually unable to pay sums claimed by their creditors, the house was sold by auction on 19 April 1978 and the applicants were evicted from it on 31 October 1978. Since then, several actions for the recovery of debts had been taken against the applicants by the Austrian State, by the vendors and by the lawyers who had dealt with the case. The applicants complained of the length of the civil and criminal proceedings they had instituted against Mr and Mrs Mayer.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr J Gersing, Mr A Spielmann.

The period to be considered began on 15 May 1972, when the applicants brought their action in the Vienna Regional Civil Court, and ended on 3 September 1980, with the notification of the Supreme Court's judgment. It accordingly amounted to eight years, three months, 19 days. The period contained two phases. The first of these ran from 15 May 1972 to 20 December 1973, when the Court of Appeal's judgment of 21 November remitting the case to the Regional Civil Court reached the latter court, a little over a year and a half. It was not open to criticism, more especially as it included several hearings and other procedural steps at two levels of jurisdiction. The second phase lasted for almost seven years, from 20 December 1973 to 3 September 1980. While the duration of the appeal and the Revision proceedings – five and eleven months respectively – appeared normal in the circumstances, the same might not be true of the proceedings in the Vienna Regional Civil Court, which took five years (20 December 1973 to 10 January 1979). *Prima facie*, such a period seemed excessive. The court adjourned the proceedings on 5 December 1974 to await the outcome of the applicants' prosecution of the vendors for fraud. The criminal proceedings had begun on 8 February 1973. They were relevant only in so far as they had a bearing on the course of the civil proceedings, which were resumed more than two years after the adjournment. The reasonableness of the length of proceedings was to be assessed according to the particular circumstances of the case and having regard to the criteria laid down in the case-law of the Court. The case did not present any exceptional legal difficulties; although the new claim did not raise any complex legal problems, it was incompatible with the old claim, and that led to some confusion. The court could have indicated that at the outset, however, and thereby have avoided unnecessary delay. To that had to be added the intertwining of several sets of civil, criminal and administrative proceedings which made the task of the relevant courts – particularly the Vienna Regional Civil Court – more difficult. The different procedural measures taken on the applicants' behalf and their personal behaviour contributed to the length of the proceedings. Looking at all the material available as a whole, in the many court proceedings instituted by the applicants as well as the vendors during the period in question (15 May 1972 to 3 September 1980), two stages were open to criticism. Firstly, the investigation opened against the vendors at the applicants' request took a very long time, that is, from 13 March 1973 to 8 June 1976. In particular, no explanation had been given as to what happened between 12 May 1975, when the applicants again asked the investigating judge to question the vendors, and 8 June 1976, when the Vienna Regional Criminal Court closed the investigation. Secondly, the Vienna Regional Civil Court should have conducted the civil proceedings, which were resumed at the applicants' request on 27 December 1976, more speedily, especially since it had the advantage of the lengthy investigation carried out in the first phase of the civil proceedings and in the second phase before they were adjourned, as well as of the file of the criminal proceedings. Apart from the considerable time the civil proceedings had already occupied before they were resumed, the judges responsible for the case should have given consideration to the possible serious consequences for the applicants of any further delay and, on that basis, have handled the case with special diligence. Account had to also be taken of the

attitude of the administrative authorities. Although the behaviour of the applicants and some of the methods chosen by their different lawyers had a regrettable impact on the Austrian courts' ability to settle the disputes before them with due expedition, the reasonable time stipulated in A 6(1) was exceeded and that was a situation for which the Austrian authorities had to be held partly responsible. There was accordingly a violation of A 6(1).

Damage (ATS 200,000), costs and expenses (ATS 150,000).

Cited: Bönisch v A (2.6.1986), Buchholz v D (6 May 1981), Eckle v D (15.7.1982), Guincho v P (10.7.1984), Sporrong and Lönnroth v S (18.12.1984), Zimmermann and Steiner v CH (13.7.1983).

Ledonne (No 1) and Ledonne (No 2) v Italy 99/21

[Application lodged 4.4.1997 and 15.9.1997; Court Judgment 12.5.1999]

Ledonne (No 1): Mr Vincenzo Ledonne, the applicant, was informed of the charge against him of criminal libel on 18 September 1991. On 18 June 1992, the Locri Public Prosecutor summoned the applicant to appear before the Bianco (Reggio Calabria) Magistrate at a hearing on 27 April 1993. The summons was served on the applicant on 8 January 1993. On 21 February 1997, the parties presented their final pleadings. In a judgment of the same day, filed with the court registry on 26 February 1997, the Cosenza Magistrate acquitted the applicant.

Ledonne (No 2): on 16 June 1992, the Cosenza Public Prosecutor's Office requested that the applicant be committed for trial on a charge of seeking to vindicate fascism. On 6 July 1992, the Cosenza investigating judge scheduled the date of the preliminary hearing for 2 November 1992. In a judgment of 29 April 1997, filed with the court registry on 21 May 1997, the Cosenza District Court acquitted the applicant.

The applicant complained of the length of the criminal proceedings instituted against him.

Court found by majority (5–2) V 6(1)

Judges: Mr CL Rozakis, President, Mr M Fischbach, Mr B Conforti (d), Mr P Lorenzen, Mrs M Tsatsa-Nikolovska, Mr A Baka (d), Mr E Levits.

Ledonne No 1: the relevant period began on 18 September 1991, when the Locri Public Prosecutor informed the applicant of the charge against him. It ended on 26 February 1997, when the Cosenza Magistrate's judgment was filed with the court registry. It therefore lasted five years, five months and eight days in one jurisdiction. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case. The case was not complex. The applicant's requests for adjournments and for the summons to be declared null and void and his contesting of the jurisdiction of the Bianco Magistrate contributed to a certain extent to a slowing down of the proceedings. However, A 6 did not require accused persons actively to co-operate with the judicial authorities. Neither could any reproach be levelled against them for making full use of the remedies available under domestic law. Nonetheless, such conduct constituted an objective fact, not capable of being attributed to the respondent State, which was to be taken into account when determining whether or not the proceedings exceeded a reasonable time. Even if the applicant was responsible for some of the delays, that could not justify the length of the periods in between individual hearings and certainly not the total duration of the proceedings. There were two periods of inactivity imputable to the State's authorities. Those two periods amounted to a total of more than two years and 10 months. The Government did not provide any convincing explanation for those delays. Accordingly, the period of more than five years and five months taken to consider the case failed to satisfy the reasonable time requirement and there had been a breach of A 6.

Ledonne No 2: the relevant period began on 16 June 1992, when the Cosenza Public Prosecutor requested that the applicant be committed for trial. It ended on 21 May 1997, when the District Court's judgment was filed with its registry. It had therefore lasted four years, 11 months and five days at one jurisdiction. The case was not complex. Two hearings were adjourned because of the

absence of the accused and his lawyer. Nevertheless, even if the applicant could be considered on that account to be responsible for some of the delays, that could not justify the length of the periods in between individual hearings and certainly not the total duration of the proceedings. As to the hearing of 6 June 1995, adjourned to 4 June 1996 because of the lawyers' strike, an event of that kind could not in itself render a Contracting State liable with respect to the reasonable time requirement; however, the efforts made by the State to reduce any resultant delay were to be taken into account for the purposes of determining whether the requirement had been complied with. There were certain periods of inactivity imputable to the State authorities; as a result, the State authorities were responsible for a delay of more than one year and four months. No convincing explanation for those delays had been advanced by the respondent Government. The volume of work of the Cosenza District Court at the relevant period did not constitute such an explanation. A 6(1) imposed on Contracting States the duty to organise their judicial system in such a way that their courts could meet each of its requirements, including the obligation to hear cases within a reasonable time. Having regard to the delays imputable to the State authorities and to the overall duration of the proceedings, the applicant's conduct was not in itself sufficient to justify the length complained of. There had accordingly been a breach of A 6(1).

Non-pecuniary damage (Ledonne (No 1): ITL 15,000,000, Ledonne (No 2) (ITL 12,000,000)). No details of costs submitted.

Cited (Ledonne (No 1)): Belziuk v PL (25.3.1998), Eckle v D (15.7.1982), IA v F (23.9.1998), Musial v PL (25.3.1999), Pélissier et Sassi v F (25.3.1999), Philis v GR (No 2) (27.6.1997), Portington v GR (23.9.1998), Zana v TR (25.11.1997).

Cited (Ledonne (No 2)): Belziuk v PL (25.3.1998), Musial v PL (25.3.1999), Papageorgiou v GR (22.10.1997), Pélissier et Sassi v F (25.3.1999), Philis v GR (No 2) (27.6.1997), Portington v GR (23.9.1998), Zana v TR (25.11.1997).

Lehideux and Isorni v France 98/84

[Application lodged 13.5.1994; Commission report 8.4.1997; Court Judgment 23.9.1998]

On 13 July 1984, the daily newspaper *Le Monde* published a one-page advertisement bearing the title 'People of France, you have short memories' in large print, beneath which appeared in small italics, 'Philippe Pétain, 17 June 1941'. The text ended with an invitation to readers to write to the Association for the Defence of the Memory of Marshal Pétain and the National Pétain-Verdun Association. On 10 October 1984, the National Association of Former Members of the Resistance filed a criminal complaint against the publication manager of *Le Monde*, for publicly defending the crimes of collaboration with the enemy, and against Mr Marie-François Lehideux as President of the Association for the Defence of the Memory of Marshal Pétain, Mr Jacques Isorni as the author of the text complained of, and a Mr M, as President of the National Pétain-Verdun Association, for aiding and abetting a public defence of the crimes of collaboration with the enemy. On 27 June 1986, the Paris Criminal Court acquitted the defendants. The civil parties to the action, The National Association of Former Members of the Resistance and the Resistance Action Committee, appealed unsuccessfully to the Court of Appeal and thereafter to the Court of Cassation. The Court of Cassation considered that the lower court had erred and remitted the case to the Court of Appeal On 26 January 1990, the Paris Court of Appeal declared the two civil party applications admissible, set aside the acquittals and awarded the civil parties damages of one franc. The applicants' appeal to the Criminal Division of the Court of Cassation was dismissed on 16 November 1993. They complained that their conviction for 'public defence of war crimes or the crimes of collaboration' had breached A 10.

Comm found by majority (23–8) V 10.

Court found by majority (15–6) V 10.

Judges: Mr R Bernhardt, President, Mr F Gölcüklü, Mr L-E Pettiti, Mr C Russo, Mr A Spielmann, Mr J De Meyer (c), Mrs E Palm, Mr I Foighel (jd), Mr R Pekkanen, Mr AN Loizou (jd), Mr JM Morenilla (d), Sir John Freeland (jd), Mr AB Baka, Mr G Mifsud Bonnici, Mr B Repik, Mr P Jambrek (c), Mr P Kûris, Mr J Casadevall (d), Mr P van Dijk, Mr T Pantiru, Mr V Butkevych.

The requirements of A 10 had to be assessed in the light of A 17. The conviction amounted to 'interference' with the applicants' exercise of their right to freedom of expression. It was prescribed by law and pursued several of the legitimate aims set forth in A 10(2), namely protection of the reputation or rights of others and the prevention of disorder or crime. It was not the Court's task to settle the double game theory point, which was part of an ongoing debate among historians about the events in question and their interpretation. It did not belong to the category of clearly established historical facts, such as the Holocaust, whose negation or revision would be removed from the protection of A 10 by A 17. The applicants had not attempted to deny or revise 'Nazi atrocities and persecutions' or 'German omnipotence and barbarism'; they were supporting one of the conflicting theories in the debate about the role of the head of the Vichy government. The applicants did not act in their personal capacities, as the only names which appeared at the foot of the text in issue were those of the legally constituted Association for the Defence of the Memory of Marshal Pétain and the National Pétain-Verdun Association, to which readers were invited to write. The word 'Advertisement' appeared at the top of the page. The Court did not have to express an opinion on the constituent elements of the offence under French law of publicly defending the crimes of collaboration. It was in the first place for the national authorities to interpret and apply domestic law. The Court's role was limited to verifying whether the interference which resulted from the applicants' conviction of that offence could be regarded as necessary in a democratic society. In exercising its supervisory jurisdiction, the Court had to look at the impugned interference in the light of the case as a whole, including the content of the remarks held against the applicants and the context in which they made them. In particular, it had to determine whether the interference in issue was proportionate to the legitimate aims pursued and whether the reasons adduced by the national authorities to justify it were relevant and sufficient. The content of the publication was unilateral in character. The applicants had explicitly stated their disapproval of 'Nazi atrocities and persecutions' and of 'German omnipotence and barbarism'. They were not so much praising a policy as a man, and doing so for a purpose, namely securing revision of Philippe Pétain's conviction. The omissions, for which the authors of the text were criticised, were about events directly linked with the Holocaust. The gravity of those facts, which constituted crimes against humanity, increased the gravity of any attempt to draw a veil over them. The observation by the Government of the period as a very painful one in the collective memory had to be taken into account. The prosecuting authorities had decided not to proceed with the case and then refrained from appealing against the acquittal. The events referred to in the publication had occurred more than 40 years before. The publication in issue corresponded directly to the object of the associations which produced it. Those associations were legally constituted and no proceedings had been brought against them, either before or after 1984, for pursuing their objects. The Court noted the seriousness of a criminal conviction for publicly defending the crimes of collaboration, having regard to the existence of other means of intervention and rebuttal, particularly through civil remedies. The applicants' criminal conviction was disproportionate and, as such, unnecessary in a democratic society. There had therefore been a breach of A 10. Having reached that conclusion, it was not appropriate to apply A 17.

Violation constituted sufficient just satisfaction for the non-pecuniary damage. Costs and expenses (FF 100,000).

Cited: Barthold v D (25.3.1985), Casado Coca v E (24.2.1994), De Haes and Gijsels v B (24.2.1997), Jacubowski v D (23.6.1994), Jersild v DK (23.9.1994), Kemmache v F (No 3) (24.11.1994), Markt Intern Verlag GmbH and Klaus Beermann v D (20.11.1989), Open Door and Dublin Well Woman v IRL (29.10.1992), Socialist Party and Others v TR (25.5.1998), United Communist Party of Turkey and Others v TR (30.1.1998), Vogt v D (26.9.1995), Zana v TR (25.11.1997).

Lestini v Italy 92/7

[Application lodged 10.4.1987; Commission report 5.3.1991; Court Judgment 26.2.1992]

Mrs Fernanda Lestini took proceedings on 11 March 1985 against the Istituto Nazionale della Previdenza Sociale (INPS) before the Rome magistrates' court in order to establish her disability

pension right. The investigation opened at the hearing of 19 June 1985. The hearing of 27 November 1985 ended with the dismissal of the applicant's claim by the magistrates' court. On 23 September 1986 the applicant appealed against that decision. A hearing was held on 17 April 1990, when the court deliberated. At the close of the hearing, the District Court delivered judgment. The text of the judgment was lodged with the registry on 13 December 1990. The District Court's judgment became final on 13 December 1991, there having been no appeal to the Court of Cassation. The applicant complained about the length of proceedings.

Comm found unanimously V 6(1).

Court found by majority (6–3) V 6(1).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson (d), Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr C Russo (d), Mr A Spielmann, Mr N Valticos (d), Mr SK Martens.

The period to be taken into consideration began on 11 March 1985 when the proceedings were instituted against the INPS in the magistrates' court. It ended on 13 December 1991 when the Rome District Court's judgment became final. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. Special diligence was necessary in employment disputes, which included pensions disputes. A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. The case was not complex. The proceedings were conducted at a normal pace in the magistrates' court and the State could not be held responsible for the period of more than 10 months which elapsed between the filing of the decision of 27 November 1985 and the lodging of the applicant's appeal on 23 September 1986; nor was it answerable for the year which went by before the judgment of 17 April 1990 became final. On the other hand, the appeal proceedings remained dormant for more than 25 months. It had taken nearly 8 months for the text of the District Court's judgment to be filed with the registry. Accordingly, and in view of what was at stake in the proceedings for the applicant, the lapse of time in the case could not be regarded as reasonable.

Non-pecuniary damage (ITL 3,000,000), costs and expenses (ITL 2,000,000).

Cited: Pugliese (No 2) v I (24.5.1991), Vocaturo v I (24.5.1991).

Letellier v France (1992) 14 EHRR 83 91/34

[Application lodged 21.8.1986; Commission report 15.3.1990; Court Judgment 266.1991

Mrs Monique Merdy, née Letellier took over a bar-restaurant in March 1985. She was the mother of eight children from two marriages and was separated from her second husband, Mr Merdy, a petrol pump attendant, and at the material time was living with a third man. On 6 July 1985 Mr Merdy was killed by a shot fired from a car. The police traced the gunman who admitted that he had fired the shot, but stated that he had acted on the applicant's instructions. Mrs Letellier was charged on 8 July 1985 with being an accessory to murder and remanded in custody. She made numerous applications for release which were dismissed. She was committed for trial. On 10 May 1988 the Val-de-Marne Assize Court sentenced her to three years' imprisonment for being an accessory to murder. She was released on 17 May 1988, the pre-trial detention being automatically deducted from the sentence. She complained that her detention on remand had exceeded the reasonable time provided for in A 5(3) and that the various courts which had examined her application for release had not ruled speedily as required under A 5(4).

Comm found unanimously V 5(3), by majority (17-1) V 5(4).

Court found unanimously V 5(3), NV 5(4).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr LE Pettiti, Mr R Macdonald, Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer, Mr S K Martens.

The period to be taken into consideration began on 8 July 1985, the date on which the applicant was remanded in custody, and ended on 10 May 1988, with the judgment of the Assize Court, less

the period, from 24 December 1985 to 22 January 1986, during which she was released subject to court supervision. It therefore lasted two years and nine months. It fell in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person did not exceed a reasonable time. To this end they had to examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on the applications for release. It was essentially on the basis of the reasons given in those decisions and of the true facts mentioned by the applicant in his appeals, that the Court was called upon to decide whether or not there had been a violation of A 5(3). The persistence of reasonable suspicion that the person arrested had committed an offence was a condition sine qua non for the validity of the continued detention, but, after a certain lapse of time, it no longer sufficed; the Court had to then establish whether the other grounds cited by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were relevant and sufficient, the Court also had to ascertain whether the competent national authorities displayed special diligence in the conduct of the proceedings. The reasons given by the courts for refusing to release the applicant were that it was necessary to prevent her from bringing pressure to bear on the witnesses, that there was a risk of her absconding which had to be countered, that court supervision was not sufficient to achieve these objectives and that her release would gravely disturb public order. A genuine risk of pressure being brought to bear on the witnesses might have existed initially, but it diminished and indeed disappeared with the passing of time. After 5 December 1986 the courts no longer referred to such a risk. The danger of absconding could not be gauged solely on the basis of the severity of the sentence risked. It had to be assessed with reference to a number of other relevant factors which might either confirm the existence of a danger of absconding or make it appear so slight that it could not justify detention pending trial. In this case the decisions of the indictments divisions did not give the reasons why, notwithstanding the arguments put forward by the applicant in support of her applications for release, they considered the risk of her absconding to be decisive. When the only remaining reason for continued detention was the fear that the accused would abscond and thereby subsequently avoid appearing for trial, he had to be released if he was in a position to provide adequate guarantees to ensure that he would so appear, for example by lodging a security. The indictments divisions did not establish that this was not the case in this instance. By reason of their particular gravity and public reaction to them, certain offences might give rise to a social disturbance capable of justifying pre-trial detention, at least for a time. In exceptional circumstances that factor might therefore be taken into account for the purposes of the Convention, in any event in so far as domestic law recognised the notion of disturbance to public order caused by an offence. However, that ground could be regarded as relevant and sufficient only provided that it was based on facts capable of showing that the accused's release would actually disturb public order. In addition detention would continue to be legitimate only if public order remained actually threatened; its continuation could not be used to anticipate a custodial sentence. In this case, those conditions were not satisfied. The indictments division assessed the need to continue the deprivation of liberty from a purely abstract point of view, taking into consideration only the gravity of the offence. At least from 23 December 1986, the contested detention ceased to be based on relevant and sufficient grounds. The decision of 24 December 1985 to release the accused was taken by the judicial officer in the best position to know the evidence and to assess the circumstances and personality of the applicant; accordingly the indictments divisions ought in their subsequent judgments to have stated in a more clear and specific, not to say less stereotyped, manner why they considered it necessary to continue the pre-trial detention. There had consequently been a violation of A 5(3).

The Court had certain doubts about the overall length of the examination of the second application for release, in particular before the indictments division was called upon to rule after a previous decision had been quashed in the Court of Cassation; it had to be borne in mind however, that the applicant retained the right to submit a further application at any time. Indeed from 14 February 1986 to 5 August 1987 she lodged six other applications, which were all dealt with in periods of from eight to twenty days. There had therefore been no violation of A 5(4).

Judgment constituted sufficient just satisfaction for reparation. Costs and expenses (FF 21,433). Costs and expenses (FF 21,433).

Cited: B v A (28.3.1990), Matznetter v A (10.11.1969), Neumeister v A (10.11.1969), Ringeisen v A (16.7.1971), Stögmüller v A (10.11.1969), Wemhoff v D (27.6.1968).

Leterme v France 98/33

[Application lodged 21.5.1997; Commission report 28.10.1997; Court Judgment 29.4.1998]

Mr Pierre Leterme was a haemophiliac who had received numerous blood transfusions. On 12 December 1989, he submitted a preliminary application for compensation to the Minister for Solidarity, Health and Social Protection. That application was rejected on 30 March 1990. He appealed to the Versailles Administrative Court, seeking compensation for the damage sustained as a result of the State's failure to take appropriate measures to prevent his infection with HIV. On 27 January 1995, he lodged an application with the European Commission of Human Rights, complaining of the length of the compensation proceedings and relying on A 6(1). On 4 July 1995, the Commission adopted a report noting that the parties had reached agreement on a friendly settlement of the case. On 1 December 1995, the reporting judge at the Conseil d'Etat filed his report; the case was listed for a hearing on 19 December 1995. The proceedings were still continuing and the applicant complained about their length.

Comm unanimously found V 6(1).

Court unanimously dismissed the Government's preliminary objection, found V 6(1).

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr N Valticos, Mr AN Loizou, Mr L Wildhaber, Mr P Jambrek, Mr E Levits, Mr T Pantiru, Mr V Toumanov.

The Government had not raised the objection of the friendly settlement having been reached before the Commission; accordingly, they were estopped from raising the objection before the Court.

The present case, as referred to the Court, concerned the proceedings subsequent to the friendly settlement being reached. The starting point had, therefore, to be 5 July 1995, that being the day after the Commission adopted its report taking notice of the settlement reached. The proceedings before the domestic courts were not yet over, as the applicant appealed on 2 May 1994 to the Conseil d'Etat, which on 27 February 1996 remitted the case to the Paris Administrative Court of Appeal, before which it was still pending. The proceedings in issue had therefore already lasted more than 2 years and 9 months to date. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law; in particular, the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what was at stake for the applicant in the litigation had to be taken into account. Even though the case was of some complexity, that fact alone could not justify the length of the proceedings in question as the information needed to determine the State's liability had been available for a long time. The applicant sought on 28 October 1996 to expedite the proceedings, but without success. What was at stake in the proceedings in issue was of crucial importance to the applicant in view of the disease from which he was suffering. Exceptional diligence was called for, notwithstanding the number of cases to be dealt with, in particular as the facts of the controversy had been known to the Government for several years and its seriousness must have been obvious to them. There were delays and periods of inactivity on the part of the authorities. The proceedings had already lasted nearly 5 years and 7 months by the time the Commission adopted its report noting that a friendly settlement had been reached and they were still pending in the Paris Administrative Court of Appeal. Having regard to all the circumstances of the case and in particular to the applicant's situation, the time taken in the present case could not be considered to have been reasonable.

Damage (FF 200,000), costs and expenses (FF 42,210).

Cited: Karakaya v F (26.8.1994), Pailot v F (22.4.1998), Richard v F (22.4.1998), Vallée v F (26.4.1994), X v F (31.3.1992).

Leutscher v The Netherlands (1997) 24 EHRR 180 96/13

[Application lodged 29.6.1990; Commission report 12.10.1994; Court Judgment 26.3.1996]

Mr Jakob Koos Leutscher was involved in the management of a number of companies incorporated under Netherlands law in which he also had an interest, directly or indirectly, as a shareholder. In 1977, the tax authorities initiated an investigation into possible tax offences committed by him. On 24 May 1984, the Amsterdam Regional Court tried the applicant *in absentia* on counts alleging ordering the return of false tax statements and making false statements of his income and assets. The Regional Court found him guilty and sentenced him to imprisonment and a fine. He appealed to the Amsterdam Court of Appeal, which quashed the judgment of the Regional Court and declared the prosecution time-barred. He appealed to the Court of Appeal for reimbursement of costs and expenses incurred in the course of the criminal proceedings against him. The court awarded certain sums to cover the costs of the witnesses, tax consultants and the applicant's travel expenses. However, the court refused to order the payment of any sum to compensate for loss of time or reimbursement of counsel's fees. He complained, *inter alia*, in respect of the proceedings concerning the claim for reimbursement of legal fees and in respect of his right to be presumed innocent.

Comm found unanimously NV 6(1), by majority (8–5) NV 6(2).

Court unanimously found A 6(1) inapplicable, NV 6(2).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr L-E Pettiti, Mr R Macdonald, Mr SK Martens, Mr MA Lopes Rocha, Mr P Jambrek, Mr K Jungwiert, Mr P Kûris.

As the compass of the case before the Court was delimited by the Commission's decision on admissibility, the Court had no jurisdiction to revive issues declared inadmissible. The applicant complained that he had not had a fair hearing before the Amsterdam Court of Appeal in relation to his request for reimbursement of his counsel's fees. The wording of the domestic provision which allowed the competent court to award the former suspect did not create any 'right' for the former accused. There was a measure of discretion granted to the courts. Proceedings under the provision were not covered by A 6(1). Accordingly A 6(1) was not applicable to the proceedings in question.

A 6(2) did not confer on a person 'charged with a criminal offence' a right to reimbursement of his legal costs where proceedings taken against him were discontinued. In itself, the refusal to order the reimbursement to the former accused of his necessary costs and expenses following the discontinuation of criminal proceedings against him did not amount to a penalty or a measure that could be equated with a penalty. Nevertheless, such a decision could raise an issue under A 6(2) if supporting reasoning, which could not be dissociated from the operative provisions, amounted in substance to a determination of the guilt of the former accused without his having previously been proved guilty according to law and, in particular, without his having had an opportunity to exercise the rights of the defence. Although the judgment at first instance was given *in absentia*, the applicant had the benefit of appeal proceedings which were by way of a complete rehearing and in which the accused enjoyed the same rights as he did at first instance. In applying the domestic provision, the Court of Appeal was empowered to order that the applicant's costs should be paid out of public funds only if it found that there were 'reasons in equity' for such reimbursement. In the exercise of the wide measure of discretion conferred upon it under those provisions, the Court of Appeal was, both under the Convention and under Netherlands law, entitled to take into account the suspicion which still weighed against the applicant as a result of the fact that his conviction had been quashed on appeal only because the prosecution was found to have been time-barred when the case was brought to trial. The Court of Appeal, when applying the provision was not called upon to reassess the applicant's guilt or express a view as to whether his conviction would have been upheld on appeal. No violation of A 6(2) could therefore be found on the facts of the present case.

Cited: Lutz v D (25.8.1987), Masson and Van Zon v NL (28.9.1995).

Levages Prestations Services v France (1997) 24 EHRR 351 96/41

[Application lodged 1.4.1993; Commission report 5.4.1995; Court Judgment 23.10.1996]

The Levages Prestations Services company carried on the business of leasing lifting gear and providing related services. In May 1983, it had recourse to an employment agency for temporary staff with which it signed five contracts for the provision of manual labour. Subsequently, it refused to pay four out of five invoices, initially because it disagreed with the number of hours charged and then on the ground that they were unsigned and did not bear the company stamp. On 18 September 1984, the Paris Commercial Court ordered it to pay the agency. The applicant company lodged a criminal complaint against a person or persons unknown for forgery of commercial instruments, and against the employment agency for aiding and abetting and for making use of forged instruments. It appealed to the Paris Court of Appeal against the Commercial Court's judgment and made an application for the appeal to be stayed pending the outcome of the criminal proceedings instituted after it had lodged its complaint. On 1 October 1986, the Court of Appeal made an interlocutory order staying the appeal. On 24 December 1987, the investigating judge ruled that there was no case to answer in respect of the two criminal complaints. The appeal proceedings resumed in the Paris Court of Appeal, which upheld the Commercial Court's judgment on 28 September 1989. On 1 December, the applicant company appealed on points of law to the Court of Cassation. In the proceedings in the Court of Cassation, the applicant company was represented by a member of the Conseil d'Etat and Court of Cassation Bar, as required by law. On 1 December 1992, the Court of Cassation held that the appeal was inadmissible as the applicant company had not, in accordance with the procedure rules, produced a copy of the judgment of 1 October 1986 which the Court of Cassation held to form an integral part of the judgment under appeal. The applicant company complained that its right to a fair hearing had been infringed when the Court of Cassation of its own motion ruled that the company's appeal on points of law was inadmissible.

Comm found by majority V 6(1).

Court found by majority (6–3) NV 6(1).

Judges: Mr R Bernhardt, President, Mr F Matscher, Mr L-E Pettiti, Mr N Valticos (jd), Mr R Pekkanen (jd), Sir John Freeland (jd), Mr J Makarczyk, Mr D Gotchev, Mr K Jungwiert.

The proceedings concerned a dispute over civil rights and obligations. A judgment of the Court of Cassation could rebound in different degrees on the position of the person concerned. The outcome of the present appeal could have had a bearing on the applicant company's debt. Therefore A 6(1) was applicable.

The right to a tribunal, of which the right of access was one aspect, was not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal were concerned, since by its very nature it called for regulation by the State, which enjoyed a certain margin of appreciation in that regard. The applicant company's appeal on points of law was declared inadmissible for failure to produce the documents. The applicant company's counsel was in a position to ascertain what steps he had to take to bring an appeal on points of law, both from the wording of the provision and, if necessary, with the aid of the case-law, which was sufficiently clear and coherent. A 6 did not compel the Contracting States to set up courts of appeal or of cassation but where such courts did exist, the guarantees of A 6 had to be complied with. The manner in which A 6(1) applied to courts of appeal depended on the special features of the proceedings concerned and account had to be taken of the entirety of the proceedings conducted in the domestic legal order and the court of appeal's role in them. The requirements inherent in the concept of 'fair hearing' were not necessarily the same in cases concerning the determination of civil rights and obligations as in cases concerning the determination of a criminal charge. Given the special nature of the Court of Cassation's role, which was limited to reviewing whether the law had been correctly applied, the Court was able to accept that the procedure followed in the Court of Cassation might be more formal, especially as in proceedings with compulsory representation

the parties would be represented by a member of the Conseil d'Etat and Court of Cassation Bar. Moreover, the appeal to the Court of Cassation was made after the applicant company's claims had been heard by both a commercial court and a court of appeal, each of which had full jurisdiction. Regard being had to all the proceedings in the domestic courts, the applicant company's right of access to a court as guaranteed by A 6(1) was not infringed by reason of the conditions which it had to satisfy for its appeal on points of law to be admissible. Consequently, there had been no violation of A 6(1).

Cited: Airey v IRL (9.10.1979), Ashingdane v UK (28.5.1985), Bellet v F (4.12.1995), De Geouffre de la Pradelle v F (16.12.1992), Delcourt v B (17.1.1970), Dombo Beheer BV v NL (27.10.1993), Fayed v UK (21.9.1994), Golder v UK (21.2.1975), Helmers v S (29.10.1991), Lobo Machado v P (20.2.1996), Melin v F (22.6.1993), Monnell and Morris v UK (2.3.1987), Tolstoy Miloslavsky v UK (13.7.1995), Vermeulen v B (20.2.1996).

Liddo and Batteta v Italy 00/14

[Application lodged 27.11.1996; Court Judgment 25.1.2000]

Messrs Giuseppe and Antonio Liddo and Maria Batteta, the applicants, complained about the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The proceedings commenced on 31 January 1989 and were still continuing at one level of jurisdiction. The delay of 10 years, 11 months and still continuing was not reasonable.

Non-pecuniary damage (ITL 28,000,000 to each of the applicants), costs and expenses ITL 1,500,000).

Cited: Bottazzi v I (28.7.1999).

Lingens v Austria (1986) 8 EHRR 103 86/6

[Application lodged 19.4.1982; Commission report 11.10.1984; Court Judgment 8.7.1986]

Mr Peter Michael Lingens was editor of the magazine *Profil*. He published two articles in the magazine on 14 October 1975 and on 21 October 1975 as a result of which, on 29 October and 12 November 1975, the then Chancellor, Mr Bruno Kreisky, brought two private prosecutions against the applicant for defamation. On 26 March 1979, the Vienna Regional Court found the applicant guilty of defamation and fined him. Mr Kreisky and the applicant both appealed against the judgment to the Vienna Court of Appeal which on 30 November 1979 set the judgment aside without examining the merits. The Vienna Regional Court, to which the Court of Appeal had returned the case, gave judgment on 1 April 1981. After re-examining the case, it passed the same sentence as in the original judgment. Both sides again appealed to the Vienna Court of Appeal, which gave judgment on 29 October 1981; it reduced the fine imposed on the applicant to ATS 15,000 but confirmed the Regional Court's judgment in all other respects. The applicant complained that his conviction for defamation through the press infringed A 10.

Comm found unanimously V 10.

Court found unanimously V 10.

Judges: Mr R Ryssdal, President, Mr W Ganshof van der Meersch, Mr J Cremona, Mr G Wiarda, Mr Thór Vilhjálmsson (so), Mrs D Bindschedler-Robert, Mr G Lagergren, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr J Gersing, Mr A Spielmann.

The applicant's conviction for defamation by the Vienna Regional Court on 1 April 1981, which was upheld by the Vienna Court of Appeal on 29 October 1981, amounted to an interference by public authority. The conviction was based on the Austrian criminal law and was designed to protect the reputation or rights of others. The conviction was therefore 'prescribed by law' and had a legitimate aim under A 10(2) of the Convention. Freedom of the press afforded the public one of

the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. The limits of acceptable criticism were wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lay himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he had to consequently display a greater degree of tolerance. A 10(2) enabled the reputation of others to be protected, and that protection extended to politicians too, even when they were not acting in their private capacity; but in such cases the requirements of such protection had to be weighed in relation to the interests of open discussion of political issues. The applicant was convicted because he had used certain expressions ('basest opportunism', 'immoral' and 'undignified') apropos of Mr Kreisky, who was Federal Chancellor at the time, in two articles published in the Viennese magazine *Profil* in 1975. The articles dealt with political issues of public interest in Austria which had given rise to many heated discussions concerning the attitude of Austrians in general, and the Chancellor in particular, to National Socialism and to the participation of former Nazis in the governance of the country. The content and tone of the articles were on the whole fairly balanced but the use of the aforementioned expressions in particular appeared likely to harm Mr Kreisky's reputation. However, since the case concerned Mr Kreisky in his capacity as a politician, regard had to be had to the background against which the articles were written. They had appeared shortly after the general election of October 1975 when it was thought Mr Kreisky's party would lose its absolute majority and would have to form a coalition with Mr Peter's Austrian Liberal Party. A careful distinction had to be made between facts and value-judgments. The existence of facts could be demonstrated, whereas the truth of value-judgments was not susceptible of proof. The facts on which the applicant founded his value-judgment were undisputed, as was also his good faith. Under the Criminal Code, journalists in a case such as this could not escape conviction unless they could prove the truth of their statements. As regards value-judgments, that requirement was impossible of fulfilment and it infringed freedom of opinion itself, which was a fundamental part of the right secured by A 10. The interference with the applicant's exercise of the freedom of expression was not necessary in a democratic society for the protection of the reputation of others; it was disproportionate to the legitimate aim pursued. There was accordingly a breach of A 10.

Just satisfaction (ATS 284,538.60)

Cited: Barthold v D (25.3.1985), Eckle v D (21.6.1983), Handyside v UK (7.12.1976), König v D (10.3.1980), Minelli v CH (25.3.1983), Sunday Times v UK (26.4.1979), Zimmermann and Steiner v CH (13.7.1983).

Lithgow and Others v UK (1986) 8 EHRR 329 86/5

[Applications lodged 30.5.1980, 16.9.1977, 5.2.1981, 3.2.1981, 6.2.1981, 25.3.1981 and 4.6.1981; Commission report 7.3.1984; Court Judgment 8.7.1986]

Sir William Lithgow, and a number of companies had certain of their interests nationalised under the Aircraft and Shipbuilding Industries Act 1977. Whilst not contesting the principle of the nationalisation, they claimed that the compensation which they received was grossly inadequate and discriminatory and alleged that they had been victims of breaches of, *inter alia*, P1A1 alone and in conjunction with A 14.

Comm found by majority (13–3) NV P1A1, (15 with one abstention) NV 14, unanimously NV 6, 13, 17, 18.

Court found by majority (13–5) NV P1A1 on the ground that the 1977 Act contained no provisions making allowance for developments between 1974 and 1977 in the companies concerned, (17–1) NV P1A1 on any of the other grounds, unanimously NV 14+P1A1, by majority (14–4) NV 6(1) on the ground that Sir William Lithgow had no individual access to an independent tribunal, (16–2) NV 6(1) on any of the other grounds, (15–3) NV 13.

Judges: Mr R Ryssdal, President, Mr W Ganshof Van Der Meersch, Mr J Cremona, Mr G Wiarda, Mr Thór Vilhjálmsson (concurring), Mrs D Bindschedler-Robert (jpd P1A1), Mr G Lagergren (so 6(1)), Mr F Gölcüklü (jpd P1A1), Mr F Matscher, Mr J Pinheiro Farinha (jpd P1A1, jd A 6(1), jd A 13), Mr L-E Pettiti (jpd P1A1, jd A 6(1), jd A 13, d A 6(1), 13, P1A1), Mr B Walsh, Sir Vincent Evans, Mr R Macdonald (so 6(1)), Mr C Russo (jpd A 6(1)), Mr R Bernhardt, Mr J Gersing, Mr A Spielmann (jpd P1A1, jd A 13, jpd A 6(1)).

P1A1 in substance guaranteed the right of property. The applicants were clearly deprived of their possessions, within the meaning of the second sentence of P1A1. The obligation to pay compensation derived from an implicit condition in P1A1 read as a whole rather than from the public interest requirement itself. The latter requirement related to the justification and the motives for the actual taking, issues which were not contested by the applicants. As regards the phrase 'subject to the conditions provided for by law', it required in the first place the existence of and compliance with adequately accessible and sufficiently precise domestic legal provisions. Regarding the reference in the second sentence of P1A1 to 'the general principles of international law', as a matter of general international law, the principles in question applied solely to non-nationals, they were not applicable to a taking by a State of the property of its own nationals. Under the legal systems of the Contracting States, the taking of property in the public interest without payment of compensation was treated as justifiable only in exceptional circumstances not relevant for present purposes. A measure depriving a person of his property had to pursue, on the facts as well as in principle, a legitimate aim in the public interest and there had to also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Compensation terms were material to the assessment whether a fair balance had been struck between the various interests at stake and, notably, whether or not a disproportionate burden had been imposed on the person who had been deprived of his possessions. Taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference which could not be considered justifiable under P1A1. P1A1 did not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of public interest, such as pursued in measures of economic reform or measures designed to achieve greater social justice, might call for less than reimbursement of the full market value. Provided always that the fair balance was preserved, the standard of compensation required in a nationalisation case might be different from that required in regard to other takings of property. As regards the compensation system established by the 1977 Act, none of its components could be regarded as in principle unacceptable in terms of Protocol 1. The decision to adopt provisions that excluded from the compensation an element representing the special value of the applicants' large or controlling share-holdings was one which the United Kingdom was reasonably entitled to take within its margin of appreciation. The effects produced by the system established by the 1977 Act were not incompatible with P1A1. In reaching that conclusion, the Court had regard to certain aspects of the method of payment of compensation which were advantageous to the former owners. No violation of P1A1 was established in the present case.

There was no violation of A 14 taken in conjunction with P1A1 as regards the owners of other undertakings nationalised under the 1977 Act or nationalised under earlier legislation

The applicants' right to compensation under the 1977 Act, derived from their ownership of shares in the companies concerned, was without doubt a civil right. A 6(1) was applicable in so far as the applicants might reasonably have considered that there was cause for alleging non-compliance with the statutory compensation provisions. The right of access to the courts secured by A 6(1) was not absolute but could be subject to limitations. The Contracting States enjoyed a certain margin of appreciation, but the final decision as to observance of the Convention's requirements rested with the Court. It had to be satisfied that the limitations applied did not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right was impaired. Furthermore, a limitation would not be compatible with A 6(1) if it did not pursue a legitimate aim and if there was not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. In the present case, the limitation on a direct right of access for every individual shareholder to the Arbitration Tribunal pursued a legitimate aim, namely the desire to avoid, in the context of a large-scale nationalisation measure, a multiplicity of claims and proceedings brought by individual shareholders. Neither did it appear, having regard to the powers and duties of the Stockholders' Representative and to the Government's margin of appreciation, that there was not a reasonable relationship of proportionality between the means employed and that aim. Regarding the breach of the reasonable time requirement, the amount of

compensation payable was settled in negotiations between the Department of Industry and the Stockholders' Representative and A 6(1) did not apply to those negotiations. It was only after reference of the matter to the Arbitration Tribunal that any question of breach of the reasonable time requirement of A 6(1) could have arisen. The Arbitration Tribunal was established by law. Under the statutory instruments governing the matter, the proceedings before the Arbitration Tribunal were similar to those before a court and due provision was made for appeals. As regards the present case, although two members of the Arbitration Tribunal were nominated by the Secretary of State, the appointments could not be made without prior consultation of the Stockholders' Representatives. The Arbitration Tribunal was in no way bound by the amount of compensation offered by the Government in the negotiations. In those circumstances, there was no warrant for finding a lack of the requisite independence. The applicants did not allege that the members in question were not subjectively impartial. Having regard to the manner in which the appointment procedure was actually carried out, their objective impartiality was not capable of appearing to be open to doubt. There had been no violation of A 6(1) in the present case.

A 13: The Convention was not part of the domestic law of the UK. There thus was, and could be, no domestic remedy in respect of a complaint by Sir William Lithgow that the nationalisation legislation itself did not measure up to the standards of the Convention and Protocol 1. A 13 did not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority on the ground of being contrary to the Convention or to equivalent domestic legal norms. The Court was therefore unable to uphold the applicant's allegation in so far as it might relate to the 1977 Act as such. It was open to the Stockholders' Representative in any case to refer the question of compensation to the Arbitration Tribunal or to test in the ordinary courts whether the Secretary of State had erred in law by misinterpreting or misapplying the 1977 Act. Even if those remedies were not directly available to Sir William Lithgow himself, he had the benefit of the collective system established by the Act. That system was not in breach of the requirements of A 6(1), an Article whose requirements were stricter than those of A 13. The aggregate of remedies available to Sir William Lithgow constituted domestic machinery whereby he could, to a sufficient degree, secure compliance with the relevant legislation. There had accordingly been no breach of A 13.

Cited: Abdulaziz, Cabales and Balkandali v UK (28.5.1985), Ashingdane v UK (28.5.1985), 'Belgian Linguistic' case (23.7.1968), Campbell and Fell v UK (28.6.1984), De Cubber v B (26.10.1984), Golder v UK (21.2.1975), Ireland v UK (18.1.1978), James and Others v UK (21.2.1986), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Malone v UK (2.8.1984), Marckx v B (13.6.1979), Rasmussen v DK (28.11.1984), Silver and Others v UK (25.3.1983), Sporrong and Lönnroth v S (23.9.1982), Swedish Engine Drivers' Union v S (6.2.1976).

Litwa v Poland 00/114

[Application lodged 6.8.1994; Commission report 4.12.1998; Court Judgment 4.4.2000]

Mr Witold Litwa, the applicant, born in 1946, was disabled in that he was blind in one eye and his sight in the other was severely impaired. On 5 May 1994, whilst checking his post-office boxes at the Kraków Post Office, he found they had been opened and were empty. He complained to the post-office clerks who, subsequently, called the police, alleging that the applicant was drunk and behaved offensively. He was taken by police officers to the Kraków Sobering-up Centre and detained there for six hours and 30 minutes. On 10 May 1994 the applicant requested the Kraków District Prosecutor to institute criminal proceedings against the police officers who had arrested him on 5 May 1994 and against the staff of the Kraków Sobering-up Centre. He alleged that the policemen had beaten him and complained about the behaviour of the staff of the centre. On 29 May 1994 he sued the State Treasury in the Kraków Regional Court seeking compensation for unlawful attacks by agents of the State on 5 May 1994 and theft of his personal possessions. On 28 November 1994 the Regional Court dismissed the claim, finding that the applicant's arrest had been justified. On 28 February 1995 the District Prosecutor discontinued the investigation. A supplementary investigation was subsequently discontinued. The applicant complained, *inter alia*,

that his detention in the Sobering-up Centre on 5 May 1994 had been unlawful and arbitrary and had therefore amounted to a violation of A 5(1).

Comm found by majority (21–5) NV 5(1).

Court found by majority (6–1) V 5(1).

Judges: Mr M Fischbach, President, Mr B Conforti (c), Mr G Bonello (c), Mrs V Stráznická, Mrs M Tsatsa-Nikolovska, Mr AB Baka (d), Mr E Levits.

The applicant's confinement in the Kraków Sobering-up Centre amounted to a 'deprivation of liberty' within the meaning of A 5(1). A 5(1) contained an exhaustive list of permissible grounds of deprivation of liberty. No deprivation of liberty would be lawful unless it fell within one of the grounds set out in sub-paras (a) to (f) of A 5. However, the applicability of one ground did not necessarily preclude that of another; a deprivation of liberty might, depending on the circumstances, be justified under one or more sub-paragraphs. The only ground the Government invoked to justify the applicant's detention was sub-para (e). In ascertaining the Convention meaning of the term 'alcoholics', the Court was guided by Articles 31–33 of the Vienna Convention of 23 May 1969 on the Law of Treaties. In its common usage, the word 'alcoholics' denoted persons who were addicted to alcohol. There was a link between all the other categories of persons in sub-para (e) that they may be deprived of their liberty either in order to be given medical treatment or because of considerations dictated by social policy, or on both medical and social grounds. It was therefore legitimate to conclude from this context that a predominant reason why the Convention allowed the persons mentioned in para 1(e) to be deprived of their liberty was not only that they were dangerous for public safety but also that their own interests might necessitate their detention. That *ratio legis* indicated how the expression 'alcoholics' should be understood in the light of the object and purpose of A 5(1)(e). It indicated that the object and purpose of the provision could not be interpreted as only allowing the detention of 'alcoholics' in the limited sense of persons in a clinical state of 'alcoholism'. Under A 5(1)(e), persons who were not medically diagnosed as 'alcoholics', but whose conduct and behaviour under the influence of alcohol posed a threat to public order or themselves, could be taken into custody for the protection of the public or their own interests, such as their health or personal safety. That did not mean that A 5(1)(e) of the Convention could be interpreted as permitting the detention of an individual merely because of his alcohol intake. However, there was nothing in A 5(1)(e) to suggest that the provision prevented that measure from being applied by the State to an individual abusing alcohol, in order to limit the harm caused by alcohol to himself and the public, or to prevent dangerous behaviour after drinking. The meaning of the term 'alcoholics' was also confirmed by the preparatory work of the Convention. The applicant's detention therefore fell within the ambit of A 5(1)(e) of the Convention. Under A 5 any deprivation of liberty had to be lawful, which included a requirement that it had to be effected in accordance with a procedure prescribed by law. The applicant's detention had a legal basis in Polish law. It was not for the Court to review whether the domestic authorities had taken correct decisions under Polish law. Its task is to establish whether the applicant's detention was 'the lawful detention' of an 'alcoholic', within the autonomous meaning of the Convention. The Court had serious doubts as to whether it could be said that the applicant behaved in such a way, influenced by alcohol, that he posed a threat to the public or himself, or that his own health, well-being or personal safety were endangered. Those doubts were reinforced by the trivial factual basis for the detention and the fact that the applicant was almost blind. A necessary element of the 'lawfulness' of the detention within the meaning of A 5(1)(e) was the absence of arbitrariness. The detention of an individual was such a serious measure that it was only justified where other, less severe measures had been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained. That meant that it did not suffice that the deprivation of liberty was executed in conformity with national law, but it also had to be necessary in the circumstances. No consideration appeared to have been given to the fact that the domestic legislation provided for several different measures which could be applied to an intoxicated person, among which

detention in a sobering-up centre was the most extreme one. In the absence of any such considerations in the present case, although expressly foreseen by the domestic law, the applicant's detention could not be considered lawful under A 5(1)(e). There had therefore been a breach of that provision.

Non-pecuniary damage (PLN 8,000), costs and expenses (PLN 15,000 less FF 13,174).

Cited: De Wilde, Ooms and Versyp v B (18.6.1971), Erkalo v NL (2.9.1998), Golder v UK (21.2.1975), Guzzardi v I (6.11.1980), Johnston and Others v IRL (18.12.1986), K-F v D (27.11.1997), Lithgow v UK (8.7.1986), Öztürk v TR (28.9.1999), Winterwerp v NL (24.10.1979).

Lobo Machado v Portugal (1997) 23 EHRR 79 96/6

[Application lodged 2.11.1989; Commission report 19.5.1994; Court Judgment 20.2.1996]

Mr Pedro Lobo Machado was an engineer in Petrogal. On 5 February 1986 he brought proceedings against Petrogal in the Lisbon industrial tribunal seeking recognition of the occupational grade of 'director-general' instead of that of 'director' which had been assigned to him by his employer. As that classification had an effect on the amount of his retirement pension, he also sought payment of the sums that, under the collective labour agreement should have been paid him since his retirement in 1980. The Lisbon industrial tribunal dismissed his claims in a judgment of 7 October 1987 and that decision was upheld by the Lisbon Court of Appeal in a judgment of 1 June 1988. The applicant appealed to the Supreme Court. After the parties had exchanged pleadings, the case file was sent to the representative of the Attorney-General's department at the Supreme Court. On 28 February 1989 that representative delivered an opinion in which he recommended that the appeal should be dismissed. On 19 May 1989 the Supreme Court, sitting in private, considered the appeal. Three judges, a registrar and the member of the Attorney-General's department were present at the deliberations. The parties had not been asked to attend. At the end of the deliberations the court adopted a judgment in which it dismissed the appeal and this was served on the applicant on 22 May 1989. He complained about the participation of the Attorney General's department in the proceedings before the Supreme Court and the infringement of his right to the peaceful enjoyment of his possessions.

Comm found by majority (14–9) V 6(1), (22–1) no separate issue under P1A1.

Court found unanimously V 6(1), not necessary to consider P1A1.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr R Macdonald, Mr A Spielmann, Mr SK Martens, Mrs E Palm, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi, Sir John Freeland, Mr MA Lopes Rocha (c), Mr L Wildhaber, Mr J Makarczyk, Mr D Gotchev, Mr K Jungwiert, Mr P Kûris, Mr U Lôhmus.

The dispute in question related to social rights and was between two clearly defined parties: the applicant, as plaintiff, and Petrogal as defendant. In that context the duty of the Attorney General's department at the Supreme Court was mainly to assist the court and to help ensure that its case-law was consistent. Given that the rights were social in nature, the department's intervention in the proceedings was more particularly justified for the purposes of upholding the public interest. Portuguese legislation gave no indication as to how the representative of the Attorney-General's department attached to the Employment Division of the Supreme Court was to perform his role when that division sat in private. Great importance had to be attached to the part actually played in the proceedings by the member of the Attorney-General's department, and to the content and effects of his observations. The opinion from the Attorney General's department was objective and reasoned in law, but nevertheless intended to advise and accordingly influence the Supreme Court. The outcome of the appeal could have affected the amount of the applicant's retirement pension. Regard being had, therefore, to what was at stake for the applicant in the proceedings in the Supreme Court and to the nature of the Deputy Attorney-General's opinion, that the appeal should be dismissed, the fact that it was impossible for Mr Lobo Machado to obtain a copy of it and reply to it before judgment was given infringed his right to adversarial proceedings. That right meant in principle the opportunity for the parties to a criminal or civil trial to have knowledge of

and comment on all evidence adduced or observations filed, even by an independent member of the national legal service, with a view to influencing the court's decision. That in itself amounted to a breach of A 6. The breach was aggravated by the presence of the Deputy Attorney General at the Supreme Court's private sitting. Even if he had no kind of say, it afforded him, if only to outward appearances, an additional opportunity to bolster his opinion in private, without fear of contradiction. The fact that his presence gave the Attorney General's department the chance to contribute to maintaining the consistency of the case-law could not alter that finding, since having a member present was not the only means of furthering that aim. There had therefore been a breach of A 6(1).

The applicant did not reiterate his complaint under P1A1 before the Court and the Court did not consider that it had to raise the issue of its own motion.

Judgment constitutes sufficient just satisfaction as to alleged damage. Costs and expenses (PTE 1,500,000 less FF 21,724).

Cited: Borgers v B (30.10.1991), Delcourt v B (17.1.1970), Kerojärvi v SF (19.7.1995), McMichael v UK (24.2.1995), Pakelli v D (25.4.1983), Pham Hoang v F (25.9.1992), Ruiz-Mateos v E (23.6.1993).

Loizidou v Turkey (1995) 20 EHRR 99, (1997) 23 EHRR 513 95/9

[Application lodged 22.7.1989; Commission report 8.7.1993; Court Judgment 23.3.1995 (preliminary objections). 18.12.1996, 28.7.1998]

Mrs Titina Loizidou, a Cypriot national, grew up in Kyrenia in northern Cyprus and after her marriage in 1972 moved with her husband to Nicosia. She claimed to be the owner of plots of land in Kyrenia in northern Cyprus and that following the Turkish occupation of northern Cyprus on 20 July 1974, she had been prevented from returning to Kyrenia and peacefully enjoying her property. On 19 March 1989 the applicant participated in a march organised by a women's group near the Turkish village of Akincilar in the occupied area of northern Cyprus. The aim of the march was to assert the right of Greek Cypriot refugees to return to their homes. They were surrounded by Turkish soldiers, detained by members of the Turkish Cypriot police force and returned to Nicosia. She was released around midnight, having been detained for more than ten hours. She complained that her arrest and detention involved violations of A 3, 5 and 8 and that the refusal of access to her property constituted a continuing violation of A 8 and P1A1.

Comm found unanimously NV 3, by majority (11–2) NV 8 as regards the applicant's private life, (9–4) NV 5(1), (9–4) NV 8 as regards the applicant's home, (8–5) NV P1A1.

Court dismissed unanimously the preliminary objection concerning an alleged abuse of process, found by majority (16–2) facts alleged by the applicant were capable of falling within Turkish jurisdiction within the meaning of 1, (16–2) that the territorial restrictions attached to Turkey's 25 and 46 declarations under the Convention were invalid but that the Turkish declarations under 25 and 46 contained valid acceptances of the competence of the Commission and Court, unanimously joined to the merits the preliminary objection *ratione temporis*.

Court dismissed by majority (11–6) the preliminary objection *ratione temporis*, found (11–6) that the denial of access to the applicant's property and consequent loss of control thereof was imputable to Turkey, (11–6) V P1A1, unanimously NV 8.

Judges (preliminary objections): Mr R. Ryssdal, President, Mr R Bernhardt, Mr F Gölcüklü (jd/d), Mr L-E Pettiti (jd/d), Mr B Walsh, Mr R. Macdonald, Mr A Spielmann, Mr S K Martens, Mrs E Palm, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla, Mr AB Baka, Mr MA Lopes Rocha, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr P Jambrek, Mr U Lôhmus.

Judges (merits): Mr R Ryssdal (jc), President, Mr R Bernhardt (jd), Mr F Gölcüklü (d), Mr L-E Pettiti (d), Mr B Walsh, Mr A Spielmann, Mr S K Martens, Mrs E Palm, Mr R Pekkanen, Mr A Loizou, Mr JM Morenilla, Mr AB Baka (d), Mr MA Lopes Rocha (jd), Mr L Wildhaber (c), Mr G Mifsud Bonnici, Mr P Jambrek (d), Mr U Lôhmus.

Judges (A 50): Mr R Bernhardt President, Mr F Gölcüklü (d), Mr L-E Pettiti (d), Mr A Spielmann, Mr SK Martens, Mrs E Palm, Mr R Pekkanen, Mr A Loizou, Mr JM Morenilla (pd), Sir John Freeland, Mr AB Baka, Mr MA Lopes Rocha, Mr L Wildhaber, Mr G Mifsud Bonnici (pd), Mr J Makarczyk, Mr P Jambrek, Mr U Lôhmus.

Preliminary objections

The standing of the applicant government: The *locus standi* of Cyprus as the Government of a High Contracting Party to the Convention could not be in doubt. Moreover it had not been contested that the applicant was a national of the Republic of Cyprus. In any event recognition of an applicant Government by a respondent Government was not a precondition for either the institution of proceedings under A 24 or the referral of cases to the Court under A 48.

Alleged abuse of process: The preliminary objection of abuse of process was not raised in the proceedings before the Commission and accordingly the Turkish Government was estopped from raising it before the Court in so far as it applied to the applicant. In so far as it was directed to the applicant Government, the Court noted that that Government had referred the case to the Court *inter alia* because of their concern for the rights of the applicant and other citizens in the same situation. The Court did not consider such motivation to be an abuse of its procedures. It followed that the objection had to be rejected.

The Turkish Government's role in the proceedings: The Court did not consider that it lay within the discretion of a Contracting Party to the Convention to characterise its standing in the proceedings before the Court in the manner it saw fit. The case originated in a petition brought by the applicant against Turkey in her capacity as a High Contracting Party to the Convention and had been referred to the Court under A 48(b) by another High Contracting Party. The Court therefore considered that Turkey was the respondent Party in the case.

Scope of the case: In the application referring the case to the Court under A 48(b) the applicant Government (Cyprus) had confined themselves to seeking a ruling on the complaints under P1A1 and A 8 in so far as they have been declared admissible by the Commission, concerning access to the applicant's property. Accordingly, it was only those complaints which were before the Court. The remaining part of the case concerning the applicant's arrest and detention thus fell within the competence of the Committee of Ministers of the Council of Europe in accordance with A 32(1). Turkey had accepted that the scope of the case be confined in that way. In those circumstances the Court did not find it necessary to give a general ruling on the question whether it was permissible to limit a referral to the Court to some of the issues on which the Commission had stated its opinion.

Objections ratione loci: At the preliminary objections stage of its procedure, the Court's enquiry was limited to determining whether the matters complained of by the applicant were capable of falling within the 'jurisdiction' of Turkey even though they occurred outside her national territory. Although A 1 set limits on the reach of the Convention, the concept of 'jurisdiction' under the provision was not restricted to the national territory of the High Contracting Parties. In addition, the responsibility of Contracting Parties could be involved because of acts of their authorities, whether performed within or outside national boundaries, which produced effects outside their own territory. Bearing in mind the object and purpose of the Convention, the responsibility of a Contracting Party could also arise when as a consequence of military action – whether lawful or unlawful – it exercised effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derived from the fact of such control whether it exercised directly, through its armed forces, or through a subordinate local administration. The respondent Government had acknowledged that the applicant's loss of control of her property stemmed from the occupation of the northern part of Cyprus by Turkish troops and the establishment there of the Turkish Republic of Northern Cyprus 'TRNC'. Furthermore, it had not been disputed that the applicant was prevented by Turkish troops from gaining access to her property. It followed that such acts were capable of falling within Turkish 'jurisdiction' within the meaning of A 1. Whether the matters complained of were imputable to Turkey and gave rise to State responsibility were thus questions which fell to be determined by the Court at the merits phase. The Court observed that A 25 and 46 were provisions which were essential to the effectiveness of the Convention system since they delineated the responsibility of the Commission

and Court 'to ensure the observance of the engagements undertaken by the High Contracting Parties', by determining their competence to examine complaints concerning alleged violations of the rights and freedoms set out in the Convention. In interpreting those key provisions the Court had to have regard to the special character of the Convention as a treaty for the collective enforcement of human rights and fundamental freedoms. The Convention was a living instrument which had to be interpreted in the light of present-day conditions, that applied not only to the substantive provisions but also to A 25 and 46 which governed the operation of the Convention's enforcement machinery. Accordingly, even if it had been established, which was not the case, that restrictions, other than those *ratione temporis*, were considered permissible under A 25 and 46 at a time when a minority of the present Contracting Parties adopted the Convention, such evidence could not be decisive. In addition, the object and purpose of the Convention as an instrument for the protection of individual human beings required that its provisions be interpreted and applied so as to make its safeguards practical and effective. Taking into consideration the character of the Convention, the ordinary meaning of A 25 and 46 in their context and in the light of their object and purpose and the practice of Contracting Parties, the Court concluded that the restrictions *ratione loci* attached to Turkey's A 25 and A 46 declarations were invalid. The Court has examined the text of the Turkish declarations and the wording of the restrictions. Even considering the texts of the A 25 and 46 declarations taken together, the Court considered that the impugned restrictions could be separated from the remainder of the text leaving intact the acceptance of the optional clauses. The declarations of 28 January 1987 and 22 January 1990 under A 25 and 46 contained valid acceptances of the competence of the Commission and Court.

Objection ratione temporis: The Court considered that on the present state of the file it had not sufficient elements enabling it to decide the questions of *ratione temporis*, which was closely connected to the merits and would be joined thereto.

Merits

Preliminary objections: In principle the Court was not prevented in its examination of the merits of a complaint from having regard to new facts, supplementing and clarifying those established by the Commission, if it considered them to be of relevance. In this case the plea of estoppel had to fail. The Court had previously endorsed the notion of a continuing violation of the Convention and its effects as to temporal limitations of the competence of Convention organs. Accordingly, the present case concerned alleged violations of a continuing nature if the applicant, for purposes of P1A1 and A 8 of the Convention could still be regarded as the legal owner of the land. In the Court's view, the principles underlying the Convention could not be interpreted and applied in a vacuum. Mindful of the Convention's special character as a human rights treaty, the Court had to also take into account any relevant rules of international law when deciding on disputes concerning its jurisdiction pursuant to A 49. In this respect it was evident from international practice and various strongly worded resolutions that the international community did not regard the 'TRNC' as a State under international law and that the Republic of Cyprus had remained the sole legitimate Government of Cyprus – itself, bound to respect international standards in the field of the protection of human and minority rights. Accordingly, the applicant could not be deemed to have lost title to her property as a result of the 1985 Constitution of the 'TRNC'. Thus, for the purposes P1A1 and A 8 the applicant had to still be regarded to be the legal owner of the land. The objection *ratione temporis* therefore failed.

P1A1: The continuous denial of the applicant's access to her property in northern Cyprus and the ensuing loss of all control over the property was a matter which fell within Turkey's 'jurisdiction' within the meaning of A 1 and was thus imputable to Turkey. The applicant's complaint under P1A1 was not limited to the question of physical access to her property but was that Turkey, by refusing her access to property over the last 16 years had affected her right as a property owner and in particular her right to a peaceful enjoyment of her possessions. P1A1 was applicable. The Court had found that the applicant had remained the legal owner of the land and the continuous denial of access had to be regarded as an interference with her rights under P1A1. Such an

interference could not, in the exceptional circumstances of the present case be regarded as either a deprivation of property or a control of use within the meaning of the first and second paragraphs of P1A1. However, it clearly fell within the meaning of the first sentence of P1A1 as an interference with the peaceful enjoyment of possessions. The Turkish Government had not made submissions justifying the interference with the applicant's property rights. No justification had been put forward for the complete negation of the applicant's property rights in the form of a total and continuous denial of access and a purported expropriation without compensation. The fact that property rights were the subject of intercommunal talks involving both communities in Cyprus could not provide a justification for this situation under the Convention. In those circumstances, there had been and continued to be a breach of P1A1.

A 8: The applicant did not have her home on the land in question. It would strain the meaning of the notion 'home' in A 8 to extend it to comprise property on which it was planned to build a house for residential purposes. Nor could that term be interpreted to cover an area of a State where one had grown up and where the family had its roots but where one no longer lived. Accordingly, there had been no interference with the applicant's rights under A 8 .

Pecuniary damage (by majority (14–3) CYP 300,000), non-pecuniary damage ((15–2) CYP 20,000), costs and expenses ((13–4) CYP 137,084.83) to applicant. Cypriot Government's claim for costs and expenses dismissed.

Cited (preliminary objections): Artico v I (13.5.1980), 'Belgian Linguistic' case (9.2.1967), Belilos v CH (29.4.1988), Cruz Varas and Others v S (20.3.1991), Drozd and Janousek v France and Spain (26.6.1992), Ireland v UK (18.1.1978), Johnston and Others v IRL (18.12.1986), Kjeldsen, Busk Madsen and Pedersen v DK (7.12.1976), Papamichalopoulos and Others v GR (24.6.1993), Soering v UK (7.7.1989), Stamoulakatos v GR (26.10.1993), Tyrer v UK (25.4.1978), Vilvarajah and Others v UK (30.10.1991).

Cited (merits): Airey v IRL (9.10.1979), McMichael v UK (24.2.1995), Gustafsson v S (25.4.1996), Papamichalopoulos and Others v GR (24.6.1993), Agrotexim and Others v GR (24.10.1995), Cruz Varas and Others v S (20.3.1991), Klaas v D (22.9.1993), McCann and Others v UK (27.9.1995).

Lombardo, Francesco v Italy (1996) 21 EHRR 188 92/71

[Application lodged 3.10.1984; Commission report 10.7.1991; Court Judgment 26.11.1992]

Mr Francesco Lombardo served in the Carabinieri from 15 August 1946 to 14 March 1974, on which date he was invalided out of the service because he had become disabled as a result of two illnesses, an ulcer and neoplasia. On 10 June 1974 he applied for an enhanced ordinary pension on the ground that the illnesses which had caused his disablement were 'due to his service'. He appealed to the Court of Audit against the decision of the Ministry of Defence rejecting his application. The appeal was received by the Court of Audit on 22 December 1977. He made several requests for his case to be given priority. The case was heard on 15 February 1989, at the end of which his appeal was upheld. The text of the judgment was deposited with the registry on 7 July 1989. He complained of the length of the civil proceedings.

Comm found by majority (13–6) V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr B Walsh, Mr C Russo, Mr R Pekkanen, Mr AN Loizou, Mr F Bigi, Sir John Freeland, Mr L Wildhaber.

As the Government withdrew the objection of non-exhaustion at the hearing, the Court would not examine it of its own motion.

Even though disputes relating to the recruitment, employment and retirement of public servants were as a general rule outside the scope of A 6(1), State intervention by means of a statute or delegated legislation had not prevented the Court, in several cases, from finding the right in issue to have a civil character. Notwithstanding the public law aspects, what was concerned here was essentially an obligation on the State to pay a pension to a public servant in accordance with the legislation in force. In performing that obligation the State was not using discretionary powers and

might be compared, in that respect, with an employer who was a party to a contract of employment governed by private law. Consequently, the right of a carabiniere to receive an 'enhanced ordinary pension' if he fulfilled the necessary conditions of injury and disability was to be regarded as a 'civil right' within the meaning of A 6(1) which was therefore applicable in the present case.

The period to be taken into consideration began on 22 December 1977, when the applicant's appeal was received by the Court of Audit. It ended on 7 July 1989 when that court's judgment was filed. It thus lasted for approximately 11 years, six months. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The case was of a certain difficulty. However, that circumstance did not in itself justify the length of the proceedings. There were several periods of delay: the registry of the Court of Audit received the applicant's administrative file two years after requesting it; the principal public prosecutor waited approximately seven years and nine months before commissioning an expert report and once he was in possession of the report he waited 14 months before filing his submissions. The excessive workload could not be taken into consideration. A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of the requirements of that paragraph. The delays were so substantial that the overall length of the proceedings had to be regarded as excessive. There had therefore been a violation of A 6(1).

No just satisfaction claimed.

Cited: Deumeland v D (29.5.1986), Feldbrugge v NL (29.5.1986), Glasenapp v D (28.8.1986), Kosiek v D (28.8.1986), Moreira de Azevedo v P (23.10.1990), Tusa v I (27.2.1992).

Lombardo, Giancarlo v Italy 1996) 21 EHRR 188 92/71

[Application lodged 29.7.1986; Commission report 14.10.1991; Court Judgment 26.11.1992]

Mr Giancarlo Lombardo, a former judge, appealed to the Court of Audit on 11 November 1980 against a decree of the Ministry of Justice rejecting his application for the amount of his pension to be increased. In a judgment dated 13 March 1989, filed with the registry on 20 March, the court partially upheld the applicant's appeal and ordered the readjustment of his pension, re-evaluation of the sums due and payment of interest on those sums. He complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr B Walsh, Mr C Russo, Mr R Pekkanen, Mr AN Loizou, Mr F Bigi, Sir John Freeland, Mr L Wildhaber.

Even though disputes relating to the recruitment, employment and retirement of public servants were as a general rule outside the scope of A 6(1), State intervention by means of a statute or delegated legislation had not prevented the Court, in several cases, from finding the right in issue to have a civil character. Notwithstanding the public law aspects, what was concerned here was essentially an obligation on the State to pay a pension to a judge in accordance with the legislation in force. In performing that obligation, the State was not using discretionary powers and might be compared, in that respect, with an employer who was a party to a contract of employment governed by private law. Consequently, the right of a judge to obtain an adjustment of the amount of his pension was to be regarded as a 'civil right' within the meaning of A 6(1) which was therefore applicable in the present case.

The period to be taken into consideration began on 11 November 1980, when the proceedings were instituted in the Court of Audit. It ended on 20 March 1989 when the judgment of that court was filed. The period to be considered thus lasted for approximately eight years and four months. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The case was of a

certain difficulty. However, that circumstance did not in itself justify the length of the proceedings. A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of the requirements of that paragraph. There were several periods of inactivity before the Court of Audit: it took the principal public prosecutor more than one year to file his submissions, and then almost five months to refer the case to the combined divisions of the Court of Audit; the case subsequently remained adjourned for over six years while awaiting the outcome of the prosecutor's appeal to the combined divisions in a similar case. Those delays were so substantial that the overall length of the proceedings had to be regarded as excessive. There had therefore been a violation of A 6(1).

Judgment constituted just satisfaction for any non-pecuniary damage sustained.

Cited: Deumeland v D (29.5.1986), Tusa v I (27.2.1992).

López Ostra v Spain (1995) 20 EHRR 277 94/47

[Application lodged 14.5.1990; Commission report 31.8.1993; Court Judgment 9.12.1994]

Mrs Gregoria López Ostra, her husband and two daughters, lived in Lorca, a town with a heavy concentration of leather industries. They lived 12 metres away from a waste-treatment plant which had operated without a licence. On 9 September 1988, following numerous complaints and in the light of reports from the health authorities and the Environment and Nature Agency, the town council ordered cessation of one of the plant's activities. On 13 October 1988 she lodged an application with the Administrative Division of the Murcia Audiencia Territorial, seeking protection of her fundamental rights, complaining, *inter alia*, of an unlawful interference with her home and her peaceful enjoyment of it on account of the nuisance and risks caused by the waste-treatment plant. She requested the court to order temporary or permanent cessation of its activities. The Audiencia Territorial found against her on 31 January 1989. She appealed to the Supreme Court which dismissed her appeal in a judgment of 27 July 1989. Her appeal to the Constitutional Court was ruled inadmissible on the ground that it was manifestly ill-founded. In 1990, two sisters-in-law of the applicant, who lived in the same building as her, brought proceedings alleging that the plant was operating unlawfully without licences required by law. The court ordered that the plant should be closed until they were obtained, but enforcement of the order was stayed following an appeal by the town council and the operating company. The case was still pending in the Supreme Court. The applicant's two sisters-in-law also lodged a complaint and were civil parties to the criminal proceedings against the company for an environmental health offence. In November 1991 the judge decided to close the plant, but that measure was suspended because of an appeal. On 1 February 1992 the applicant and her family were rehoused in a flat in the centre of Lorca, for which the municipality paid the rent. The inconvenience resulting from this move and from the precariousness of their housing situation prompted the applicant and her husband to purchase a house in a different part of town on 23 February 1993. On 27 October 1993 the judge confirmed of the order of November 1991 and the plant was temporarily closed. She complained that she was the victim of a violation of her right to respect for her home that made her private and family life impossible and the victim also of degrading treatment.

Comm found unanimously V 8, NV 3.

Court unanimously dismissed the Government's preliminary objections, found V 8, NV 3.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr A Spielmann, Mrs E Palm, Mr JM Morenilla, Mr F Bigi, Mr B Baka, Mr MA Lopes Rocha, Mr G Mifsud Bonnici.

The applicant had raised her complaint in both the Murcia Audiencia Territorial and the Supreme Court. She was not party to the proceedings brought by her sisters-in-law. Having had recourse to a remedy that was effective and appropriate in relation to the infringement of which she had complained, the applicant was under no obligation also to bring other proceedings that were slower. She had provided the national courts with the opportunity of putting right the violations alleged against them and the preliminary objection of non-exhaustion therefore had to be

dismissed. Someone who had been forced by environmental conditions to abandon her home and subsequently to buy another house did not cease to be a victim. Neither her move nor the waste-treatment plant's closure, which was temporary, altered the fact that the applicant and her family lived for years only 12 metres away from a source of smells, noise and fumes. If she could now return to her former home following the decision to close the plant, that would be a factor to be taken into account in assessing the damage she sustained, but would not mean that she ceased to be a victim. Preliminary objection that applicant not a victim therefore dismissed.

Where a situation under consideration was a persisting one, the Court could take into account facts occurring after the application has been lodged and even after the decision on admissibility had been adopted. Severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health. Whether the question was analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicant's rights under A 8(1), or in terms of an interference by a public authority to be justified in accordance with A 8(2), the applicable principles were broadly similar. In both contexts regard had to be had to the fair balance that had to be struck between the competing interests of the individual and of the community as a whole, and in any case the State enjoyed a certain margin of appreciation. Even in relation to the positive obligations flowing from the first paragraph of A 8, in striking the required balance the aims mentioned in the second paragraph might be of a certain relevance. Although the waste-treatment plant was built to solve a serious pollution problem it soon caused nuisance and health problems to many local people. The Spanish authorities were theoretically not directly responsible for the emissions in question. However, the town allowed the plant to be built on its land and the State subsidised the plant's construction. The town council had reacted promptly by rehousing the affected residents and then by stopping one of the plant's activities. However, the council's members would have been aware that the environmental problems continued after this partial shutdown. That was confirmed by the report of the Environment and Nature Agency. The question of the lawfulness of the building and operation of the plant had been pending in the Supreme Court since 1991. It was primarily for the national authorities, notably the courts, to interpret and apply domestic law. However, the municipality not only failed to take steps to fulfil the functions assigned by domestic law after 9 September 1988 but also resisted judicial decisions to that effect. It had appealed against the Murcia High Court's decision ordering temporary closure of the plant, and that measure was suspended as a result. Other State authorities also contributed to prolonging the situation. The family had to bear the nuisance caused by the plant for over three years before moving house with all the attendant inconveniences. The municipality's offer of rehousing could not afford complete redress for the nuisance and inconveniences to which they had been subjected. Having regard to the foregoing, and despite the margin of appreciation left to the respondent State, the State had not succeeded in striking a fair balance between the interest of the town's economic well-being, that of having a waste-treatment Plant, and the applicant's effective enjoyment of her right to respect for her home and her private and family life. There had accordingly been a violation of A 8.

The conditions in which the applicant and her family lived for a number of years were very difficult but did not amount to degrading treatment within the meaning of A 3.

Damage (ESP 4,000,000), costs and expenses (ESP 1,500,000 less FF 9,700).

Cited: Casado Coca v E (24.2.1994). De Wilde, Ooms and Versyp v B (18.6.1971), Delta v F (19.12.1990), Guzzardi v I (6.11.1980), Inze v A (28.10.1987), Marckx v B (13.6.1979), Neumeister v A (27.6.1968), Powell and Rayner v UK (21.2.1990), Rees v UK (17.10.1986), X and Y v NL (26.3.1985).

Lorenzi, Bernardini and Gritti v Italy 92/36

[Application lodged 15.9.1987; Commission report 5.3.1991; Court Judgment 27.2.1992]

Mr Giovanni Lorenzi, Mr Ivano Bernardini and Mr Alessio Gritti took proceedings on 27 March 1975 before the Brescia District Court against the Minister of Public Works, seeking compensation for the damage caused by the flooding of a stream. The investigation opened at the hearing of 19

May 1975. On 6 June 1984, the Brescia District Court ordered the Ministry of Public Works to compensate the applicants. On 20 May 1985, the Ministry of Public Works appealed against the judgment. Their appeal to the Brescia Court of Appeal was dismissed in November 1986. They appealed to the Court of Cassation which, on 9 March 1989, set aside the decision. The text of the decision was lodged with the registry on 15 May 1990. The applicants complained of the length of the civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 27 March 1975, when the proceedings were instituted against the Minister of Public Works in the Brescia District Court. It ended, at the earliest, on 15 May 1990, when the judgment of the Court of Cassation was lodged with the registry, and, at the latest, on 15 May 1991, when the time-limit for resuming the proceedings before the competent court expired. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The case was a complex one, both as regards the facts and the law, in particular because of the questions of jurisdiction which the Brescia District Court and then the Court of Cassation had to determine. In addition, the parties, by mutual agreement, caused numerous adjournments, which entailed a total delay of 21 months. However, the investigating judge failed to display due diligence in exercising his power of supervision over the work of the expert and there were two periods of total inactivity in the proceedings before the District Court and before the Court of Appeal. Furthermore, the Minister of Public Works, an officer of the State, took more than six months to file an appeal against the judgment of 6 June 1984 and that decision and the judgment of 9 March 1989 were not filed with the registry for nearly six and 14 months respectively. A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. Accordingly, the Court could not regard as reasonable the time which it took to make a finding that the court before which the case initially came lacked jurisdiction. There had therefore been a violation of A 6(1).

Judgment constituted just satisfaction for non-pecuniary damage. Costs and expenses (ITL 2,000,000).

Cited: Capuano v I (25.6.1987), Vocaturo v I (24.5.1991).

Luberti v Italy (1984) 6 EHRR 440 84/3

[Application lodged 19.5.1980; Commission report 6.5.1982; Court Judgment 23.2.1984]

On 20 January 1970 Mr Luciano Luberti killed his mistress by firing several shots at her. Criminal proceedings were instituted against the applicant. He was arrested on 10 July 1972 and committed for trial on a charge of murder. On 17 January 1976, the Rome Assize Court sentenced him to twenty-one years' imprisonment for murder and to one year's imprisonment and a fine for possession of military weapons. He appealed on the grounds, inter alia, that he was insane at the time of the commission of the offence. Psychiatric reports were obtained and on 16 November 1979 the Rome Appeal Court of Assize acquitted him on the ground of mental incapacity and directed that he be confined for two years in a psychiatric hospital. Appeals on points of law to the Court of Cassation were dismissed on 17 June 1981. The applicant made several applications to the judicial authorities for release from confinement. He complained of having been confined in a psychiatric hospital although he was no longer suffering from any mental disorder. He also complained that the Italian courts had not given a decision speedily on his applications for the confinement order to be set aside.

Comm found by majority (10–2) NV 5(1), unanimously V 5(4).

Court found unanimously NV 5(1), V 5(4).

Judges: Mr G Wiarda, President, Mr J Cremona, Mr G Lagergren, Mr E García de Enterría, Sir Vincent Evans, Mr C Russo, Mr R Bernhardt.

In deciding whether an individual should be detained as a 'person of unsound mind', the national authorities were to be recognised as having a certain margin of appreciation since it was in the first place for the national authorities to evaluate the evidence adduced before them in a particular case; the Court's task was to review under the Convention the decisions of those authorities. An individual could not be considered to be 'of unsound mind' for the purposes of A 5(1) and deprived of his liberty unless the following three minimum conditions were satisfied: he had to be reliably shown to be of unsound mind; the mental disorder had to be of a kind or degree warranting compulsory confinement; and the validity of continued confinement depended upon the persistence of such a disorder. It could be seen to have been reliably established by the Appeal Court of Assize that the applicant was of unsound mind. The Appeal Court verified the existence of that condition not only as at the time of the killing, but also as at the date of adoption of the measure depriving the applicant of his liberty. Moreover, the Appeal Court of Assize did not fail to satisfy itself that the mental disorder from which the applicant was suffering at the time of its judgment was of a kind and degree warranting compulsory confinement. Two reports on the applicant's state of mental health were drawn up during the period between 16 November 1979, when the Appeal Court of Assize gave judgment, and 10 June 1981, when the security measure was terminated. On the basis of the evidence before it, the Court did not consider that it had been established that the applicant's detention continued beyond the period justified by his mental disorder. There had therefore been no violation of A 5(1).

Where the decision to deprive an individual of his liberty was one taken by an administrative body, that individual was entitled to have the lawfulness of the decision reviewed by a court, but the same did not apply when the decision was made by a court at the close of judicial proceedings, the review required by A 5(4) being in that event incorporated in the decision. The Court had also held, in connection with the confinement of persons of unsound mind, that provision should always be made for a subsequent review to be available at reasonable intervals, in as much as the reasons initially warranting confinement may cease to exist. The applicant lodged three applications for termination of his confinement. The proceedings from 19 November 1979 to 29 May 1981, before the Supervision Division and then the Court of Cassation and the Court of Appeal were characterised by excessive delays. As a result of those delays, the Italian judicial authorities, notwithstanding the diligence shown by the Naples Supervision Division, did not give a decision speedily on the lawfulness of the detention in question. There was therefore a breach of A 5(4).

Judgment constituted sufficient just satisfaction for any non-pecuniary damage. Costs and expenses (ITL 1,000,000).

Cited: Eckle v D (15.7.1982), Stögmüller v A (10.11.1969), Van Droogenbroeck v B (24.6.1982, 25.4.1983), Winterwerp v NL (24.10.1979), X v UK (5.11.1981), Zimmermann and Steiner v CH (13.7.1983).

Lüdi v Switzerland (1993) 15 EHRR 173 92/50

[Application lodged 30.9.1986; Commission report 6.12.1990; Court Judgment 15.6.1992]

On the basis of information about Mr Ludwig Lüdi's intended activities from the German police, an investigating judge at the Laufen District Court opened a preliminary investigation on 15 March 1984. With the agreement of the Indictments Chamber of the Court of Appeal of the Canton of Berne and pursuant to the Berne Code of Criminal Procedure, he also ordered the applicant's telephone conversations to be monitored. The Laufen police and the special drugs unit decided that a sworn officer of the Berne Cantonal Police should pass himself off as a potential purchaser of cocaine. The applicant met the undercover agent on a number of occasions. The applicant was arrested on 1 August 1984 and charged with unlawful trafficking in drugs. On 4 June 1985, the Laufen District Court found the applicant guilty of seven offences against the Federal Drugs Law and sentenced him to three years' imprisonment. In order to preserve the anonymity of the

undercover agent, the court declined to call him as a prosecution witness. The applicant applied to the Berne Court of Appeal, which confirmed the original judgment. The Court of Appeal did not call the undercover agent either. The applicant then brought a public law appeal and an application for a declaration of nullity to the Federal Court. On 8 April 1986, the Federal Court dismissed the public law appeal. The application for a declaration of nullity was granted and the case remitted to the Berne Court of Appeal. On 19 February 1987, the First Chamber of that court reduced the sentence to 18 months' imprisonment, suspended for three years. The applicant complained of the interception of his telephone conversations and that his conviction had been based solely on the reports of the undercover agent, who had not been summoned to appear as a witness, thus infringing his right to a fair trial.

Comm found by majority (10–4) V 8, (13–1) V 6(1)+6(3)(d).

Court dismissed unanimously the Government's preliminary, found NV 8, by majority (8–1) V 6(1)+6(3)(d).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr F Matscher (pd), Mr B Walsh, Mr A Spielmann, Mr SK Martens, Mr AN Loizou, Mr F Bigi, Mr L Wildhaber.

The word 'victim' under A 25 denoted the person directly affected by the act or omission in issue, the existence of a violation of the Convention being conceivable even in the absence of prejudice; prejudice being relevant only in the context of A 50. Mitigation of a sentence in principle deprived a person of his status as a victim only where the national authorities had acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention. The applicant was directly affected by the intervention of the undercover agent and the national authorities, far from acknowledging that this intervention constituted a violation, expressly decided that it was in fact compatible with the obligations under the Convention. The preliminary objection of lack of victim status had therefore to be dismissed.

The telephone interception was an interference with the applicant's private life and correspondence. The measure was based on the Berne Code of Criminal Procedure. It was aimed at the prevention of crime and there was no doubt as to its necessity in a democratic society. The use of an undercover agent did not, either alone or in combination with the telephone interception, affect private life within the meaning of A 8. The undercover agent's actions took place within the context of a deal relating to 5 kg of cocaine. The applicant must have been aware that he was engaged in a criminal act punishable under the Drugs Law and that consequently he was running the risk of encountering an undercover police officer whose task would in fact be to expose him. There had been no violation of A 8.

The admissibility of evidence was primarily governed by the rules of domestic law, and as a general rule it was for the national courts to assess the evidence before them. The Court's task was to ascertain whether the proceedings, considered as a whole, including the way in which the evidence was submitted, were fair. As the requirements of A 6(3) represented particular aspects of the right to a fair trial guaranteed in A 6(1) the complaint would be examined from the point of view of those two provisions taken together. Although the undercover agent did not give evidence to the court in person, for the purposes of A 6(3)(d) he had to be considered as a witness, a term which was to be given an autonomous interpretation. The applicant first made admissions after he had been shown the transcripts of the telephone interceptions, and he was deprived throughout the proceedings of any means of checking them or casting doubt on them. While the Swiss courts did not reach their decisions solely on the basis of the undercover agent's written statements, these played a part in establishing the facts which led to the conviction. All the evidence had normally to be produced in the presence of the accused at a public hearing with a view to adversarial argument. There were exceptions to this principle, but they could not infringe the rights of the defence. In distinction to other cases, in this case the person in question was a sworn police officer whose function was known to the investigating judge. Moreover, the applicant knew the agent, if not by his real identity, at least by his physical appearance, as a result of having met him on five occasions. However, neither the investigating judge nor the trial courts were able or willing to hear

the undercover agent as a witness and carry out a confrontation which would enable his statements to be contrasted with the applicant's allegations. In addition, neither the applicant nor his counsel had at any time during the proceedings an opportunity to question the agent and cast doubt on his credibility. Yet it would have been possible to do this in a way which took into account the legitimate interest of the police authorities in a drug trafficking case in preserving the anonymity of their agent, so that they could protect him and also make use of him again in the future. The rights of the defence were restricted to such an extent that the applicant did not have a fair trial.

Costs and expenses (CHF 15,000).

Cited: Asch v A (26.4.1991), B v F (26.3.1992), Eckle v D (15.7.1982), Kostovski v NL (20.11.1989), Vidal v B (22.4.1992), Windisch v A (27.9.1990).

Luedicke, Belkacem and Koç v Germany (1979–80) 2 EHRR 149 78/5

[Applications lodged 23.7.1973, 20.12.1974 and 28.7.1975; Commission report 18.5.1977; Court Judgment 23.11.1978]

Mr Gerhard W Luedicke, a citizen of the UK, was charged with a road traffic offence, Mr Mohammed Belkacem, an Algerian citizen, was charged *inter alia* with assault occasioning bodily harm and Mr Arif Koç, a Turkish citizen, was charged with causing grievous bodily harm. Since they were not sufficiently familiar with the language of the country, they were assisted by an interpreter in accordance with German law. After conviction, they were ordered, amongst other things, to pay the costs of their proceedings, including the interpretation costs. On 4 May 1973, after unsuccessful appeals, Mr Luedicke paid the costs of the proceedings, including the interpretation costs. On 5 May 1977, following a request by Mr Belkacem, the Berlin Justizkasse allowed him to defer payment until the decision of the Commission of Human Rights was known. Mr Koç had not paid the costs and had indicated that he intended to return to Turkey. They complained that the order by the German courts to bear interpretation costs infringed their right to a fair trial. In addition, Mr Luedicke and Mr Belkacem also alleged discrimination by reason of the fact that a foreigner not speaking German was in a less favourable position than a German person.

Comm found unanimously V 6(3)(e), by majority (12–1) not necessary to examine 14.

Court unanimously rejected the Government's application to strike the case out of its list as far as the applicant Koç was concerned, found V 6(3)(e), not necessary to examine 14.

Judges (merits): Mr G Wiarda, President, Mr H Mosler (SO), Mrs H Pedersen, Mrs D Bindschedler-Robert, Mr D Evrigenis, Mr P-H Teitgen, Mr G Lagergren (so).

Judges (A 50): Mr G Wiarda, President, Mr H Mosler, Mrs D Bindschedler-Robert, Mr W Ganshof Van Der Meersch, Mr D Evrigenis, Mr P-H Teitgen, Mr G Lagergren.

The Court took formal notice of the Government's declaration that the compulsory collection of costs from the applicant Koç would not be carried out in future even if he were to return to Germany. However, that declaration was a unilateral act which could not amount to a 'friendly settlement' or an 'arrangement' within the meaning of Rule 47(2). Neither could it be regarded as a 'fact of a kind to provide a solution of the matter'. The waiver of recovery of the sums due by Mr. Koç was not prompted by reasons deriving from A 6(3)(e), but from the practical difficulties and cost of recovery, as well as from consideration of the applicant's family and financial situation. Furthermore, the waiver of recovery did not remove the applicant's legal interest to have established the Convention complaint. Retaining the case in its entirety on the list would facilitate providing the Government, who were seeking an interpretation of the Convention by the Court, with an answer of the completeness they were entitled to expect on account, notably, of the conflict of opinion as to the meaning of the provisions in issue. Consequently, the Court decided not to sever Mr Koç's case from the two others and not to strike it out of the list.

The term 'free' in A 6(3)(e) had a clear and determinate meaning. It denoted neither a conditional remission, nor a temporary exemption, nor a suspension, but a once and for all exemption or

exoneration. To read A 6(3)(e) as allowing the domestic courts to make a convicted person bear the interpretation costs would amount to limiting in time the benefit of the article and in practice, to denying that benefit to any accused person who was eventually convicted. It would leave in existence the disadvantages that an accused who did not understand or speak the language used in court suffered as compared with an accused who was familiar with that language. The obligation for a convicted person to pay interpretation costs might have repercussions on the exercise of his right to a fair trial as safeguarded by A 6. The ordinary meaning of the term 'free' in A 6(3)(e) was not contradicted by the context of the sub-paragraph and was confirmed by the object and purpose of A 6. The right protected by A 6(3)(e) entailed, for anyone who could not speak or understand the language used in court, the right to receive the free assistance of an interpreter, without subsequently having claimed back from him payment of the costs thereby incurred. Construed in the context of the right to a fair trial guaranteed by A 6, para 3 (e) signified that an accused who could not understand or speak the language used in court had the right to the free assistance of an interpreter for the translation or interpretation of all those documents or statements in the proceedings instituted against him which it was necessary for him to understand in order to have the benefit of a fair trial. Mr Luedicke had to pay interpretation costs, including an amount in respect of the oral hearing. No details were provided as to the nature of the remaining balance and accordingly, the Court could not conclude that that balance fell outside the scope of A 6(3)(e). Mr Koç's interpretation costs were exclusively attributed to three court hearings and came within the ambit of A 6(3)(e). The interpretation costs awarded against Mr Belkacem resulted from his appearance before the judge, the review of his detention on remand, the translation of the indictment and the trial hearing; A 6(3)(e) covered all those costs. Accordingly, the decisions of the German courts were in breach of A 6(3)(e).

It was not necessary to examine the case under A 14. In order to secure the right to a fair trial, A 6(3)(e) sought to prevent any inequality between an accused person who was not conversant with the language used in court and an accused person who did speak and understand that language; hence, it was to be regarded as a particular rule in relation to the general rule embodied in A 6(1) and 14 taken together. Accordingly, there was no scope for the application of the two latter provisions.

A 50: Court held unanimously Federal Republic of Germany to reimburse Mr Luedicke for the interpretation costs that he had paid. Agreements having been reached of an equitable nature between the Federal Republic of Germany and the respective representatives of Mr Luedicke and Mr Koç, their cases were struck out of the list. No issue arose concerning the interpretation costs which Mr Belkacem was ordered to pay or the costs incurred in the exercise of the domestic remedies. The relevant Berlin authorities had suspended recovery of the interpretation costs pending clarification by the Court of the meaning of A 6(3)(e). Subsequently, the claim for costs had been cancelled. Reimbursement of the costs referable to the domestic remedies had not been claimed by the applicant. What remained were the additional costs claimed by Mr Belkacem's lawyer. Mr Belkacem had the benefit of free legal aid before the Commission and the Court and therefore bore no costs himself and suffered no loss capable of being compensated. His lawyer could not rely on A 50 to seek just satisfaction on his own account; besides, he accepted of his own free will the conditions, including the scale of fees, applicable to the legal aid granted to his client. Accordingly, the request made in Mr Belkacem's name was not well-founded.

Cited: Golder v UK (21.2.1975).

Lughofer v Austria 99/92

[Application lodged 27.9.1993; Commission report 9.9.1998; Court Judgment 30.11.1999]

Ernst and Anna Lughofer's farm was the object of land consolidation proceedings instituted by the District Agricultural Authority on 22 February 1973. The applicant's appeal was dismissed by the Upper Austria Regional Land Reform Board after an oral hearing held in private, but in the presence of the parties and their lawyer. On 25 September 1990 the applicants filed a complaint with the Administrative Court against the decision. They also asked the Court to hold an oral hearing. On 15 December 1992 the Administrative Court dismissed the complaint, rejecting the

applicants' request for an oral hearing. They complained of a violation of A 6(1) on account of the lack of a public hearing.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr P Kûris, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mrs HS Greve, Mr K Traja.

By letter of 17 May 1999 the Government conceded that there had been a violation of A 6(1) in the circumstances of the application. The Court recalled its findings in *Stallinger and Kuso v A*. The failure to hold a public hearing in the land consolidation proceedings was not compatible with A 6(1).

Finding of violation constituted sufficient just satisfaction for any non-pecuniary damage. Costs and expenses (ATS 30,965.42).

Cited: König v D (10.3.1980), Stallinger and Kuso v A (23.4.1997).

Lukanov v Bulgaria (1997) 24 EHRR 121 97/17

[Application lodged 1.9.1992; Commission report 16.1.1996; Court Judgment 20.3.1993]

Mr Andrei Karlov Lukanov was formerly a Minister, then Deputy Prime Minister and, in 1990, Prime Minister of Bulgaria, he was a member of the Bulgarian National Assembly at the time of the events giving rise to the present case. On 2 October 1996 he was shot dead outside his home. On 7 July 1992 the National Assembly waived his parliamentary immunity and authorised criminal proceedings against him and his arrest and detention on remand. On 9 July 1992 the public prosecutor charged the applicant with having together with others misappropriated funds allocated to certain developing countries facilitating the misappropriation in order to obtain an advantage for a third party, thereby causing considerable economic damage. He was arrested and remanded in custody at the premises of the National Investigation Service in Sofia. On the same date the applicant's lawyer lodged an appeal with the Bulgarian Supreme Court, requesting his release. The appeal was dismissed on 13 July. Further unsuccessful requests were made for his release. On 30 December 1992 the prosecutor decided to release the applicant on bail. He complained, *inter alia*, that his arrest and detention on remand had been incompatible with A 5(1)(c) in that there was no reasonable suspicion of his having committed a crime and that the measures were not necessary in order to prevent him from committing an offence or fleeing.

Comm found unanimously V 5(1) and no separate issue under 18.

Court found unanimously V 5(1), no separate issue under 18.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mrs E Palm, Sir John Freeland, Mr J Makarczyk, Mr D Gotchev, Mr B Repik, Mr U Lôhmus, Mr J Casadevall.

The Court had jurisdiction to examine the facts and circumstances of the applicant's complaints in so far as they related to the period after 7 September 1992, when Bulgaria ratified the Convention and recognised the Court's compulsory jurisdiction. In doing so, it would take into account the state of the proceedings as of that date, in particular the fact that the grounds for his detention, stated in the detention order of 9 July and the Supreme Court judgment of 13 July upholding the order, remained the same until his release on 30 December 1992. A 5(1) contained an exhaustive list of permissible grounds for deprivation of liberty which had to be interpreted strictly. The applicant had, as a member of the Bulgarian Government, taken part in the decisions – granting funds in assistance and loans to certain developing countries – which had given rise to the charges against him. However, none of the provisions of the Criminal Code relied on to justify the detention specified or even implied that anyone could incur criminal liability by taking part in collective decisions of that nature. Moreover, no evidence had been adduced to show that such decisions were unlawful, that is to say contrary to Bulgaria's Constitution or legislation, or more specifically that the decisions were taken in excess of powers or were contrary to the law on the national

budget. In the light of the above, the Court was not persuaded that the conduct for which the applicant was prosecuted constituted a criminal offence under Bulgarian law at the relevant time. The public prosecutor's order of detention of 9 July 1992 and the Supreme Court's decision of 13 July upholding the order referred to parts of the Criminal Code and the Court was not provided with any fact or information capable of showing that the applicant was at the time reasonably suspected of the offence. In those circumstances, the Court did not find that the deprivation of the applicant's liberty during the period under consideration was 'lawful detention' effected 'on reasonable suspicion of his having committed an offence'. Having reached that conclusion it was not necessary to examine whether the detention could reasonably be considered necessary to prevent his committing an offence or fleeing after having done so. There had been a violation of A 5(1).

Having regard to the conclusions with respect to A 5(1) no separate issue arose under A 18.

Non-pecuniary damage (FF 40,000), costs and expenses (USD 13,456 and FF 7,067).

Cited: Ahmet Sadik v GR (15.11.1996), Benham v UK (10.6.1996), Bozano v F (18.12.1986), Ciulla v I (22.2.1989), Foti and Others v I (10.12.1982), Hokkanen v SF (23.9.1994), Kemmache v F (No 3) (24.11.1994), Murray v UK (28.10.1994), Yagci and Sargin v TR (8.6.1995).

Lustig-Prean and Beckett v United Kingdom (2000) 29 EHRR 548 99/53

[Application lodged 23.4.1996, 11.7.1996; Court Judgment 27.9.1999 (merits) 25.7.2000 (A 41)]

Mr Duncan Lustig-Prean joined the Royal Navy Reserve as a radio operator and in 1982 commenced a career in the Royal Navy. On 27 April 1983 he became a midshipman in the executive branch of the navy. He had been involved in a steady relationship with a civilian partner. In early June 1994 the applicant was informed that the Royal Navy Special Investigations Branch ('the service police') had been given his name anonymously in connection with an allegation of homosexuality and was investigating the matter. He was interviewed and admitted that he was homosexual. On 16 December 1994 the Admiralty Board informed the applicant that it had decided to terminate his commission and to discharge him, administratively, from the navy with effect from 17 January 1995. The ground for his discharge was his sexual orientation. His commission was removed and most of the bonus which he had received with that promotion was recouped by the naval authorities. On 20 February 1989 Mr John Beckett joined the Royal Navy. In May 1993 the applicant had been refused time off to deal with a personal matter (he wished to collect his Aids test results) and consequently he spoke with the chaplain, to whom he admitted his sexual orientation. On 10 May 1993 the applicant was asked by his lieutenant-commander to repeat what he had told the chaplain and he again admitted his homosexuality to that officer. He was then called for interview by the service police. His locker was searched and he was interviewed. On 28 July 1993 his administrative discharge was approved on the basis of his homosexuality. His subsequent complaint to the Admiralty Board about the decision to discharge him was dismissed. The applicants' application to the High Court for judicial review of the decisions to discharge them from the armed forces was dismissed. Their appeals to the Court of Appeal were dismissed on 3 November 1995. On 19 March 1996 the Appeals Committee of the House of Lords refused leave to appeal to the House of Lords. Their appeals to the Industrial Tribunal claiming unfair dismissal and sexual discrimination were dismissed. They complained that the investigations into their homosexuality and their subsequent discharge from the Royal Navy on the sole ground that they were homosexual, in pursuance of the Ministry of Defence's absolute policy against homosexuals in the British armed forces, constituted a violation of their right to respect for their private lives protected by A 8.

Court found unanimously V 8, no separate issue under 14+8.

Judges (merits and A 14): Mr J-P Costa, President, Sir Nicolas Bratza, Mr L Loucaides (pc/pd), Mr P Kûris, Mr W Fuhrmann, Mrs HS Greve, Mr Traja.

The investigations by the military police into the applicants' homosexuality, which included detailed interviews with each of them and with third parties on matters relating to their sexual orientation and practices, together with the preparation of a final report for the armed forces' authorities on the investigations, constituted a direct interference with the applicants' right to respect for their private lives. Their consequent administrative discharge on the sole ground of their sexual orientation also constituted an interference with that right. The Ministry of Defence policy excluding homosexuals from the armed forces was in accordance with the law. The interferences could be said to pursue the legitimate aims of the interests of national security and the prevention of disorder. An interference would be considered necessary in a democratic society for a legitimate aim if it answered a pressing social need and, in particular, was proportionate to the legitimate aim pursued. When the relevant restrictions concerned a most intimate part of an individual's private life, there had to exist particularly serious reasons before such interferences could satisfy the requirements of A 8(2). When the core of the national security aim pursued was the operational effectiveness of the armed forces, it was accepted that each State was competent to organise its own system of military discipline and enjoyed a certain margin of appreciation in that respect. However, the national authorities could not rely on such rules to frustrate the exercise by individual members of the armed forces of their right to respect for their private lives, which right applied to service personnel as it does to others within the jurisdiction of the State. Moreover, assertions as to a risk to operational effectiveness had to be substantiated by specific examples. The sole reason for the investigations conducted and for the applicants' discharge was their sexual orientation. As it concerned a most intimate aspect of an individual's private life, particularly serious reasons by way of justification were required. The interferences were especially grave in this case. The investigation process was of an exceptionally intrusive character. The administrative discharge of the applicants had a profound effect on their careers and prospects. The absolute and general character of the policy which led to the interferences in question was striking. The policy resulted in an immediate discharge from the armed forces once an individual's homosexuality was established and irrespective of the individual's conduct or service record. The core argument of the Government in support of the policy was that the presence of open or suspected homosexuals in the armed forces would have a substantial and negative effect on morale and, consequently, on the fighting power and operational effectiveness of the armed forces. However, there was a lack of concrete evidence to substantiate the alleged damage to morale and fighting power that any change in the policy would entail. No convincing or weighty reasons had been offered by the Government to justify the policy against homosexuals in the armed forces or, therefore, the consequent discharge of the applicants from those forces. Neither the investigations conducted into the applicants' sexual orientation, nor their discharge on the grounds of their homosexuality in pursuance of the Ministry of Defence policy, were justified under A 8(2). Accordingly, there had been a violation of A 8.

The applicants' complaints that they were discriminated against on grounds of their sexual orientation by reason of the existence and application of the policy of the Ministry of Defence, amounted in effect to the same complaint, albeit seen from a different angle, that had already been considered in relation to A 8 and accordingly, the complaints under A 14+8 did not give rise to any separate issue.

First applicant: by majority (6–1), non-pecuniary damage (GBP 19,000), pecuniary damage (GBP 94,875), costs and expenses of domestic proceedings (GBP 18,000), costs and expenses of proceedings before Convention organs (GBP 16,000 less amounts paid by the Council of Europe in legal aid to the applicants). Second applicant: by majority (6–1), non-pecuniary damage (GBP 19,000), pecuniary damage (GBP 55,000), costs and expenses of proceedings before Convention organs (GBP 15,000 less amounts paid by the Council of Europe in legal aid to the applicants).

Cited: Cable and Others v UK (18.2.1999), Dudgeon v UK (22.10.1981), Engel and Others v NL (8.6.1976), Grigoriades v GR (25.11.1997), Nikolova v BG (25.3.1999), Norris v IRL (26.10.1988), Observer and Guardian v UK (26.11.1991), Selçuk and Asker v TR (24.4.1998), Sunday Times v UK (6.11.1989), Vereinigung Demokratischer Soldaten Österreichs and Gubi v A (19.12.1994), Vogt v D (26.9.1995), Young, James and Webster v UK (18.10.1982).

Lutz v Germany (1988) 19 EHRR 182 87/18

[Application lodged 14.6.1982; Commission report 18.10.1985; Court Judgment 25.8.1987]

Mr Uli Lutz was involved in a road accident on 10 October 1980. On 9 December 1980, on the basis of the police report, the Police Authority fined the applicant and added costs for the road accident. The applicant appealed. On 24 July 1981, the District Court informed the applicant that it intended to discontinue the proceedings as they were time-barred and order costs against the Treasury while the applicant would have to bear his own necessary costs and expenses. On 10 September 1981, the applicant challenged the decision on his costs. On 25 September, the Heilbronn Regional Court dismissed the appeal as being unfounded. His appeal to the Federal Constitutional Court was rejected. He complained that the decision as to costs was contrary to the principle of the presumption of innocence.

Comm found by majority (7–5) V 6(2).

Court unanimously rejected preliminary objection, found by majority (14–3) that 6(2) applied, (16–1) NV 6(2).

Judges: Mr R Ryssdal, President, Mr J Cremona (d), Mr Thór Vilhjálmsson (declaration), Mrs D Bindschedler-Robert (jd), Mr G Lagergren, Mr F Gölcüklü, Mr F Matscher (jd), Mr J Pinheiro Farinha, Mr L-E Pettiti, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt (jd), Mr J Gersing, Mr A Spielmann, Mr J De Meyer, Mr N Valticos.

The complaint raised by the applicant was not outside the provisions of the Convention, it related to the Convention's interpretation and application. It had been considered with the merits and could not be tried as a preliminary issue.

In order to determine whether a 'regulatory offence' was a 'criminal' one, the Court referred to the criteria adopted in its previous judgments. The first matter to be ascertained was whether or not the text defining the offence in issue belonged, according to the legal system of the respondent State, to criminal law; next, the nature of the offence and, finally, the nature and degree of severity of the penalty that the person concerned risked incurring had to be examined, having regard to the object and purpose of A 6, to the ordinary meaning of the terms of that article and to the laws of the Contracting States. The second and third criteria were alternative and not cumulative ones: for A 6, by virtue of the words 'criminal charge', it sufficed that the offence in question should by its nature be 'criminal' from the point of view of the Convention, as in the instant case, or should have made the person concerned liable to a sanction which, in its nature and degree of severity, belonged in general to the 'criminal' sphere. The proceedings against the applicant had become time-barred, and that fact was given judicial recognition by the decision of 24 August 1981, which decision also settled the question of costs. Apportionment of the costs was a consequence and necessary concomitant of the stay of proceedings. A 6(2) applied in the instant case. That did not mean that the very principle of the system adopted in the matter by the German legislature was being put in question. Conferring the prosecution and punishment of minor offences on administrative authorities was not inconsistent with the Convention, provided that the person concerned was able to bring any decision thus made against him before a tribunal that afforded the safeguards of A 6.

The refusal to reimburse the applicant for his necessary costs and expenses did not in itself offend the presumption of innocence. Nevertheless, a decision refusing reimbursement of an accused's necessary costs and expenses following termination of proceedings could raise an issue under A 6(2) if supporting reasoning which could not be dissociated from the operative provisions amounted in substance to a determination of the accused's guilt without his having previously been proved guilty according to law and, in particular, without his having had an opportunity to exercise the rights of the defence. Applying the relevant provision of the Code of Criminal Procedure meant that the relevant courts, which decided the matter on an equitable basis and had a degree of discretion, were under an obligation to take into account, *inter alia*, the weight of the suspicion still falling on the person concerned. The German courts, in their decisions, meant to indicate, as they were required to do for the purposes of the decision, that there were still strong

suspicions concerning the applicant. The refusal to order the Treasury to pay the applicant's necessary costs and expenses did not amount to a penalty or a measure that could be equated with a penalty. The applicant only had to bear his own costs and expenses, not those of the proceedings. The Convention, particularly A 6(2), did not oblige the Contracting States, where a prosecution had been discontinued, to indemnify a person 'charged with a criminal offence' for any detriment he may have suffered. Therefore, the decision of the Heilbronn District Court, which was upheld by the Regional Court and the Federal Constitutional Court, did not offend the presumption of innocence guaranteed to the applicant under A 6(2).

Cited: Adolf v A (26.3.1982), 'Belgian Linguistic' case (9.2.1967), Campbell and Fell v UK (28.6.1984), Engel and Others v NL (8.6.1976), Kosiek v D (28.8.1986), Minelli v CH (25.3.1983), Öztürk v D (21.2.1984).

M

M v Italy (40931) 00/24

[Application lodged 14.12.1996; Court Judgment 25.1.2000]

Messrs M and M complained about the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 26 April 1985 and ended on 13 January 1999, a period of 13 years and eight months at one level of jurisdiction which could not be regarded as reasonable.

Non-pecuniary damage (ITL 40,000,000), costs and expenses (ITL 266,000).

Cited: Bottazzi v I (28.7.1999).

M v Italy (40940) 00/32

[Application lodged 26.11.1997; Court Judgment 25.1.2000]

Messrs BM and GM complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 23 December 1987 and ended on 12 April 1996, a period of more than eight years, three months at one level of jurisdiction which could not be regarded as reasonable.

Non-pecuniary damage (ITL 24,000,000 to each of the two applicants), costs and expenses (ITL 2,500,000).

Cited: Bottazzi v I (28.7.1999).

MC v Italy 99/84

[Application lodged 23.2.1996; Commission report 27.10.1998; Court Judgment 9.11.99]

MC complained of the length of civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr L Ferrari Bravo, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mr A B Baka, Mr E Levits.

The period to be taken into consideration began on 19 June 1987 and ended on 15 February 1997, it had lasted more than nine years, seven months and could not be considered reasonable.

Non-pecuniary damage (ITL 15,000,000).

Cited: Bottazzi v I (28.7.1999).

MR v Italy 92/74

[Application lodged 10.6.1987; Commission report 8.4.1992; Court Judgment 27.11.1992]

At the end of a series of proceedings which had lasted 25 years in total, Mr N, the applicant's husband, an official at the Ministry of Finance until his retirement in 1973, was retrospectively acknowledged as being entitled to an upgrading and, consequently, to receive the corresponding difference in remuneration. On 19 October 1984 Mrs MR, the applicant, brought an action in the Regional Administrative Court seeking a recalculation of the salary due to her husband (who had died in the meantime) following the career restructuring ordered by the Ministry of Finance on 14 April 1980. On 29 October 1985 the Administrative Court granted the applicant's request and the

text of the judgment was filed in the registry on 24 September 1987. The applicant complained of the length of the proceedings brought by her.

Comm found unanimously V 6(1).

Court unanimously struck case out of the list.

Judges: Mr R Ryssdal, President, Mr R Macdonald, Mr C Russo, Mr A Spielmann, Mr SK Martens, Mr I Foighel, Sir John Freeland, Mr AB Baka, Mr MA Lopes Rocha.

The applicant had not responded to correspondence from the registry. The Court discerned no reason of public policy for continuing the proceedings. It noted that there were a number of previous cases and pending cases raising similar issues of the reasonableness of the length of judicial proceedings. Accordingly, the case should be struck out of the list.

Cited: FM v I (23.9.1992).

MS v Sweden (1999) 28 EHRR 313 97/46

[Application lodged 23.9.1992; Commission report 11.4.1996; Court Judgment 27.8.1997]

Ms MS was as a nursery-school teacher. On 9 October 1981 she slipped and fell at work, injuring her back. She was pregnant at the time, and had been seeing a doctor at the women's clinic at the hospital. On the afternoon of the accident she went to the same clinic. Following this incident, Ms MS was unable to return to work for any sustained period of time because of severe back pain. After she had been on the sick-list for some time, she was granted a disability pension. On 13 March 1991 she made a claim for compensation from the Social Insurance Office. As a matter of routine, her lawyer requested a copy of the file which had been compiled by the Office for the purposes of her claim. From the documents on the file she learnt that the Office had written to the women's clinic on 25 March 1992 and that the clinic had submitted copies of her medical records containing information on treatment she had received. She had not been consulted prior to the disclosure of these documents. On 19 May 1992 the Office rejected the applicant's claim for compensation under the Insurance Act, finding that her sick-leave had not been caused by an industrial injury. The applicant appealed successively to the Social Insurance Board, the local County Administrative Court and the competent Administrative Court of Appeal, but at each stage her appeal was rejected. On 26 February 1996 the Supreme Administrative Court refused her leave to appeal. She complained, under A 8, that the submission of her medical records to the Social Insurance Office constituted an unjustified interference with her right to respect for private life and, under A 6 and 13, that she had no remedy she could use to challenge this measure.

Comm found by majority (22–5) NV 8, (24–3) NV 6(1), (20–7) no separate issue under 13.

Court found unanimously NV 8, by majority (6–3) A 6(1) not applicable, unanimously NV 6, NV 13.

Judges: Mr R Ryssdal (pc/pd), President, Mr F Gölcüklü (PC/PD), Mrs E Palm, Mr R Pekkanen, Sir John Freeland, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr D Gotchev, Mr P Jambrek (pc/pd).

Under Swedish law, the disclosure depended not only on the fact that the applicant had submitted her compensation claim to the Social Insurance Office but also on a number of factors beyond her control. It could not therefore be inferred from her request for compensation that she had waived in an unequivocal manner her right to respect for private life with regard to the medical records at the clinic. Accordingly, A 8 applied to the matters under consideration. The medical records contained highly personal and sensitive data about the applicant. Although the records remained confidential, they had been disclosed to another public authority and therefore to a wider circle of public servants. Moreover, whilst the information had been collected and stored at the clinic in connection with medical treatment, its subsequent communication had served a different purpose, namely to enable the Office to examine her compensation claim. The disclosure of the data by the clinic to the Office entailed an interference with the applicant's right to respect for private life. The interference had a legal basis and was foreseeable; in other words, that it was in accordance with the law. The object of the disclosure was to enable the Office to determine whether the conditions

for granting the applicant compensation for industrial injury had been met. The communication of the data was potentially decisive for the allocation of public funds to deserving claimants. It could thus be regarded as having pursued the aim of protecting the economic well-being of the country. The applicant's medical data were communicated by one public institution to another in the context of an assessment of whether she satisfied the legal conditions for obtaining a benefit which she herself had requested. The Office had a legitimate need to check information received from her against data in the possession of the clinic. That claim concerned a back injury which she had allegedly suffered in 1981, and all the medical records produced by the clinic to the Office contained information relevant to the applicant's back problems. The applicant had not substantiated her allegation that the clinic could not reasonably have considered her post-1981 medical records to be material to the Office's decision. The contested measure was subject to important limitations and was accompanied by effective and adequate safeguards against abuse. There were relevant and sufficient reasons for the communication of the applicant's medical records by the clinic to the Office and that the measure was not disproportionate to the legitimate aim pursued. Accordingly, there had been no violation of the applicant's right to respect for her private life.

In order to determine whether A 6(1) was applicable to the disagreement, it had to ascertained whether there was a dispute over a 'right' which could be said, at least on arguable grounds, to be recognised under domestic law. The dispute had to be genuine and serious; it could relate not only to the existence of a right but also to its scope and the manner of its exercise; and the outcome of the proceedings had to be directly decisive for the right in question. The right had to be civil in character. The clinic had been under an obligation to supply the Office with information on the applicant concerning circumstances of importance to the application under the Insurance Act. Thus, the obligation incumbent on the imparting authority vis-à-vis the requesting authority depended exclusively on the relevance of the data in its possession; it comprised all data which the clinic had in its possession concerning the applicant and which were potentially relevant to the Office's determination of her compensation claim. In addition, the clinic enjoyed a very wide discretion in assessing what data would be of importance to the application of the Insurance Act. In this regard, it had no duty to hear the applicant's views before transmitting the information to the Office. A 'right' to prevent communication of such data could not, on arguable grounds, be said to be recognised under national law. A 6(1) was not applicable to the proceedings under consideration and had therefore not been violated in the present case.

The applicant's complaint under A 8 was essentially that the clinic had communicated to the Office certain data which in her view were irrelevant to the latter's examination of her compensation claim. She had an arguable claim for the purposes of A 13. It was open to her to bring criminal and civil proceedings before the ordinary courts against the relevant staff of the clinic and to claim damages for breach of professional secrecy. She therefore had access to an authority empowered both to deal with the substance of her A 8 complaint and to grant her relief. Having regard to the limited nature of the disclosure and to the different safeguards, in particular the Office's obligation to secure and maintain the confidentiality of the information, the various *ex post facto* remedies referred to satisfied the requirements of A 13. Accordingly, there was no violation of A 13.

Cited: Boyle and Rice v UK (27.4.1988), Chahal v UK (15.11.1996), Kerojärvi v SF (19.7.1995), Masson and Van Zon v NL (28.9.1995), Z v SF (25.2.1997), Zander v S (25.11.1993).

Macaluso v Italy 91/55

[Application lodged 14.5.1987; Commission report 15.1.1991; Court Judgment 13.12.1991]

Mrs Maria Macaluso was unemployed. On 13 July 1983 she took action against the 'Istituto Nazionale della Previdenza Sociale' (INPS) before the Rome magistrates' court ('pretore') in order to establish her right to a disability pension. On 4 November 1988, the District Court dismissed her claim. The text of the judgment was registered on 11 January 1989. She complained of the length of the proceedings.

Comm found unanimously V 6(1).

Court unanimously struck case out of the list.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr SK Martens.

The Court was informed that the applicant had died and her heirs had not expressed any wish to continue the proceedings before the Court. The Court discerned no reason of public policy for continuing the proceedings. It noted other cases in which it had reviewed the reasonableness of the length of civil proceedings. Accordingly case struck out of the list.

Cited: Brigandì v I (19.2.1991), Caleffi v I (24.5.1991), Capuano v I (25.6.1987), Pretto and Others v I (8.12.1983), Pugliese (No 2) v I (24.5.1991), Santilli v I (19.2.1991), Vocaturo v I (24.5.1991), Zanghì v I (19.2.1991).

Maciariello Italy 92/21

[Application lodged 23.5.1986; Commission report 5.12.1990; Court Judgment 27.2.1992]

Mr Vittorio Maciariello instituted divorce proceedings before the District Court of Santa Maria Capua Vetere on 31 May 1983. Judgment was reserved at the hearing of 10 February 1987 and delivered on 19 February 1987, the text of it being lodged with the registry on 14 March 1987. The applicant complained of the length of the proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 31 May 1983 when the divorce proceedings were instituted. It ended at the latest on 14 March 1988 when the judgment of the Santa Maria Capua Vetere District Court became final. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The proceedings were conducted at a normal pace before the relevant chamber of the District Court; however there had been delays at the beginning of the investigation. A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. The Court could not regard as reasonable the lapse of time in the present case, in particular as special diligence was required in cases relating to civil status and capacity.

Non-pecuniary damage (ITL 2,000,000).

Cited: Bock v D (29.3.1989), Pugliese (No 2) v I (24.5.1991), Vocaturo v Italy (24.5.1991).

Magee v United Kingdom 00/156

[Application lodged 22 5 1992; Court Judgment 6.6.2000]

Mr Gerard Magee was arrested on 16 December 1988 in Northern Ireland, in connection with an attempted bomb attack on military personnel. Access to a lawyer was delayed under the relevant legislation. He was cautioned that adverse inferences could be drawn from his failure to mention facts later relied on in his defence. He was interviewed several times. The following morning he complained to the doctor that he had been ill-treated. During subsequent interviews the applicant broke his silence and gave detailed answers to a number of questions admitting to his involvement in the assembly and planting of the bomb. He signed a lengthy statement to that effect. The following day he told the doctor that he had not had any further ill-treatment. He was later allowed to consult with his lawyer. His trial took place before a single judge sitting without a jury. The prosecution case was based on his confession and written statement, his application to have it excluded on the basis of the ill-treatment was rejected. Although cautioned that adverse inferences could be drawn from his failure to give evidence at trial, he declined to do so. He was convicted

and sentenced to 20 years' imprisonment. His appeal was dismissed. He complained that he had been denied a fair trial.

Court found unanimously V 6(1)+6(3)(c), NV 14+6.

Judges: Mr J-P Costa, President, Mr W Fuhrmann, Mr L Loucaides, Mr P Kûris, Sir Nicolas Bratza, Mrs HS Greve, Mr K Traja.

The applicant's central complaint was that he had been prevailed upon in a coercive environment to incriminate himself without the benefit of legal advice. Even if the primary purpose of A 6, as far as criminal matters was concerned, was to ensure a fair trial by a tribunal competent to determine any criminal charge, it did not follow that the Article has no application to pre-trial proceedings. Thus, A 6, especially para 3, might be relevant before a case was sent for trial if and so far as the fairness of the trial was likely to be seriously prejudiced by an initial failure to comply with its provisions. The manner in which A 6(1) and (3)(c) was to be applied during the preliminary investigation depended on the special features of the proceedings involved and on the circumstances of the case. Prior to his confession the applicant had been interviewed on five occasions for extended periods punctuated by breaks. He was examined by a doctor on two occasions including immediately before the critical interview at which he began to confess. Apart from his contacts with the doctor, he was kept incommunicado during the breaks between bouts of questioning conducted by experienced police officers operating in relays. As a matter of procedural fairness, the applicant should have been given access to a solicitor at the initial stages of the interrogation as a counterweight to the intimidating atmosphere specifically devised to sap his will and make him confide in his interrogators. Irrespective of the fact that the domestic court drew no adverse inferences under the legislation, it could not be denied that the caution administered to the applicant was an element which heightened his vulnerability to the relentless rounds of interrogation on the first days of his detention. To deny access to a lawyer for such a long period (over 48 hours) and in a situation where the rights of the defence were irretrievably prejudiced was, whatever the justification for such denial, incompatible with the rights of the accused under A 6. There had therefore been a violation of A 6(1) in conjunction with A 6(3)(c) as regards the denial of access to a solicitor.

The applicant complained that he was discriminated against on grounds of national origin and/or association with a national minority. A 14 protected against a discriminatory difference in treatment of persons in analogous positions in the exercise of the rights and freedoms recognised by the Convention and its Protocols. In the constituent parts of the UK there was not always a uniform approach to legislation in particular areas. Whether or not an individual could assert a right derived from legislation may accordingly depend on the geographical reach of the legislation at issue and the individual's location at the time. In so far as there existed a difference in treatment of detained suspects under the legislation on the matters referred to by the applicant, that difference was not to be explained in terms of personal characteristics, such as national origin or association with a national minority, but on the geographical location where the individual was arrested and detained. That permitted legislation to take account of regional differences and characteristics of an objective and reasonable nature. Such a difference did not amount to discriminatory treatment within the meaning of A 14. There had been no violation of A 14 in conjunction with A 6.

Finding of a violation constituted just satisfaction for any non-pecuniary damage incurred by the applicant. Costs and expenses (GBP 10,000 less FF 4,100).

Cited: Imbrioscia v CH (24.11.1993), John Murray v UK (8.2.1996).

Maillard v France (1999) 27 EHRR 232 98/41

[Application lodged 24.9.1994; Commission report 14.1.1997; Court Judgment 9 6 1998]

Mr Yves Maillard was an officer in the French navy. He complained about the assessment of his abilities in 1983 and sought an order to have it quashed and his career retrospectively adjusted. His applications were refused and he complained about the length of proceedings.

Comm found by majority (17–12) NV 6(1).

Court found unanimously 6 NA.

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Sir John Freeland, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr D Gotchev, Mr P Jambrek (c), Mr E Levits, Mr M Voicu.

The applicant had raised a dispute over a right within the meaning of A 6(1). The only issue was whether the right in question was a civil one. Disputes concerning the recruitment, careers and termination of service of civil servants were as a general rule outside the scope of A 6(1). Matters were nevertheless different where the claims in issue related to a 'purely economic' right, such as payment of a salary or pension, or at least an 'essentially economic' one. That applied to French professional servicemen. The applicant's disputes thus related to his assessment for 1983 and its consequences for his promotion; they therefore primarily concerned his career. The pecuniary implications of the outcome of the relevant proceedings did not suffice to make those proceedings 'civil' ones. A 6(1) consequently did not apply in the instant case.

Cited: Huber v France (19.2.1998).

Maini v France 99/66

[Application lodged 10.1.1996; Court Judgment 26 10 1999]

Mr Alain Maini filed a criminal complaint and applied to join criminal proceedings as a civil party in September 1991. In March 1996 the investigating judge held that there was no case to answer. The applicant's appeals were dismissed by the Court of Appeal in June 1996 and by the Court of Cassation on 1 October 1997. He complained of the length of proceedings.

Court found unanimously V 6(1).

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

In his criminal complaint the applicant had expressly referred to the damage to his property, psychological suffering and financial damage caused by the alleged offences. His complaint therefore concerned a civil right. The fact that he had not quantified the damage at the time of filing the complaint could not be held against him as, under French law, it was open to him to file a claim for damages at any time before or during the trial. In addition, the aim of his complaint was to have criminal proceedings commenced with a view to obtaining a guilty verdict which would have enabled him to exercise his civil rights in relation to the alleged offences, in particular, to obtain compensation for the harm he claimed to have suffered. The outcome of the proceedings was therefore decisive for establishing his right to redress. Consequently A 6(1) was applicable.

The period to be taken into consideration began on 2 September 1991 and ended on 1 October 1997; it had lasted 6 years and one month. The case was not complex and the applicant had not delayed the proceedings by his conduct. There were two delays in the investigation on the part of the authorities which held it up for two years and 11 months of its total length of 4 years and 6 months. No convincing explanation had been put forward for those delays. There had therefore been a violation of A 6(1).

Non-pecuniary damage (FF 30,000), costs and expenses (FF 413).

Cited: Acquaviva v F (21.11.1995), Aït-Mouhoub v F (28.10.1998), Nikolova v BG (25.3.1999), Selmouni v F (28.7.1999), Tomasi v F (27.8.1992).

Maj v Italy (1992) 14 EHRR 405 91/16

[Application lodged 18.7.1987; Commission report 5.12.1989; Court Judgment 19.2.1991]

Mr Giuseppe Maj was arrested on 24 December 1981 and charged with carrying weapons unlawfully, infringing exchange control regulations and treasonable conspiracy. He was released on 4 January 1982 and examined by the prosecutor. On 21 February 1985 the prosecutor applied for

formal proceedings and the file was sent to the judge on 22 February 1985. The applicant was discharged on 9 September 1987.

Comm found unanimously V 6(1).

Court held unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Sir Vincent Evans, Mr C Russo, Mr J De Meyer, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla.

The reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case, taking into account the complexity of the case, conduct of the applicant and of the competent authorities. The present case was complex, the applicant had not delayed it but there was no justification for the long delays in the process. The lapse of 5 years 8 months was not reasonable.

Non-pecuniary damage, costs and expenses (ITL 5,000,000).

Cited: Obermeier v A (28.6.1990).

Majaric v Slovenia 00/44

[Application lodged 13.12.1994; Commission report 21.10.1998; Court Judgment 8.2.2000]

On 6 December 1991 Mr Ljubo Majaric was charged with sexual assault of a minor and abduction of minors. He was remanded in custody. On 5 June 1992 the applicant's trial started before the Nova Gorica District Court. Further charges were added and proceedings joined. On 9 July 1997 the District Court convicted the applicant of sexual offences on several counts. A combined prison sentence of two years and eight months was imposed on the applicant. Both the applicant and the public prosecutor appealed. On 12 February 1998 the Koper High Court rejected the applicant's appeal and increased the sentence to three years' imprisonment. The applicant's appeals to the Supreme Court and Constitutional Court were dismissed by the latter court on 1 December 1998. He complained of the length of proceedings.

Comm found unanimously V 6(1).

Court unanimously dismissed the Government's preliminary objection, found V 6(1).

Judges: Mrs E Palm, President, Mr J Casadevall, Mr L Ferrari Bravo, Mr Gaukur Jörundsson, Mr R Türmen, Mrs W Thomassen, Mr R Maruste.

The Government's preliminary objection of non-exhaustion was not raised, as it could have been, when the admissibility of the application was being considered by the Commission and accordingly it was estopped from doing so before the Court.

The criminal proceedings against the applicant were instituted on 6 December 1991. However, the relevant period began only on 28 June 1994, when Slovenia ratified the Convention and recognised the right of individual petition. The proceedings ended with the Constitutional Court's decision of 1 December 1998. Accordingly, the period to be taken into consideration lasted four years and more than five months. In order to determine the reasonableness of the time that elapsed after 28 June 1994, the Court had to take account of the state of the proceedings at that time. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case as well as what was at stake for the applicant. The case was of some complexity due to the fact that additional charges had been brought against the applicant in the course of the proceedings at first instance. However, that could not, as such, justify the length of the proceedings. There was no evidence the applicant contributed to the length of the proceedings. The delays in the proceedings were mainly imputable to the conduct of the domestic courts. With regard to the claimed heavy workload of the domestic courts resulting from the economic and legislative reforms in Slovenia, the Court recalled that A 6(1) imposed on Contracting States the duty to organise their judicial system in such a way that their courts could meet each of its requirements. There had accordingly been a breach of A 6(1).

Non-pecuniary damage (SIT 300,000).

Cited: GS v A (21.12.1999), Lauko v Slovakia (2.9.1998), Ledonne v Italy (No 2) (12.5.1999), Matter v SK (5.7.1999), Nikolova v BG (25.3.1999), Pélissier and Sassi v F (25.3.1999), Philis v GR (No 2) (27.6.1997), Polat v TR (18.7.1999), Proszak v PL (16.12.1997).

Malige v France 98/85

[Application lodged 28.11.1994; Commission report 29.5.1997; Court Judgment 23.9.1998]

Mr Jérôme Malige was recorded as speeding at 172 kph on a motor bicycle on a stretch of road where a 110 kph limit was in force. He refused to pay the fine imposed and on 22 September 1993 elected to stand trial. The Police Court found him guilty of the offence of exceeding the speed limit and fined him FF 1,500 and disqualified him from driving for 15 days. In addition, the offence of exceeding the speed limit by 40 kph or more entailed the automatic deduction of four of the 12 points allocated to each driving licence. The applicant's appeals to the Versailles Court of Appeal and the Court of Cassation, arguing that the laws implementing the deduction of points by administrative measure were contrary to A 6(1) of the Convention and also of the unlawfulness of the legislation penalising speeding and the unreliability of the speed-recording device, were dismissed. He complained before the European Court that the systematic and automatic docking of points from driving licences without any possibility of an appeal to an effective judicial body had deprived him of the right to a tribunal within the meaning of A 6(1).

Comm found by majority (18–10) NV 6(1).

Court found unanimously 6 applicable and NV 6(1).

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr R Macdonald, Mr R Pekkanen, Mr AN Loizou, Mr K Jungwiert, Mr P Kûris, Mr E Levits, Mr M Voicu.

With regard to the applicability of A 6, the Court had to determine whether the sanction of deducting points from driving licences was a punishment, and accordingly whether it was 'criminal' within the meaning of A 6(1). In order to determine whether there was a 'criminal charge', regard had to be had to three criteria: the legal classification of the offence in question in national law, the very nature of the offence and the nature and degree of severity of the penalty. The offence which led to the deduction of points, namely exceeding the speed limit, was criminal in nature. With regard to the classification in French law of the deduction of points, the measure in question, considered in isolation, was regarded as an administrative sanction not connected with the criminal law. With regard to the nature of the sanction, the points were deducted in the context of, and after the outcome of, a criminal prosecution. The sanction of deducting points was an automatic consequence of the conviction pronounced by the criminal court. With regard to the severity of the measure, the deduction of points could in time entail invalidation of the licence. The right to drive a motor vehicle was very useful in everyday life and for carrying on an occupation. Accordingly, although the deduction of points had a preventive character, it also had a punitive and deterrent character and was accordingly similar to a secondary penalty. The fact that Parliament intended to dissociate the sanction of deducting points from the other penalties imposed by the criminal courts could not change the nature of the measure. Accordingly, A 6(1) was applicable.

Regarding the Government's preliminary objection of non-exhaustion of domestic remedies, the question whether the applicant had a remedy to challenge the lawfulness of the deduction of points was the same in substance as the complaint he submitted to it.

Where a penalty was criminal in nature, there had to be the possibility of review by a court which satisfied the requirements of A 6(1), even though it was not inconsistent with the Convention for the prosecution and punishment of minor offences to be primarily a matter for the administrative authorities. The applicant did not pay the fixed fine and the partial loss of points thus depended on the criminal courts finding him guilty. In the Versailles Police Court and the Versailles Court of Appeal, criminal courts which satisfied the requirements of A 6(1), the applicant was able to deny that he had committed the criminal offence of exceeding the speed limit and to submit all the

factual and legal arguments which he considered helpful to his case, knowing that his conviction would in addition entail the docking of a number of points. In the present case, the offence committed entailed the deduction of four of the licence's 12 points, so the measure could not be described as disproportionate to the conduct it was intended to punish: It did not lead immediately to disqualification and the applicant could win back points. A review sufficient to satisfy the requirements of A 6(1) was incorporated in the criminal decision convicting the applicant and he could seek judicial review in the administrative courts, in order to ascertain whether the administrative authority acted after following a lawful procedure. Therefore, the domestic law afforded the applicant a review by the courts of the measure in issue which was sufficient for the purposes of A 6(1). There had accordingly been no breach of that provision.

Cited: Engel and Others v NL (8.6.1976), Öztürk v D (21.2.1984), Pierre-Bloch v France (21.10.1997), Putz v A (22.2.1996), Schmautzer v A (23.10.1995), Welch v UK (9.2.1995).

Malone v UK (1985) 7 EHRR 14, (1991) 13 EHRR 448 84/10

[Application lodged 19.7.1979; Commission report 17.12.1982; Court Judgment 2.8.1984 (merits), 26.4.1985 (A 50)]

Mr James Malone, who had been the subject of police investigations relating to dishonest handling of stolen goods, alleged that both his and his wife's correspondence and his telephone lines had been tapped, one telephone conversation had been intercepted under warrant and that his telephone had been metered by a device recording all the numbers dialled. He claimed that by reason of these matters, and of relevant law and practice in England and Wales, he had been the victim of breaches of A 8 and 13 of the Convention.

Comm found by majority (11 with one abstention) V 8 with respect to interceptions, (7–3 with two abstentions) not necessary to investigate 13 with respect to metering of telephone calls, (10–1 with one abstention) V 13.

Court found unanimously V 8, by majority (16–2) not necessary to examine 13.

Judges (merits): Mr G Wiarda, President, Mr R Ryssdal, Mr J Cremona, Mr Thór Vilhjálmsson, Mr W Ganshof van der Meersch, Mrs D Bindschedler-Robert, Mr D Evrigenis, Mr G Lagergren, Mr F Gölcüklü, Mr F Matscher (pd), Mr J Pinheiro Farinha (pd), Mr E García de Enterría, Mr L-E Pettiti (c), Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr J Gersing.

Judges (A 50): Mr G Wiarda, President, Mrs D Bindschedler-Robert, Mr G Lagergren, Mr F Gölcüklü, Mr B Walsh, Sir Vincent Evans, Mr J Gersing.

The question was whether the interference with the applicant's communications and the release of records of metering to the police had been justified. 'In accordance with the law' required the measure to have some basis in domestic law and also referred to the quality of the law, requiring it to be accessible, foreseeable and compatible with the rule of law. The law did not indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on public authorities. The interference was not 'necessary in a democratic society' as the particular system of secret surveillance adopted contained inadequate guarantees against abuse. Accordingly, the interferences were not justified.

FS (State to reimburse applicant his costs in domestic proceedings GBP 5,443.20, pay the further sum of GBP 4,725.25, hand over the other currency USD 4,445 and ITL 3,010,000 held and pay GBP 3,774.10 less legal aid, in respect of his costs before the Commission and Court) therefore SO.

Cited: Deweer v Belgium (27.2.1980), Golder v UK (21.2.1975), Ireland v UK (18.1.1978), Klass v Germany (6.9.1978), Silver v UK (25.3.1983); Sunday Times v UK (6.11.1980), Van Droogenbroeck v Belgium (24.6.1982).

Manca v Italy 00/25

[Application lodged 15.11.1997; Court Judgment 25.1.2000]

The applicants, Renata Enza and Maria Antonietta Manca complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 9 November 1987 and was still pending on 25 May 1999, a duration of more than 11 years, six months at one jurisdiction, which could not be regarded as reasonable.

Non-pecuniary damage (ITL 11,000,000 to each of the applicants).

Cited: Bottazzi v I (28.7.1999).

Manieri v Italy 92/15

[Application lodged 30.12.1985; Commission report 15.1.1991; Court Judgment 27.2.1992]

Mrs Anna Aurora Manieri was a shopkeeper. By a writ against Mr P before the Teramo District Court dated 23 March 1983, the applicant applied on her own behalf and on behalf of her brother and sisters to regain possession of the real property which they had inherited following the death of their mother and then their father and which was held by Mr P as managing agent. The judge set the hearing down for 4 October 1991. The applicant complained of the length of the proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 23 March 1983 when the proceedings were instituted against Mr P in the Teramo District Court. It had not yet ended because that court had still to give judgment. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The case was one of some complexity, which was increased following the intervention of the second wife of the applicant's father and that of Mr Antonio Manieri (junior). However, there were three periods of stagnation for which no or no satisfactory explanation was provided. A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. A lapse of time of almost nine years for only one level of jurisdiction could not be regarded as reasonable.

Non-pecuniary damage (ITL 20,000,000), costs and expenses (ITL 2,609,500 and FF 845).

Cited: Vocaturo v I (24.5.1991).

Manifattura FL v Italy 92/22

[Application lodged 9.7.1986; Commission report 15.1.1991; Court Judgment 27.2.1992]

The applicant was a limited company. On 14 October 1982 the X company brought an action against the applicant before the Modena District Court to obtain a declaration that no purchase and sale contract existed between it and the applicant company contrary to the latter's allegation. In its counterclaim of 13 January 1983, the applicant asked that the court should first declare the aforesaid contract valid and then order that it be performed. On 12 April 1989 the District Court dismissed the X company's claim and allowed the applicant's claim. On 9 March 1990 the X company appealed to the Bologna Court of Appeal. The case had been set down for trial on 15 October 1993. The applicant company complained of the length of the proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 14 October 1982 when the proceedings were instituted against the applicant in the Modena District Court. It had not yet ended because the Bologna Court of Appeal had still to give judgment. The case was not a complex one. There was a long period of stagnation in the proceedings before the Modena District Court. With regard to the backlog of cases, A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. The applicant was responsible for some delay. Nevertheless the trial hearing would be conducted at best more than 28 months after the end of the investigation. A lapse of time of more than nine years could not be regarded as reasonable.

Judgment constituted just satisfaction for any non-pecuniary damage. Costs and expenses (ITL 8,000,000).

Cited: Vocaturo v I (24.5.1991).

Manoussakis and Others v Greece (1997) 23 EHRR 387 96/37

[Application lodged 7.8.1991; Commission report 25.5.1995; Court Judgment 26.9.1996]

The applicants, Mr Titos Manoussakis, Mr Constantinos Makridakis, Mr Kyriakos Baxevanis and Mr Vassilios Hadjakis, were all Jehovah's Witnesses. By an application of 28 June 1983 lodged with the Minister of Education and Religious Affairs, the applicants requested an authorisation to use a room in a building they had rented by private agreement, as a place of worship. They did not receive a response. On 3 March 1986, the Heraklion public prosecutor's office instituted criminal proceedings against the applicants under s 1 of Law No 1363/1938, as amended, accused of having established and operated a place of worship for Jehovah's Witnesses without authorisation from the recognised ecclesiastical authorities and the Minister of Education and Religious Affairs. On 6 October 1987 the Heraklion Criminal Court sitting at first instance and composed of a single judge acquitted the applicants. On 15 February 1990 the Heraklion Criminal Court sitting on appeal and composed of three judges, sentenced each of the accused to three months' imprisonment convertible into a pecuniary penalty, and fined them GRD 20,000 each. Their appeal to the Court of Cassation on points of law was dismissed on 19 March 1991.

Comm unanimously found V 9.

Court unanimously dismissed the Government's preliminary objection, found V 9.

Judges: Mr R Bernhardt, President, Mr R Macdonald, Mr N Valticos, Mr SK Martens (c), Mr AN Loizou, Sir John Freeland, Mr L Wildhaber, Mr D Gotchev, Mr P Kûris.

The applicants exhausted the domestic remedies in respect of their conviction in the criminal proceedings. The only remedies that A 26 required to be exhausted were those that were available and sufficient and related to the breaches alleged. Moreover, an applicant who had availed himself of a remedy capable of redressing the situation giving rise to the alleged violation, directly and not merely indirectly, was not bound to have recourse to other remedies which would have been available to him but the effectiveness of which was questionable. An application for judicial review of the alleged implied refusal of the authorities could not be regarded as an effective remedy in this case. As the applicants had exhausted the domestic remedies, the Government's preliminary objection fell to be dismissed.

The applicants' conviction for having used the premises in question without the prior authorisation required under Law No 1363/1938 was an interference with the exercise of their freedom of religion. Such interference breached A 9 unless it was prescribed by law, pursued one or more of the legitimate aims referred to in para 2 and was necessary in a democratic society to attain such aim or aims. The applicants' complaint was directed less against the treatment of which they themselves had been the victims than the general policy of obstruction pursued in relation to Jehovah's Witnesses when they wished to set up a church or a place of worship. They were therefore in substance challenging the provisions of the relevant domestic law. However, it was not necessary to rule on the question whether the interference in issue was 'prescribed by law' in this instance because, in any event, it was incompatible with A 9 on other grounds. States were entitled to verify whether a movement or association carried on, ostensibly in pursuit of religious aims,

activities which were harmful to the population. Jehovah's Witnesses came within the definition of 'known religion' as provided for under Greek law. However, having regard to the circumstances of the case the impugned measure pursued a legitimate aim for the purposes of A 9(2), namely the protection of public order. Contracting States had a certain margin of appreciation in assessing the existence and extent of the necessity of an interference, but that margin was subject to European supervision, embracing both the legislation and the decisions applying it. The Court's task was to determine whether the measures taken at national level were justified in principle and proportionate. In delimiting the extent of the margin of appreciation in the present case the Court had to have regard to what was at stake, namely the need to secure true religious pluralism, an inherent feature of the notion of a democratic society. In addition, considerable weight had to be attached to that need when it came to determining whether the restriction was proportionate to the legitimate aim pursued. The restrictions imposed on the freedom to manifest religion by the provisions of Law No 1363/1938 and of the decree of 20 May/2 June 1939 called for very strict scrutiny by the Court. Law No 1363/1938 and the decree of 20 May/2 June 1939 allowed far reaching interference by the political, administrative and ecclesiastical authorities with the exercise of religious freedom. There existed in practice the possibility for the Minister of Education and Religious Affairs to defer his reply indefinitely or to refuse his authorisation without explanation or without giving a valid reason. The Minister was empowered to assess whether there was a 'real need' for the religious community in question to set up a church. The Supreme Administrative Court had developed case-law limiting the Minister's power in the matter. The right to freedom of religion as guaranteed under the Convention excluded any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs were legitimate. Accordingly, the authorisation requirement under Law No 1363/1938 and the decree was consistent with A 9 only in so far as it was intended to allow the Minister to verify whether the formal conditions laid down in those enactments were satisfied. The applicants were prosecuted and convicted for having operated a place of worship without first obtaining the authorisations required by law. Both the Heraklion public prosecutor's office and the Heraklion Criminal Court sitting on appeal, relied expressly on the lack of the bishop's authorisation as well as the lack of an authorisation from the Minister of Education and Religious Affairs. The latter, in response to five requests made by the applicants replied that he was examining their file. To date the applicants had not received an express decision. In these circumstances the Court considered that the Government could not rely on the applicants' failure to comply with a legal formality to justify their conviction. The degree of severity of the sanction was immaterial. The impugned conviction had such a direct effect on the applicants' freedom of religion that it could not be regarded as proportionate to the legitimate aim pursued, nor, accordingly, as necessary in a democratic society. There had been a violation of A 9.

Judgment constituted just satisfaction for the non-pecuniary damage alleged. Costs and expenses (GRD 4,030,100).

Cited: Ciulla v I (22.2.1989), Funke v F (25.2.1993), Kokkinakis v GR (25.5.1993), Pine Valley Developments Ltd and Others v IRL (29.11.1991).

Mansur v Turkey (1995) 20 EHRR 535 95/19

[Application lodged 23.11.1989; Commission report 28.2.1994; Court Judgment 8.6.1995]

Mr Sadi Mansur, an Iranian by origin, had acquired Turkish nationality in 1989. Proceedings were brought against him in respect of drug trafficking offences. He complained of the length of his detention pending trial and of the length of the criminal proceedings against him.

Comm found unanimously V 5(3), V 6(1).

Court unanimously dismissed the Government's preliminary objections, found V 5(3), V 6(1).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr F Gölcüklü, Mr R Macdonald, Mr I Foighel, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr D Gotchev, Mr P Jambrek.

Having regard to Turkey's declaration under A 46, the Court could not entertain complaints about events which occurred before 22 January 1990. However, when examining the complaints relating to A 5(3) and 6(1) it would take account of the state of the proceedings at the time when the above-mentioned declaration was deposited. From the critical date onwards all the State's acts and omissions not only had to conform to the Convention but were also undoubtedly subject to review by the Convention institutions. Preliminary objection of lack of jurisdiction *ratione temporis* was therefore rejected. The objections of non-exhaustion and loss of victim status were not raised at the admissibility stage of the application and there was therefore estoppel.

The period to be taken into consideration was the one year and 28 days which elapsed between the deposit of the declaration whereby Turkey recognised the Court's compulsory jurisdiction and the judgment of the Edirne First Assize Court. However, when determining whether the applicant's continued detention after 22 January 1990 was justified under A 5(3) the Court had to take into account the fact that by that date the applicant, having been placed in detention on 5 November 1984, had been in custody for nearly five years and three months. It was in the first place for the national judicial authorities to ensure that, in a given case, the detention of an accused person pending trial did not exceed a reasonable time. To that end they had to examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on the applications for release. It was essentially on the basis of the reasons given in those decisions and of the true facts mentioned by the applicant in his appeals, that the Court was called upon to decide whether or not there had been a violation of A 5(3). The persistence of reasonable suspicion that the person arrested had committed an offence was a condition *sine qua non* for the validity of the continued detention, but, after a certain lapse of time, it no longer sufficed; the Court had to then establish whether the other grounds cited by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were 'relevant' and sufficient, the Court had to also ascertain whether the competent national authorities displayed special diligence in the conduct of the proceedings. During the period covered by the Court's jurisdiction *ratione temporis* the Edirne First Assize Court considered the question of the applicant's continued detention on nine occasions of its own motion. As grounds for refusing to release the applicant it cited the nature of the offence the applicant stood accused of and the state of the evidence. The Government emphasised the heavy sentence to which the accused was liable, the danger that he would abscond or destroy evidence and the risk of collusion. The Government noted that he had no fixed abode in Turkey and, once released, might have ignored the summonses of the judicial authorities or evaded enforcement of the sentence, only the length of which remained to be determined. The danger of an accused's absconding could not be gauged solely on the basis of the severity of the sentence risked. It had to be assessed with reference to a number of other relevant factors which could either confirm the existence of a danger of absconding or make it appear so slight that it could not justify detention pending trial. The expression 'the state of the evidence' could be understood to mean the existence and persistence of serious indications of guilt. Although in general those might be relevant factors, in the present case they could not on their own justify the continuation of the detention complained of. Therefore the applicant's continued detention during the period in question contravened A 5(3). That conclusion made it unnecessary to look at the way in which the judicial authorities conducted the case.

The proceedings began when the applicant was committed for trial at the Edirne First Assize Court, on 18 April 1984. However, the Court could only consider the period of one year, three months and eight days that elapsed between 22 January 1990, the date of Turkey's declaration, and 30 April 1991, when the Court of Cassation upheld the first court's judgment. Nevertheless, it had to take into account the fact that by the critical date the proceedings had already lasted more than seven years. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law. The case could not be regarded as complex. No criticism was made of the accused's behaviour

at any stage of the trial. The Court was aware of the danger represented by drug trafficking and of the need for effective measures to prevent it. A 6(1) guaranteed to everyone against whom criminal proceedings were brought the right to a final decision within a reasonable time on the charge against him. It was for the Contracting States to organise their legal systems in such a way that their courts could meet that requirement. In this case the Edirne First Assize Court did not receive the laboratory report on the substances confiscated in Greece until 13 July 1990; six days later it sent a letter of request to the Ankara Assize Court, asking for a translation. Then, on 19 February 1991, it convicted the applicant on the basis of other evidence, since it still did not have a translation of the report. The Court found it hard to understand why the proceedings were conducted in that way, especially as the Edirne First and Second Assize Courts had each previously persisted in requesting the report and in adjourning the case pending receipt of it. The length of the criminal proceedings in issue contravened A 6(1).

Non-pecuniary damage (FF 30,000), costs and expenses (FF 30,000 less FF 14,106.50).

Cited: Adiletta and Others v I (19.2.1991), B v A (28.3.1990), Baggetta v I (25.6.1987), Letellier v F (26.6.1991), Kemmache v F (Nos 1 and 2) (27.11.1991), Matznetter v A (10.11.1969), Neumeister v A (27.6.1968), Ringeisen v A (16.7.1971), Vocaturo v I (24.5.1991), Wemhoff v D (27.6.1968).

Mantovanelli v France 97/13

[Application lodged 26.2.1993; Commission report 29.11.1995; Court Judgment 18.3.1997]

Mr Mario Mantovanelli and his wife Andrée were the applicants. On 27 January 1981 their daughter, Jocelyne Mantovanelli, who was then 20, was admitted to the Nancy Orthopaedic and Accident and Emergency Clinic for an operation on a whitlow on her left thumb. She had to undergo repeat operations and skin grafts. She got an infection and contracted jaundice and died in hospital in March 1983. The applicants were convinced that their daughter's death had been caused by excessive administration of halothane and applied to the administrative courts for a ruling that the hospital was liable for her death. An expert was appointed. The applicants alleged that neither they nor their lawyer had been informed of the dates of the steps taken by the expert and that his report referred to documents which they had not been able to inspect. Their case was dismissed and appeals to the Nancy Administrative Court of Appeal and the Conseil d'Etat were unsuccessful. They complained that the procedure followed in preparing the expert medical opinion ordered by the Nancy Administrative Court had not been in conformity with the adversarial principle and had given rise to a violation of their right to a fair hearing.

Comm found by majority (10–3) V 6(1).

Court found by majority (5–4) V 6(1).

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson (d), Mr L-E Pettiti (d), Mr R Macdonald, Mrs E Palm (d), Mr MA Lopes Rocha, Mr P Jambrek (c), Mr P Kûris, Mr E Levits (d).

One of the elements of a fair hearing within the meaning of A 6(1) was the right to adversarial proceedings; each party had to have in principle the opportunity not only to make known any evidence needed for his claims to succeed, but also to have knowledge of and comment on all evidence adduced or observations filed with a view to influencing the court's decision. Compliance with the adversarial principle related to proceedings in a 'tribunal'; no general, abstract principle could therefore be inferred from that provision that, where an expert had been appointed by a court, the parties had to, in all instances, be able to attend the interviews held by him or to be shown the documents he had taken into account. What was essential was that the parties should be able to participate properly in the proceedings before the tribunal. Moreover, the Convention did not lay down rules on evidence as such. The Court therefore could not conclude as a matter of principle and in the abstract that evidence obtained in breach of provisions of domestic law may be admitted. It was for the national courts to assess the evidence they had obtained and the relevance of any evidence that a party wished to have produced. The Court had nevertheless to ascertain whether the proceedings considered as a whole, including the way in which the evidence

was taken, were fair as required by A 6(1). The procedural code provided that the parties had to be informed of the dates of the steps taken by the expert. The failure to comply with that provision could not on its own put the fairness of the proceedings in issue seriously in doubt. While the applicants could have made submissions to the administrative court on the content and findings of the expert report after receiving it, that did not afford them a real opportunity to comment effectively on it. The question the expert was instructed to answer was identical with the one that the court had to determine. It pertained to a technical field that was not within the judges' knowledge. Thus although the administrative court was not in law bound by the expert's findings, his report was likely to have a preponderant influence on the assessment of the facts by that court. Under such circumstances, and in the light also of the administrative courts' refusal of their application for a fresh expert report at first instance and on appeal the applicants could only have expressed their views effectively before the expert report was lodged. They were prevented from participating in the interviews of witnesses for the report, although the five people interviewed by the expert were employed by the hospital. Regarding the documents taken into consideration by the expert, the applicants only became aware of them once the report had been completed and transmitted. The applicants were thus not able to comment effectively on the main piece of evidence. The proceedings were therefore not fair as required by A 6(1).

Judgment constituted just satisfaction for alleged non-pecuniary damage. Costs and expenses (FF 25,000).

Cited: Kerojärvi v SF (19.7.1995), Lobo Machado v P (20.2.1996), Nideröst-Huber v CH (18.2.1997), Schenk v CH (12.7.1988), Vermeulen v B (20.2.1996).

Manunza v Italy 91/56

[Application lodged 20.6.1987; Commission report 15.1.1991; Court Judgment 13.12.1991]

Mrs Maria Grazia Manunza was unemployed. On 14 January 1985 she instituted proceedings against the 'Instituto Nazionale della Previdenza Sociale' before the Rome magistrates' court in order to establish her disability pension right. On 28 November 1985, the INPS was ordered to pay the pension claimed. On 11 March 1986 the INPS appealed. The court delivered judgment on 17 February 1989 and the text was lodged with the registry on 4 July 1989. The applicant complained of the length of the proceedings.

Comm found unanimously V 6(1).

Court unanimously struck case out of the list.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr SK Martens.

The Court was informed that the applicant had died and her heirs had not expressed any wish to continue the proceedings before the Court. The Court discerned no reason of public policy for continuing the proceedings. It noted other cases in which it had reviewed the reasonableness of the length of civil proceedings. Accordingly case struck out of the list.

Cited: Brigandì v I (19.2.1991), Caleffi v I (24.5.1991), Capuano v I (25.6.1987), Pretto and Others v I (8.12.1983), Pugliese (No 2) v I (24.5.1991), Santilli v I (19.2.1991), Vocaturo v I (24.5.1991), Zanghì v I (19.2.1991).

Manzoni, Giovanni v Italy 91/9

[Application lodged 3.6.1985; Commission report 5.12.1989; Court Judgment 19.2.1991]

Mr Giovanni Manzoni was arrested on 9 January 1981 in respect of drug offences. A warrant was issued in Italy for the his arrest on 19 August 1981. He was extradited to Italy on 27 July 1982. Following pre-trial investigations he was sentenced on 17 October 1985 to four years' imprisonment. The appellant's appeal was rejected by the Court of Cassation on 10 October 1988, although the judgment had still not been filed with the registry. He complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Sir Vincent Evans, Mr C Russo, Mr J De Meyer, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla.

The period to be taken into account began on 19 August 1981 when the Italian authorities issued a warrant for the applicant's arrest and ended on 10 October 1988 with the dismissal of his appeal to the Court of Cassation. The reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case. The proceedings were of some complexity, in particular at the investigation stage when a file of the Dutch trial had to be obtained. However, a lapse of more than seven years, one month could not be regarded as reasonable.

Non-pecuniary damage (ITL 1,000,000), costs and expenses (ITL 2,000,000).

Cited: Bagetta v I (25.6.1987), Obermeier v A (28.6.1990).

Manzoni, Giulia v Italy 97/38

[Application lodged 2.12.1991; Commission report 11.4.1996; Court Judgment 1.7.1997]

On 25 September 1991 at about 11 pm, Mrs Giulia Manzoni was arrested in Rome for insulting, threatening and assaulting two municipal police officers in the execution of their duty and taken into police custody. Her custody was confirmed by the public prosecutor's office. On 27 September 1991 at 11 am, the public prosecutor's office applied to the Rome District Court for the applicant to be detained at her home pending trial. The court did not consider it necessary and ordered that she be released immediately. At the end of proceedings the court sentenced the applicant to three months and 11 days' imprisonment, suspended. The hearing ended at 11.45 am. At about 1.30 pm the police escorted the applicant to Rebibbia Prison. At 3.10 pm the record of the hearing was served on her by the prison management. That afternoon the prison authorities completed the statutory formalities. At 6.30 pm the applicant gave the prison management her address for notification purposes, and at 6.45 pm she left the prison. She complained of the unlawfulness of her detention following her arrest and after the suspended sentence had been imposed on her.

Comm found by unanimously NV 5(1)(c) as regards the applicant's imprisonment following her arrest, by majority (11–4) NV 5(1)(c) as regards the applicant's release following the Rome District Court's judgment.

Court found unanimously NV 5(1)(c) as regards the applicant's imprisonment following her arrest, NV 5(1)(c) as regards the applicant's release following the Rome District Court's judgment.

Judges: Mr R Ryssdal, President, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr R Pekkanen, Mr L Wildhaber, Mr B Repik, Mr P Kûris, Mr U Lôhmus.

Deprivation of liberty following the arrest: detention had to be lawful. The words 'in accordance with a procedure prescribed by law' essentially referred to domestic law. The 'lawfulness' of the detention presupposed conformity with domestic law and also conformity with the purpose of the restrictions permitted by A 5(1), namely the protection of individuals from arbitrariness; it was required in respect of both the ordering and the execution of the measures entailing deprivation of liberty. In the instant case the public prosecutor's office acted in accordance with the legislation in force. Accordingly, A 5(1)(c) had not been infringed in that respect.

Release following the judgment (11.45 am to 6.45 pm): the list of exceptions to the right to liberty secured in A 5(1) was an exhaustive one and only a narrow interpretation of those exceptions was consistent with the aim of that provision, namely to ensure that no one was arbitrarily deprived of his or her liberty. The administrative formalities for the applicant's release could have been carried out more swiftly, but that was not a ground for finding that there had been a breach of the Convention; some delay in carrying out a decision to release a detainee was often inevitable, although it had to be kept to a minimum. There had been no violation of A 5(1) in this respect either.

Cited: Quinn v F (22.3.1995), Van der Leer v NL (21.2.1990), Wassink v NL (27.9.1990), Winterwerp v NL (24.10.1979).

Marchetti v Italy 99/102

[Application lodged 10.8.1997; Court Judgment 14.12.1999]

Mr Alessandro Marchetti complained of the length of criminal proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr Mp Lorenzen, Mrs M Tsatsa-Nikolovska.

The period to be taken into consideration began at the latest on 6 December 1984 and ended on 21 March 1997. It had lasted 12 years, three months, 15 days, and that period could not be considered as reasonable.

Non-pecuniary damage (ITL 28,000,000), costs and expenses (ITL 5,000,000).

Cited: Corigliano v I (10.12.1982), Pelissier and Sassi v F (25.3.1999), Philis v GR (No 2) (27.6.1997), Portington v GR (23.9.1998).

Marckx v Belgium (1979-80) 2 EHRR 330 79/2

[Application lodged 29.3.1974; Commission report 10.12.1977; Court Judgment 13.6.1979]

Ms Paula Marckx the first applicant was a journalist and the unmarried mother of the second applicant Alexandra Marckx born on 16 October 1973. She complained that certain aspects of the Belgian illegitimacy laws infringed Articles and Protocols of the Convention.

Comm found by majority (10–4) V 8 with respect to the illegitimate child as far as, firstly, the principle of recognition and the procedure for recognition and, secondly, the effects of recognition were concerned, (9–4 with one abstention) V 8 regarding the adoption of Alexandra by her mother, (12 with two abstentions) V 14+8 regarding the legislation as applied, (9–6) V 14+P1A1 regarding the Belgian legislation as applied with respect to the first, but not to the second, applicant, not necessary to examine 3, unanimously 12 not relevant.

Court by majority (14–1) dismissed Government's preliminary plea of lack of victim, found by majority (10–5) V 8 with respect to Paula Marckx, (11–4) V 14+8 with respect to Paula Marckx, (12–3) V 8 with respect to Alexandra Marckx, (13–2) V 14+8 with respect to Alexandra Marckx, (12–3) V 8 with respect to both applicants on extent of family relations, (13–2) V 14+8 with respect to both applicants, unanimously P1A1 not applicable to Alexandra Marckx's claims with regard to patrimonial rights, unanimously NV 8 with respect to Alexandra Marckx regarding patrimonial rights, by majority (13–2) V14+8 with respect to Alexandra Marckx regarding patrimonial rights, unanimously NV 8 with respect to Paula Marckx regarding patrimonial rights, by majority (13–2) V 14+8 with respect to Paula Marckx regarding patrimonial rights, (10–5) P1A1 applicable to Paula Marckx, (9–6) NV P1A1 with respect to Paula Marckx, (10–5) V 14+P1A1 with respect to Paula Marckx, unanimously NV 3 or 12.

Judges: Mr G Balladore Pallieri, President (jd A 50, jd P1A1 Paula Marckx), Mr G Wiarda, Mr M Zekia (jd P1A1 Paula Marckx), Mr P O'Donoghue (pd), Mrs H Pedersen (jd A50, jd P1A1 Paula Marckx), Mr Thór Vilhjálmsson (pd), Mr W Ganshof Van Der Meersch (jd A 50, jd P1A1 Paula Marckx), Sir Gerald Fitzmaurice (d), Mrs D Bindschedler-Robert (pd), Mr D Evrigenis (jd A 50, jd P1A1 Paula Marckx), Mr G Lagergren (jd P1A1 Paula Marckx), Mr F Gölcüklü, Mr F Matscher (pd), Mr J Pinheiro Farinha (jd A 50, pd), Mr E Garcia De Enterría (jd A 50).

A 25 entitled individuals to contend that a law violated their rights by itself, in the absence of an individual measure of implementation, if they run the risk of being directly affected by it. The applicants were challenging a legal position – that of unmarried mothers and of children born out of wedlock – which affected them personally. The existence of prejudice was not a matter for A 25 which, in its use of the word 'victim', denoted the person directly affected by the act or omission which was in issue. The applicants could therefore claim to be victims of the breaches of which they complained.

By guaranteeing the right to respect for family life, A 8 presupposed the existence of a family. A 8 made no distinction between the 'legitimate' and the 'illegitimate' family and thus applied to the family life of the illegitimate and the legitimate family. Besides, Paula Marckx assumed

responsibility for her daughter Alexandra from the moment of her birth and had continuously cared for her, with the result that a real family life existed between them. The object of the Article was essentially that of protecting the individual against arbitrary interference by the public authorities. Nevertheless it did not merely compel the State to abstain from such interference: in addition to the primarily negative undertaking, there might be positive obligations inherent in an effective respect for family life. A 14 had no independent existence, it may play an important autonomous rôle by complementing the other normative provisions of the Convention and the Protocols: A 14 safeguarded individuals, placed in similar situations from any discrimination in the enjoyment of the rights and freedoms set forth in those other provisions. A distinction was discriminatory if it had no objective and reasonable justification, that is, if it did not pursue a legitimate aim or if there was not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. In acting in a manner calculated to allow the family life of an unmarried mother and her child to develop normally, the State had to avoid any discrimination grounded on birth. The necessity to have recourse to recognition, which was declaratory and not attributive, to establish affiliation, derived from a refusal to acknowledge fully Paula Marckx's maternity from the moment of the birth. An unmarried mother was restricted in her capacity to give or bequeath her property to her child. There was a violation of A 8 with respect to the first applicant. As regards Alexandra Marckx, only one method of establishing her maternal affiliation was available to her under Belgian law, namely, to take legal proceedings for the purpose. The procedure was complex and could be time-consuming and, in the interim, the child would remain separated in law from his mother. The system resulted in a lack of respect for the family life of Alexandra Marckx who, in the eyes of the law, was motherless from 16 to 29 October 1973. Despite the brevity of this period, there was thus also a violation of A 8 with respect to the second applicant. The fact that some unmarried mothers did not wish to take care of their child could not justify the rule of Belgian law whereby the establishment of their maternity was conditional on voluntary recognition or a court declaration. Support and encouragement of the traditional family was itself legitimate or even praiseworthy. However, in the achievement of that end recourse should not be had to measures whose object or result was, as in the present case, to prejudice the 'illegitimate' family. The distinction lacked objective and reasonable justification. Accordingly, the manner of establishing Alexandra Marckx's maternal affiliation violated, with respect to both applicants, A 14 taken in conjunction with A 8.

Family life, within the meaning of A 8 included at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives might play a considerable part in family life. Respect for a family life implied an obligation for the State to act in a manner calculated to allow those ties to develop normally. The fact that the maternal grandmother did not apply to the Commission in no way prevented the applicants from complaining, on their own account, of the exclusion of one of them from the other's family. There was thus in that connection violation of A 8 with respect to both applicants.

There was no objective and reasonable justification for the differences of treatment between illegitimate and legitimate children. Admittedly, the tranquillity of legitimate families might sometimes be disturbed if an illegitimate child was included, in the eyes of the law, in his mother's family on the same footing as a child born in wedlock, but that was not a motive that justified depriving the former child of fundamental rights. The distinction complained of therefore violated, with respect to both applicants, A 14 taken in conjunction with A 8.

As concerns the second applicant, the Court had taken its stand solely on A 8, taken both alone and in conjunction with A 14. The Court excluded P1A1: P1A1 did no more than enshrine the right of everyone to the peaceful enjoyment of his possessions, consequently it applied only to a person's existing possessions and did not guarantee the right to acquire possessions whether on intestacy or through voluntary dispositions. P1A1 was inapplicable and A 14 could not be combined with it on that point. Matters of intestate succession – and of disposition – between near relatives proved to be intimately connected with family life. Family life did not include only social, moral or cultural relations, it also comprised interests of a material kind. It was not a requirement of A 8 that a child

should be entitled to some share in the estates of his parents or even of other near relatives. In consequence, the restrictions which the Belgian Civil Code placed on Alexandra Marckx's inheritance rights on intestacy were not of themselves in conflict with the Convention, that is, if they were considered independently of the reason underlying them. Similar reasoning was to be applied to the question of voluntary dispositions. Until she was adopted (30 October 1974), Alexandra had only a capacity to receive property from Paula Marckx that was markedly less than that which a child born in wedlock would have enjoyed. That difference of treatment, in support of which the Government put forward no special argument, lacked objective and reasonable justification. The need to have recourse to adoption in order to eliminate the said difference of treatment involved of itself discrimination. Unlike a 'legitimate' child, Alexandra had at no time before or after 30 October 1974 had any entitlement on intestacy in the estates of members of Paula Marckx's family for which the Court failed to find any objective and reasonable justification. The Court considered discriminatory the need for a mother to adopt her child. Alexandra Marckx was the victim of a breach of A 14, taken in conjunction with A 8, by reason both of the restrictions on her capacity to receive property from her mother and of her total lack of inheritance rights on intestacy over the estates of her near relatives on her mother's side.

By recognising that everyone had the right to the peaceful enjoyment of his possessions, P1A1 was in substance guaranteeing the right of property. The right to dispose of one's property constituted a traditional and fundamental aspect of the right of property. The second paragraph of P1A1 nevertheless authorised a Contracting State to enforce such laws as it deemed necessary to control the use of property in accordance with the general interest. In consequence, the limitation complained of by the first applicant was not of itself in conflict with Protocol 1. However, the limitation applied only to unmarried and not to married mothers. That distinction, in support of which the Government put forward no special argument, was discriminatory. Accordingly, there was on that point breach of A 14 taken in conjunction with P1A1, with respect to Paula Marckx.

While the legal rules at issue probably presented aspects which the applicants felt to be humiliating, they did not constitute degrading treatment coming within the ambit of A 3.

There was no legal obstacle confronting the first applicant in the exercise of the freedom to marry or to remain single; consequently, the Court had no need to determine whether the Convention enshrined the right not to marry. The issue under consideration fell outside the scope of A 12. Accordingly, A 12 had not been infringed.

Findings amount to adequate just satisfaction for the purposes of A 50 (by majority 9–6).

Cited: 'Belgian Linguistic' case (23.7.1968), De Becker v B (27.3.1962), De Wilde, Ooms and Versyp v B (10.3.1972), Engel and Others v NL (8.6.1976, 23.11.1976), Golder v UK (21.2.1975), Handyside v UK (7.12.1976), Klass and Others v D (6.9.1978), National Union of Belgian Police v B (27.10.1975), Tyrer v UK (25.4.1978).

Markt Intern Verlag GmbH and Klaus Beermann v Germany (1990) 12 EHRR 161 89/19

[Application lodged 11.7.1983; Commission report 18.12.1987; Court Judgment 20.11.1989]

The applicants, a publishing company and one of its editors, had published an article about the complaint of a dissatisfied consumer against an English mail-order firm. In response to a query from a journalist from Markt Intern, the firm had replied that it did not know about the complaint but would carry out a prompt investigation. The publishers had nevertheless asked readers for information of similar experiences about the firm complained about. The firm successfully obtained an injunction to stop repetition of the statements published in the article, on the ground that the statements were 'contrary to honest practices' and infringed the Unfair Competition Act 1909. The applicants alleged a violation of A 10.

Comm found by a majority (12–1) V 10.

Court held by a majority (9–9 with President's casting vote) NV 10.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr F Gölcüklü (jd), Mr F Matscher, Mr L-E Pettiti (jd/d), Mr B Walsh, Sir Vincent Evans, Mr R Macdonald (d), Mr C Russo, Mr R Bernhardt, Mr A Spielmann (jd), Mr J De Meyer (jd/d), Mr JA Carrillo Salcedo (jd), Mr N Valticos (jd), Mr SK Martens (d), Mrs E Palm, Mr I Foighel.

Although the Article was addressed to a limited circle of tradespeople and did not concern the public as whole, nevertheless it contained information of a commercial nature. Such information could not be excluded from A 10(1), which did not apply solely to certain types of information or ideas or forms of expression. The prohibition on the repetition of the contested statements was an interference by a public authority which had to be justified under A 10(2). The interference was prescribed by law; there was consistent, clear and abundant case-law from the Federal Court in this case. The interference was intended to protect the reputation and the rights of others and so was legitimate under A 10(2). States have a margin of appreciation in assessing the existence and extent of the necessity of the interference. That margin was essential in commercial matters and, in particular, in areas as complex and fluctuating as that of unfair competition. Otherwise the Court would have to undertake a re-examination of the facts and all the circumstances of each case. The Court had to confine its review to the question whether the measures taken on the national level were justifiable in principle and proportionate. It was necessary to weigh the requirements of the protection of the reputation and the rights of others against the publication of the information in question. In a market economy an undertaking which sought to set up a business inevitably exposed itself to close scrutiny of its practices by its competitors. Its commercial strategy and the manner in which it honoured its commitments could give rise to criticism on the part of consumers and the specialised press. In order to carry out this task the specialised press had to be able to disclose facts which could be of interest to its readers and contribute to the openness of business activities. However, even the publication of items which were true and described real events could under certain circumstances be prohibited. In addition, an isolated incident could deserve closer scrutiny before being made public, otherwise an accurate description of one such incident could give the false impression that the incident was evidence of a general practice. The present article was written in a commercial context. Although Markt Intern were not competitors of the firm, they sought to protect the interests of competing retailers. The article contained some truths, but also contained some doubts about the reliability of the firm as it asked readers to report similar experiences. The national Federal Court had considered the publication was premature as the firm had agreed to investigate the matter and premature publication was bound to have adverse effects on the firm's business. The Court found that having regard to the duties and responsibilities attaching to the freedoms guaranteed by A 10, the final judgment of the Federal Court did not go beyond the margin of appreciation left to the national authorities and there had been no breach of A 10.

Cited: Barthold v D (25.3.1985); Müller v CH (24.5.1988); Sunday Times v UK (26.4.1979).

Marlhens v France (1996) 21 EHRR 502 95/15

[Application lodged 29.9.1993; Commission report 17.1.1995; Court Judgment 24.5.1995]

Miss Isabelle Marlhens received a blood transfusion during an operation carried out at Pau Hospital in December 1982. At the beginning of 1988 it was discovered that she was infected with HIV. On 9 April 1992 she applied to the Compensation Fund for Haemophiliacs and Transfusion Patients. The Paris Court of Appeal gave judgment on 8 July 1994 and awarded her compensation. She complained of the length of proceedings.

Comm found unanimously V 6(1).

Court unanimously struck out of the list.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr L-E Pettiti, Mr R Macdonald, Mr SK Martens, Mr F Bigi, Sir John Freeland, Mr MA Lopes Rocha, Mr L Wildhaber.

The Court took formal note of the friendly settlement reached by the Government and the applicant. It discerned no reason of public policy why the case should not be struck out of the list and noted the already established case-law in the matter.

FS (FF 150,000 compensation, costs and expenses), therefore SO.

Cited: Karakaya v F (26.8.1994), Vallée v F (26.4.1994), X v F (31.3.1992).

Marques Gomes Galo v Portugal 99/87

[Application lodged 6.3.1997; Court Judgment 23.11.1999]

Mr Jaime Manuel Marques Gomes Galo complained about the length of civil proceedings instituted by him following a road traffic accident.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr G Ress, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mr I Cabral Barreto, Mrs N Vajic.

The period to be taken into consideration began on 6 March 1991 and was still pending before the courts, a period of about eight years and eight months, which could not be regarded as reasonable.

Non-pecuniary damage (PTE 1,200,000).

Cited: Martins Moreira v P (26.10.1988), Silva Pontes v P (23.3.1994).

Marte and Achberger v Austria 98/15

[Application lodged 23.8.1993; Commission report 9.4.1997; Court Judgment 5.3.1998]

Mr Bernhard Marte and Mr Walter Achberger were convicted by the Feldkirch Regional Court on 23 August 1990 of resisting police officers who on 3 July 1990 had been called in to make them leave the refreshment booth at a festival. On 13 September 1990, in the course of administrative criminal proceedings, they were ordered to pay a fine or imprisonment in default of payment. They applicants appealed to the Vorarlberg Regional Public Security Authority against the sentences imposed under the Introductory Act and to the regional government against those imposed under the Public Morality Act. The regional government largely dismissed the appeals, but slightly reduced the amount of the fines. The Public Security Authority dismissed the appeals. On 17 June 1992, the Constitutional Court declined to accept for adjudication appeals lodged by the applicants against the decisions of the regional government and the Public Security Authority on the ground that these did not have sufficient prospects of success. In reply to their complaints concerning A 6 of the Convention, it referred to Austria's reservation in respect of A 5 of the Convention. In connection with the complaint concerning P7A4 (right not to be tried or punished twice), it referred to the declaration made by Austria when it ratified that Protocol. Their appeals to the Administrative Court were dismissed.

Comm found unanimously V 6, V P7A4.

Court unanimously struck case out of the list.

Judges: Mr R Bernhardt, President, Mr F Matscher, Mr B Walsh, Mr N Valticos, Mr I Foighel, Mr JM Morenilla, Mr J Makarczyk, Mr B Repik, Mr P Kûris.

The Court took formal note of the friendly settlement reached by the Government and the applicants. It discerned no reason of public policy why the case should not be struck out of its list.

FS (Compensation ATS 68,000 for each applicant) therefore SO.

Martins Moreira v Portugal (1991) 13 EHRR 517 88/15

[Application lodged 24.7.1984; Commission report 15.10.1987; Court Judgment 26.10.1988]

Mr José Goncalves Martins Moreira was a bank employee. On 12 November 1975, he was a passenger in a car driven by Mr Virgilio da Silva Pontes, who was the owner of the vehicle. Near Evora, their car was in collision with another vehicle. The applicant was injured in the accident

and remained in hospital until 14 May 1976. In August 1976 and August 1977 he underwent surgery in London. He now suffers from a 25% permanent disability. On 20 December 1977, Mr Martins Moreira and Mr Pontes instituted civil proceedings in the Evora Court of First Instance against the owner, driver, the company on whose behalf the journey was undertaken, and the insurance company. The Supreme Court delivered its judgment on 5 February 1987. On 28 October 1987 the applicant asked the Evora Court of First Instance to order the payment of the part of the damages awarded to them by the Court of Appeal which had already been calculated. The enforcement proceedings were still pending. The applicant complained of the length of the proceedings

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr J Pinheiro Farinha, Sir Vincent Evans, Mr R Macdonald, Mr JA Carrillo Salcedo, Mr N Valticos.

The period to be considered did not begin to run when the action was first brought before the competent court but only when, on 9 November 1978, the Portuguese declaration accepting the right of individual petition took effect. However, in order to determine whether the time which elapsed following that date was reasonable, it was necessary to take account of the stage which the proceedings had reached at that point. The Court considered that the relevant period should also extend to the subsequent enforcement proceedings as those proceedings constituted a second stage, which had to be set in motion by the plaintiffs. They did not begin until 28 October 1987, eight months after the judgment, and only concerned the part of the damages which had already been calculated. They were as yet uncompleted. The first stage, which covered the period from 9 November 1978 to 9 February 1987, lasted eight years and three months. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law. The case was not in itself a complex one. There were procedural difficulties which could not justify the excessive length of the proceedings. The applicant could have assisted the doctors of the Institute in their task by providing them with the necessary documents more expeditiously. Nevertheless, ultimately, this did not prolong the proceedings unduly. The applicant took steps to expedite the proceedings. He wrote to the ombudsman and made a fresh application to the first instance court, complaining of the Institute's inactivity and proposing a solution. Various delays were attributable to the Portuguese judicial authorities and in particular to the Evora Court of First Instance. The arguments of an excessive workload and comparison with the duration of proceedings in the other Member States was rejected. The delays were mainly due to the difficulties encountered in obtaining an examination of the plaintiffs by orthopaedic experts. In particular the lack of facilities at the Lisbon Institute of Forensic Medicine gave rise to difficulties. The various institutions which were prevented through inadequate facilities or an excessive workload from complying with the requests of the Evora court were all public establishments. The fact that they were not judicial in character was immaterial in that respect. The institutes came under the administrative authority of the Ministry of Justice. Accordingly, the Portuguese State was under a duty to provide them with appropriate means in relation to the objectives pursued so as to enable them to comply with the requirements of A 6(1). In any event, the examination in question was to be effected in the context of judicial proceedings supervised by the court, which remained responsible for ensuring the speedy conduct of the trial. The excessive length of the proceedings was essentially due to the conduct of the competent authorities. There had therefore been a violation of A 6(1).

Damage (PTE 2,000,000), costs and expenses (PTE 435,000 less FF 5,180).

Cited: Baraona v P (8.7.1987), Bouamar v B (29.2.1988), Capuano v I (25.6.1987), Guincho v P (10.7.1984), Lechner and Hess v A (23.4.1987), Milasi v I (25.6.1987).

Masi v Italy 99/117

[Court Judgment 14.12.1999]

The applicant complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mrs M Tsatsa-Nikolovska, Mr A Baka.

A period of more than 13 years and two months for three levels of jurisdiction could not be regarded as reasonable.

Non-pecuniary damage (ITL 28,000,000), costs and expenses (ITL 4,000,000).

Massa v Italy (1994) 18 EHRR 266 93/31

[Application lodged 2.11.1988; Commission report 13.5.1992; Court Judgment 24.08.1993]

Mr Aldo Massa was married to a headmistress. Following her death, he applied to the Ministry of Education for a reversionary pension. His application was refused on 13 March 1968. An appeal lodged on 1 July 1968 to the Court of Audit was dismissed. On 1 April 1980 the Applicant appealed to the President. The Applicant was granted a reversionary pension on 16 May 1981, but only from 18 December 1977. On 23 April 1985 he applied to Court of Audit to have the decision of 16 May 1981 quashed and on 18 July 1986 sent a memorandum requesting that the case be dealt with more quickly. On 25 January 1991 the applicant's application to have the decision of 16 May 1981 quashed was allowed. By 19 November 1991 the applicant had still heard nothing of his appeal of 1 April 1980 to the Italian President. He complained, *inter alia*, of the length of proceedings.

Comm found by majority (6–2) V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal (President), Mr R MacDonald, Mr C Russo, Mr A Spielmann, Mr SK Martens, Mr I Foighel, Sir John Freeland, Mr AB Baka, Mr MA Lopes Rocha.

Disputes relating to the recruitment, careers and termination of service of public servants were as a general rule outside the scope of A 6(1), but State intervention by means of a statute or delegated legislation had not prevented the Court from finding in several cases that the right in issue was a civil one. The present dispute arose from an obligation on the State to pay a reversionary pension to the husband of a public servant in accordance with the legislation in force. In performing that obligation, the State was not using discretionary powers and might be compared, in that respect, to an employer who was a party to a contract of employment governed by private law. Accordingly, the applicant's right to a reversionary pension was a 'civil' one within the meaning of A 6(1), which was therefore applicable in the present case.

The period to be considered began on 23 April 1985, when he applied to the Court of Audit. It ended on 18 March 1991, when that court's judgment was filed. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. Two periods of inactivity were attributable solely to the State. Heavy case load could be no excuse. The length of proceedings was excessive and there had been a violation of A 6(1).

Non-pecuniary damages (ITL 10,000,000), costs and expenses (ITL 8,365,000).

Cited: Glasenapp v D (28.8.1986), Kosiek v D (28.8.1986), Francesco Lombardo v I (26.11.1992), Giancarlo Lombardo v I (26.11.1992).

Masson and Van Zon v Netherlands (1996) 22 EHRR 491 95/33

[Applications lodged 8.6.1989 and 2.6.1989; Commission report 4.7.1994; Court Judgment 8.9.1995.]

Mr Adrianus Johannes Marie Masson was the Investments Manager of the Civil Service Pension Fund (ABP) and Mr Jacobus van Zon was a businessman with interests in real estate development.

Following a criminal investigation, the two applicants were charged with forgery and corruption. They were arrested and remanded in custody. On 7 June 1988, following trial and appeal, the Court of Appeal acquitted them on all charges. In September 1988 they filed requests to the Court of Appeal for reimbursement by the State of their legal costs and of travel and subsistence expenses incurred in connection with the proceedings and for financial compensation for the restrictions on their liberty. The Court of Appeal rejected both applicants' claims for compensation. They complained, *inter alia*, that their requests for financial compensation for the restrictions on their liberty and their requests for reimbursement of their legal costs incurred in connection with the criminal proceedings had not been dealt with in public by an impartial tribunal.

Comm found by majority (15–9) V 6(1) in respect of both applicants, (21–3) not necessary to examine Mr Masson's complaint under A 13.

Court found unanimously no jurisdiction to entertain Mr van Zon's complaint under A 6(2), by majority (8–1) A 6(1) not applicable, unanimously NV 6(1) in relation to either applicant, unanimously not necessary to examine Mr Masson's complaint under A 13.

Judges: Mr R Ryssdal, President, Mr R Macdonald, Mr SK Martens (concurring), Mrs E Palm, Mr I Foighel, Mr AN Loizou, Mr F Bigi, Mr B Repik, Mr P Jambrek.

The scope of the case before the Court was delimited by the Commission's decision on admissibility. Consequently, the Court had no jurisdiction to entertain the complaint under A 6(2) which the Commission had declared inadmissible.

For A 6(1) under its 'civil' head to be applicable, there had to be a dispute over a right which could be said, at least on arguable grounds, to be recognised under domestic law. The dispute had to be genuine and serious; it could relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings had to be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring A 6(1) into play. In view of the status of the Convention within the legal order of The Netherlands, the Court observed that the Convention did not grant to a person charged with a criminal offence but subsequently acquitted a right either to reimbursement of costs incurred in the course of criminal proceedings against him, however necessary these costs might have been, or to compensation for lawful restrictions on his liberty. Such a right could be derived neither from A 6(2) nor from any other provision of the Convention or its Protocols. It followed that the question whether such a right could be said in any particular case to exist had to be answered solely with reference to domestic law. The Court had to have regard to the wording of the relevant legal provisions and to the way in which those provisions were interpreted by the domestic courts. Whether or not the impugned proceedings involved a dispute for the purposes of A 6(1), the claims asserted by the applicants did not in any event concern a 'right' which could arguably be said to be recognised under the law of The Netherlands. That being so, A 6(1) was not applicable to the impugned proceedings and had therefore not been violated in relation to either applicant.

The allegation of violation of A 13 was not referred to in the proceedings before the Court, which saw no cause, either on the facts or in law, to address the matter of its own motion.

Cited: Fayed v UK (21.9.1994), McMichael v UK (24.2.1995), Zander v Sweden (25.11.1993).

Mastrantonio v Italy 92/16

[Application lodged 17.3.1986; Commission report 15.1.1991; Court judgment 24.1.1992]

Mr Alberto Mastrantonio was involved in a road traffic accident with a German motorist in Italy. On 15 March 1978 a claim for damages from the Ufficio Centrale Italiano, which is liable for any damage resulting from road traffic accidents with foreigners in Italy, was lodged in the Teramo District Court. The investigations began on 7 June 1978, and 15 hearings took place between that date and 29 February 1984, when the investigating judge was transferred. The case was adjourned indefinitely. Investigations were resumed on 3 November 1987 when the new judge called for an expert, who was summoned to a hearing on 1 March 1988. Final submissions were made on 15

November 1991. The applicant complained that the action had not been tried within a reasonable time.

Comm unanimously found V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The proceedings began on 15 March 1978 when the Ufficio Centrale Italiano was summonsed to appear in the Teramo District Court and they were still pending in that court. The reasonableness of the length of proceedings was to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. Although the case was not a complex one, the investigation had already lasted 13 years. The Government invoked the excessive workload of the Teramo District Court, but A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. Accordingly and despite the lack of details on the course of the proceedings after 1 March 1988, the Court cannot regard as reasonable in the present case such a lapse of time for proceedings which were still pending at first instance. There had therefore been a violation of A 6(1).

Non-pecuniary damage (ITL 10,000,000), costs and expenses (ITL 2,606,000 and FF 772).

Cited: Vocaturo v I (24.5.1991).

Mathieu-Mohin and Clerfayt v Belgium (1987) 10 EHRR 1 87/1

[Application lodged 5.2.1981; Commission report 15.3.1985; Court Judgment 2.3.1987]

Mrs Lucienne Mathieu-Mohin, a French-speaking Belgian citizen lived in Vilvoorde, in the Flemish Region, and in the electoral district of Brussels. She was elected in the latter constituency and at the time sat in the Senate, one of the two Houses of the national Parliament. As she had taken the parliamentary oath in French, she could not be a member of the Flemish Council. She was, on the other hand, a member of the French Community Council, but not of the Walloon Regional Council. She was not re-elected on 8 November 1981 and did not stand in the general election of October 1985.

Mr Georges Clerfayt, a French-speaking Belgian lived Sint-Genesius-Rode, in the Flemish region and the electoral district of Brussels. Together with five other localities on the outskirts of the capital, however, it was given a special status by Parliament because of its large number of French-speaking. He sat in the national Parliament, in the House of Representatives. He took the parliamentary oath in French, which prevented him from belonging to the Flemish Council; on the other hand, he was a member of the French Community Council, but not of the Walloon Regional Council. On 28 November 1983, he sought leave from the Speaker of the House of Representatives to put a question to the member of the Flemish Executive responsible for matters relating to regional planning, land policy, subsidised housing and compulsory purchase in the public interest, on a number of relevant issues arising in Sint-Genesius-Rode. His leave was refused him on the ground that his request was inadmissible.

The applicants complained of clauses in the 1980 Special Act, particularly those governing the method of appointing members of the Community and regional Councils and Executives; they also criticised Parliament on the ground that it had not provided the Brussels Region with institutions comparable to those of the Walloon and Flemish Regions.

Comm found by majority (10–1) V P1A3 in respect of the applicants as electors, unnecessary to consider 14 or to consider the Convention and Protocol 1 in respect of the applicants as elected representatives.

Court found by majority (13–5) NV P1A3, (14–4) NV 14+P1A3.

Judges: Mr R Ryssdal, President, Mr J Cremona (jd), Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert (jd), Mr G Lagergren, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha (c), Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt (jd, declaration), Mr J Gersing, Mr A Spielmann (jd), Mr N Valticos (jd), Mr W Ganshof van der Meersch, ad hoc judge.

According to the Preamble to the Convention, fundamental human rights and freedoms were best maintained by 'an effective political democracy'. Since it enshrined a characteristic principle of democracy, P1A3 was accordingly of prime importance in the Convention system. As to the nature of the rights thus enshrined in P1A3, the view taken by the Commission had evolved. From the idea of an 'institutional' right to the holding of free elections, the Commission had moved to the concept of 'universal suffrage' and then, as a consequence, to the concept of subjective rights of participation – the 'right to vote' and the right to stand for election to the legislature. The Court approved that latter concept. The rights in question were not absolute. Since P1A3 recognised them without setting them forth in express terms, let alone defining them, there was room for implied limitations. Contracting States had a wide margin of appreciation in this sphere, but it was for the Court to determine in the last resort whether the requirements of Protocol 1 had been complied with; it had to satisfy itself that the conditions did not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they were imposed in pursuit of a legitimate aim; and that the means employed were not disproportionate. In particular, such conditions must not thwart the free expression of the opinion of the people in the choice of the legislature. P1A3 applied only to the election of the legislature, or at least of one of its chambers if it had two or more. The word legislature did not necessarily mean only the national parliament, however; it had to be interpreted in the light of the constitutional structure of the State in question. The 1980 reform vested the Flemish Council with competence and powers wide enough to make it, alongside the French Community Council and the Walloon Regional Council, a constituent part of the Belgian legislature in addition to the House of Representatives and the Senate. As regards the method of appointing the legislature, P1A3 provided only for free elections at reasonable intervals, by secret ballot and under conditions which would ensure the free expression of the opinion of the people. Subject to that, it did not create any obligation to introduce a specific system. Contracting States had a wide margin of appreciation given that their legislation on the matter varied from place to place and from time to time. Electoral systems sought to fulfil objectives which were sometimes scarcely compatible with each other. In those circumstances the phrase 'conditions which will ensure the free expression of the opinion of the people in the choice of the legislature' implied essentially the principle of equality of treatment of all citizens in the exercise of their right to vote and their right to stand for election. It did not follow, however, that all votes had to necessarily have equal weight with regard to the outcome of the election or that all candidates had to have equal chances of victory. Thus no electoral system could eliminate wasted votes. For the purposes of P1A3, any electoral system had to be assessed in the light of the political evolution of the country concerned.

In any consideration of the electoral system in issue, its general context should not be forgotten. The system did not appear unreasonable if regard was had to the intentions it reflected and to the respondent State's margin of appreciation within the Belgian parliamentary system – a margin that was all the greater as the system was incomplete and provisional. One of the consequences for the linguistic minorities was that they had to vote for candidates willing and able to use the language of their region. Experience showed that such a situation did not necessarily threaten the interests of the minorities. The French-speaking electors in the district of Halle-Vilvoorde enjoyed the right to vote and the right to stand for election on the same legal footing as the Dutch-speaking electors. They were in no way deprived of those rights by the mere fact that they had to vote either for candidates who would take the parliamentary oath in French and would accordingly join the French-language group in the House of Representatives or the Senate and sit on the French Community Council, or else for candidates who would take the oath in Dutch and so belong to the Dutch-language group in the House of Representatives or the Senate and sit on the Flemish Council. That was not a disproportionate limitation such as would thwart the free expression of

the opinion of the people in the choice of the legislature. Accordingly there had been no breach of P1A3.

The arguments under A 14 were the same as those relied on by the applicants in respect of P1A3. The Court had already rejected those arguments, there was no discrimination prejudicial to the applicants. No breach of A 14 had been made out.

Cited: Golder v UK (21.2.1975), Ireland v UK (18.1.1978), Lithgow and Others v UK (8.7.1986).

Matos e Silva, Lda, and Others v Portugal (1997) 24 EHRR 573 96/31

[Application lodged 16.11.1989; Commission report 21.2.1995; Court Judgment 16.9.1996]

The first applicant, Matos e Silva, Lda. was a private limited company cultivating land, extracting salt and breeding fish. It, alone among the applicants, was a party to the domestic proceedings. The second and third applicants, Mrs Maria Sofia Machado Perry Vidal and Teodósio dos Santos Gomes, Lda., another company, were the only shareholders in and owners of Matos e Silva. The second applicant managed both companies. On 2 May 1978, by Decree No 45/78, the Portuguese Government created a nature reserve for animals on the Algarve coast. The Government took various measures in connection with this scheme, including the five contested by the applicants concerned with expropriation of land. The measures were challenged and the applicants complained of the length of the administrative proceedings. They also complained that no effective remedy before a national authority was available to them to challenge the infringements of their rights caused by the Government's measures. In addition, they alleged a violation of their right to the peaceful enjoyment of their possessions as guaranteed by P1A1 and relied on A 14, complaining of discrimination in relation to other owners of land in the same area.

Comm found by majority (19–3) V 6 by reason of the lack of effective access to a court, (20–2) no separate issue under 6 on account of the length of the proceedings, (21–1) V P1A1, (21–1) not necessary to examine 14+P1A1).

Court unanimously dismissed Government's preliminary objection, found NV 13, NV 6 on account of the lack of access to a tribunal, V 6(1) on account of the length of the proceedings, V P1A1, not necessary to examine 14+P1A1;

Judges: Mr R Ryssdal, President, Mr F Golcuklu, Mr C Russo, Mr J De Meyer, Mr SK Martens, Mr AN Loizou, Mr MA Lopes Rocha, Mr B Repik, Mr P Kûris.

The objection of a failure to exhaust domestic remedies was raised before the Commission with regard to P1A1 only. The preliminary objections were closely linked to consideration of the merits of the complaints under A 6 P1A1 and were therefore joined to the merits.

No question of hindering access to a tribunal arose where a litigant, represented by a lawyer, freely brought proceedings in a court, made his submissions to it and lodged such appeals against its decisions as he considered appropriate. Matos e Silva used the remedies available under Portuguese law. The fact that the proceedings were taking a long time did not concern access to a tribunal. The difficulties encountered related to conduct of proceedings, not to access. In short, there had been no violation of A 13 or, in that regard, of A 6(1), the requirements of A 13 being less strict than, and here absorbed by, those of A 6(1).

The proceedings in question commenced on 18 April 1983, 15 November 1983, 9 July 1984, 8 February 1988 and 23 March 1991 and were still pending. Their length to date had therefore been approximately thirteen years and four months, twelve years and nine months, twelve years and one and a half months, eight and a half years and five years and five months. The Government had conceded that there had been a breach and therefore the Court did not consider it necessary to examine the reasonableness of the length of each set of proceedings with reference to the criteria laid down in its case-law. The length of the proceedings taken as a whole could not be considered reasonable in this case. Having regard to all those considerations, the Court dismissed the Government's preliminary objections with respect to this part of the case and considered that there had been a violation of A 6(1) in that respect.

Although the disputed measures had, as a matter of law, left intact the applicants' right to deal with and use their possessions, they had nevertheless greatly reduced their ability to do so in practice. They also affected the very substance of ownership in that three of them recognised in advance the lawfulness of an expropriation. The other two measures, the one creating and the other regulating the Ria Formosa Nature Reserve, also incontestably restricted the right to use the possessions. The applicants suffered an interference with their right to the peaceful enjoyment of their possessions. The consequences of that interference were aggravated by the combined use of the public-interest declarations and the creation of a nature reserve over a long period. There was no formal or *de facto* expropriation in the present case. The effects of the measures were not such that they could be equated with deprivation of possessions. The position was not irreversible. The restrictions on the right to property stemmed from the reduced ability to dispose of the property and from the damage sustained by reason of the fact that expropriation was contemplated. Although the right in question had lost some of its substance, it had not disappeared. All reasonable manner of exploiting the property had not disappeared seeing that the applicants continued to work the land. The second sentence of the first paragraph of P1A1 was therefore not applicable in the instant case. The measures pursued the public interest relied on by the Government, that is to say town and country planning for the purposes of protecting the environment. The various measures taken with respect to the possessions concerned did not lack a reasonable basis. However, in the circumstances of the case the measures had serious and harmful effects that had hindered the applicants' ordinary enjoyment of their right for more than thirteen years during which time virtually no progress had been made in the proceedings. The long period of uncertainty both as to what would become of the possessions and as to the question of compensation further aggravated the detrimental effects of the disputed measures. As a result, the applicants have had to bear an individual and excessive burden which had upset the fair balance which should be struck between the requirements of the general interest and the protection of the right to the peaceful enjoyment of one's possessions. Having regard to all those considerations, the Court dismissed the Government's preliminary objections with respect to this part of the case; there had been a violation of P1A1.

Having regard to the conclusion regarding P1A1, it was not necessary to examine A 14 taken in conjunction with P1A1.

Damages (PTE 10,000,000), costs and expenses (PTE 6,000,000).

Cited: Gasus Dosier und Fördertechnik GmbH v NL (23.2.1995), Papamichalopoulos and Others v GR (24.6.1993), Phocas v F (23.4.1996), Sporrong and Lönnroth v S (23.9.1982),

Matter v Slovakia 99/28

[Application lodged 7.8.1993; Commission report 20.5.1998; Court Judgment 5.7.1999]

In 1976 Mr Wilibald Rudolf Matter's legal capacity was restricted. In 1983, the District Court deprived the applicant of legal capacity on the ground that he suffered from an explosive and vexatious form of paranoid psychosis. On 18 February 1987, the District Court started, at the applicant's request of 2 February 1987, proceedings under the Code of Civil Procedure with a view to determining whether the applicant's legal capacity could be restored. The proceedings were still continuing. The applicant complained, *inter alia*, about the length of the proceedings concerning his legal capacity and that he was examined in a mental hospital against his will.

Comm found unanimously V 6(1), by majority (9–4) NV 8.

Court found unanimously V 6(1), NV 8.

Judges: Mr CL Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr A Baka, Mr E Levits.

The purpose of the proceedings was to determine whether or not legal capacity could be restored to the applicant. Their outcome was therefore directly decisive for the determination of the applicant's 'civil rights and obligations'. Accordingly, A 6(1) was applicable. The proceedings were

brought on 18 February 1987. However, the relevant period began only on 18 March 1992, when the former Czech and Slovak Federal Republic ratified the Convention and recognised the right of individual petition pursuant to former A 25. As of 1 January 1993, the Slovak Republic, as one of the two successor States, took over, according to the territorial principle, all rights and obligations arising under international treaties which had bound the Czech and Slovak Federal Republic and made relevant statements to this effect at the international level. The proceedings had not yet ended. The period to be taken into consideration had therefore exceeded seven years and three months. In order to determine the reasonableness of the time that elapsed after 18 March 1992, the Court had to take account of the state of the proceedings at that time. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case. In cases relating to civil status and capacity, what was at stake for the applicant was also a relevant consideration and special diligence was required in view of the possible consequences which the excessive length of proceedings might have. The case was of some complexity due to the necessity to obtain an expert opinion on the applicant's mental health. However, that could not, as such, justify the length of the proceedings. The applicant's conduct had contributed to the length of the proceedings in that he was unwilling to co-operate with experts, by challenging the Regional Court judges and by requesting that his case should be dealt with by another court. In respect of the conduct of the Slovak authorities, there were long delays and periods of inactivity for which no satisfactory explanation had been provided by the Government. The domestic courts failed to act with the special diligence required by A 6(1) in cases of this nature. In those circumstances, and having regard to what was at stake for the applicant and to the state of the proceedings at 18 March 1992, the reasonable time requirement had not been respected. There had accordingly been a breach of A 6(1).

The forcible examination of the applicant in a hospital amounted to an interference with his right to respect for his private life. Such interference constituted a violation of A 8 unless it was in accordance with the law, pursued an aim or aims that were legitimate under A 8(1) and could be regarded as necessary in a democratic society to achieve the aim or aims concerned. The interference had a legal basis, in the Code of Civil Procedure. It pursued the legitimate aim of protecting the applicant's own rights and health. The applicant had been entirely deprived of legal capacity since 1983; there was a serious interference with his rights. Because of the complexity of the assessment and the special knowledge it required, it was justified to obtain an expert opinion on the applicant's mental health. The first expert appointed had tried to examine the applicant on a voluntary basis. As the applicant refused, the District Court ordered that he should be examined in a mental hospital. That decision was later confirmed by the Regional Court after the applicant's guardian and the public prosecutor had agreed to such an examination. The District Court invited the applicant twice to submit to the examination in the mental hospital and warned him that, if he did not comply, he could be brought there. The applicant failed to comply and therefore the District Court ordered that the applicant should be brought to the hospital. The applicant was brought to the hospital on 19 August 1993 and he was discharged on 2 September 1993, when the examination was concluded. Having regard to the case as a whole, the interference was not disproportionate to the legitimate aims pursued. It was therefore necessary in a democratic society within the meaning of A 8(2) and accordingly, there had been no violation of A 8.

No claim submitted for just satisfaction under A 41.

Cited: Bronda v I (9.6.1998), Maciariello v I (27.2.1992), McLeod v UK (23.9.1998), Olsson v S (No 1) (24.3.1988), Pélissier et Sassi v F (25.3.1999), Philis v GR (No 2) (27.6.1997), Proszak v PL (16.12.1997).

Matthews v United Kingdom (1999) 28 EHRR 361 99/7

[Application lodged 18.4.1994; Commission report 29.10.1997; Court Judgment 18.2.1999]

Ms Denise Matthews claimed that her inability to vote in elections to the European Parliament from Gibraltar violated P1A3 taken alone or in conjunction with A 14.

Comm found by majority (11–6) NV P1A3, (12–5) NV 14.

Court found by majority (15–2) NV P1A3, unanimously not necessary to consider 14+P1A3.

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr L Ferrari Bravo, Mr Gaukur Jörundsson, Mr G Ress, Mr I Cabral Barreto, Mr J-P Costa, Mr W Fuhrmann, Mr K Jungwiert (jd), Mr M Fischbach, Mrs N Vajic, Mr J Hedigan, Mrs W Thomassen, Mrs M Tsatsa-Nikolovska, Mr T Pantiru, Mr K Traja, Sir John Freeland (jd), ad hoc judge.

The UK was responsible for securing the right guaranteed under this article regardless of whether the elections were purely domestic or European. There was no reason made out justifying the exclusion of the European Parliament from the ambit of 'election' and the European Parliament constituted part of the legislature of Gibraltar for the purposes of P1A3. There was a violation of the article because the very essence of the applicant's right to vote was denied in the complete lack of any opportunity for her to express her opinion on the choice of a member of the European Parliament.

Costs and expenses (GBP 45,000 less FF 18,510).

Cited: Loizidou v TR (23.3.1995); Mathieu-Mohin and Clerfayt v B (2.3.1987), Tyrer v UK (25.4.1978).

Mattiello v Italy 00/190

[Application lodged 7.10.1997; Court Judgment 27.7.2000]

Mrs Immacolata Mattiello complained about the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr AB Baka, Mr B Conforti, Mr G Bonello, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska, Mr ME Levits.

The period to be taken into consideration began on 18 November 1992 and was still pending on 19 April 2000, a period of seven years and five months at two levels of jurisdiction, which could not be regarded as reasonable.

Non-pecuniary damage (ITL 16,000,000), costs and expenses (ITL 3,000,000).

Cited: Bottazzi v I (28.7.1999).

Mattoccia v Italy 00/188

[Application lodged 22.5.1993; Commission report 17.9.1998; Court Judgment 25.7.2000]

Mr Massimiliano Mattoccia used to work as a bus driver for a school for handicapped children. In 1985, the police filed a criminal complaint against him. On 12 June 1990 he was convicted of rape of a mentally handicapped girl who had attended the school. He was sentenced to imprisonment. His appeals were rejected by the Court of Appeal and the Court of Cassation. He complained of the length and fairness of the proceedings.

Comm found unanimously V 6(1) regarding length of proceedings, by majority (25–7) V 6(1) and 6(3) regarding fairness of proceedings.

Court found unanimously V 6(1), (3)(a) and (b) as regards the fairness of the proceedings, V 6(1) as regards the length of the proceedings.

Judges: Mrs E Palm, President, Mrs W Thomassen, Mr R Türmen, Mr J Casadevall, Mr T Pantîru, Mr R Maruste, Mr C Russo, ad hoc judge.

A 6(3) required the accused to be made aware promptly and in detail of the cause of the accusation, ie, the material facts alleged against him which were the basis of the accusation, and of the nature of the accusation, ie, the legal qualification of those material facts. While the extent of the 'detailed' information referred to varied depending on the particular circumstances of each case, the accused had at any rate to be provided with sufficient information as was necessary to understand fully the extent of the charges against him with a view to preparing an adequate defence. In this respect, the adequacy of the information had to be assessed in relation to sub-para (b) of A 6(3). The defence was confronted with exceptional difficulties. Given that the information contained in the

accusation was characterised by vagueness as to essential details concerning time and place, was repeatedly contradicted and amended in the course of the trial, and in view of the lengthy period which had elapsed between the committal for trial and the trial (more than three and a half years) compared to the rapidity of the trial (less than one month), fairness required that the applicant should have been afforded greater opportunity and facilities to defend himself in a practical and effective manner, for example, by calling witnesses to establish an alibi. The applicant's right to be informed in detail of the nature and cause of the accusation against him and his right to have adequate time and facilities for the preparation of his defence were infringed. Consequently, there has been a violation of A 6(3)(a) and (b) taken together with A 6(1).

The period to be taken into consideration began on 17 February 1986, when the applicant received the official notification of the allegation that he had committed the offence of rape and ended with the filing of the Court of Cassation judgment in the Registry on 19 July 1993. The proceedings had lasted approximately seven years and five months. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case. The nature of the offence did not make the proceedings especially complex. There was nothing to suggest that the applicant was in any way responsible for the delays in the proceedings. Delays covering more than half of the overall length of the proceedings were attributable to the national authorities. The proceedings in question exceeded a reasonable time.

Non-pecuniary damage (ITL 27,000,000), costs and expenses (ITL 15,000,000).

Cited: Deweer v B (27.2.1980), Kamasinski v A (19.12.1989), Pélissier et Sassi v F (1999), T v I (12.10.1992).

Matznetter v Austria (1979-80) 1 EHRR 198 69/2

[Application lodged 3.4.1964; Commission report 4.4.1967; Court Judgment 10.11.1969]

Mr Otto Matznetter was employed by the Schiwitz group, first as assistant and later as their principal adviser in tax, economic and financial matters. On 15 May 1963 the applicant was arrested with others for fraud offences. It was feared that he would abscond and suppress evidence if released. The Regional Criminal Court, sitting as a lay judge court, gave judgment on 6 February 1967, after a hearing lasting 23 days. It found the applicant guilty and sentenced him to seven years' severe imprisonment, with one day's fast every quarter, and to a fine of ATS 5,000 or one week's imprisonment. He complained of the decisions refusing his release and the length of proceedings.

Comm found by majority (9–1) V 5(3) in that the applicant's detention had exceeded a reasonable time, (6–2 with two abstentions) NV 5(4) and 6(1).

Court found by majority (5–2) NV 5(3),unanimously, NV 5(4) or 6(1).

Judges: Mr H Rolin, President, Mr Cremona A Holmbäck (c), Mr A Verdross (jc), Mr G Balladore Pallieri (c), Mr M Zekia (d), Mr J (pd A 5(3), pc A 5(4) and 6(1)), Mr S Bilge (jc).

It was essentially on the basis of the reasons given in the decisions on the applications for release pending trial, and of the true facts mentioned by the applicant in his appeals, that the Court was called upon to decide whether or not there had been a violation of the Convention. The Court of Appeal of Vienna based its decision on a danger of absconding and on a danger of repetition of offences. As regards the danger of absconding, the decisions refusing the request for release of 27 December 1963 contained extensive statements of reasons and were justified at that time. In particular, the circumstances of the arrest, the transfers of funds out of Austria, the applicant's journey to Angola and the connections which he had established abroad could, at the beginning, bear out the idea of such a danger. As to the danger of repetition of the offences, a judge could reasonably take into account the seriousness of the consequences of criminal offences when there was a question of taking into account the danger of seeing such offences being repeated, in order to decide if the person concerned could be released in spite of the possible existence of such danger. In this case the Austrian courts took care to point in their decisions to a series of definite factors

and the Court found it proper that they should have attached importance to them, that is, the very prolonged continuation of reprehensible activities, the huge extent of the loss sustained by the victims and the wickedness of the person charged. The explanations of the applicant (Schiwitz enterprises subsequently being independently managed and in the course of liquidation, his own office under control of temporary administrator and his attempts to assist in finding out the truth) lacked weight when measured against the various circumstances mentioned by the Austrian courts, particularly the applicant's experience and great skill which were such as to make it easy for him to resume his unlawful activities either on his own account or in the employ of persons other than the Schiwitz enterprises. At the date of the lodging of the application the applicant's detention while on remand had not exceeded a reasonable time. After his first request had been dismissed on 4 March 1964, the applicant made, on 13 November 1964, a second request which was rejected in final instance on 20 January 1965 by the Court of Appeal of Vienna and then a third on 21 April 1965 which led to his release on 8 July 1965. The time which elapsed between the final dismissal of the first request and the making of the second was not abnormal; the same held good for the period between the final dismissal of the second request and the filing of the third. The reasons given by the Austrian courts for the dismissal of the second request for release were the same as those on which they had relied to dismiss the first request. As regards the further reason of the severity of the sentence to be expected, it could not suffice to establish the existence of a danger of absconding; in any event, the effect of the fear which such severity inspired in a person charged or accused diminished as the detention continued and, consequently, the balance of the sentence which the person concerned might expect to have to serve was reduced. In any case, the national authorities would have been able to accept the security offered by the applicant if the sole reason for his detention had been the danger of absconding. If the danger of absconding could no longer be found to be sufficient in this case, on the contrary and for the reasons set out above, the danger of repetition of offences could be held to justify the continuation of the applicant's detention while on remand. Having regard to the applicant's serious illness, that danger had ceased to exist. The Austrian courts could scarcely have arrived earlier at that last conclusion: The applicant had admittedly made known his state of health as early as 7 January 1964 but without relying much on the point and then, it seems, for the sole purpose of showing that there was no danger of his absconding.

Some delays could constitute violations of A 5(3) while remaining compatible with A 6(1). The length of the applicant's detention, from 15 May 1963 to 8 July 1965, was not due to the slowness of the preliminary investigation which ended only on 11 May 1965; no criticism could be made of the judicial authorities' conduct of the case. The unusual length of the investigation was justified by the exceptional complexity of the case. Intervals of several months elapsed between different interrogations. The competent authorities ordered certain charges to be split up and relieved the Investigating Judge, from 20 November 1963 to 10 May 1965, from his duty to take on new cases, thus showing their anxiety to avoid any delay in the course of the proceedings. While an accused person held in custody was entitled to have his case given priority and conducted with special diligence that could not stand in the way of the proper administration of justice.

As to the question whether or not the procedure followed in the examination of the applicant's applications for release gave rise, by reason of a lack of equality of arms, to a violation of A 5(4) or A 6(1), a similar issue already arose before the Court in the Neumeister case, which the Court decided in the negative. The Court saw no reason to depart in this case from that decision.

Cited: Lawless v IRL (1.7.1961), Neumeister v A (27.6.1968), Stögmüller v A (10.11.1969), Wemhoff v D (27.6.1968).

Mauer v Austria (1998) 25 EHRR 91 97/2

[Applications lodged 18.1.1990, 14.5.1990; Commission report 27.6.1995; Court Judgment 18.2.1997]

Mr Wolfgang Mauer had a taxi business. The first set of proceedings: On 4 March 1988 a car identified as belonging to him was seen to drive through a red traffic-light. On 15 May 1988 the Federal Police Authority in Vienna sent him a letter ordering him to disclose the identity of the

driver. On 20 May 1988 the Vienna Federal Police Authority imposed a fine of ATS 800 with 48 hours' imprisonment in default on the applicant by way of a provisional penal order for having failed to comply with his obligation as registered owner to disclose the identity of the driver at a particular time. His subsequent appeals were rejected. The second set of proceedings: On 6 August 1987 officers of the Vienna police found that a tyre on one of the applicant's taxis had too low a tread. They drew up a report and confiscated the car's number plates and logbook. On 20 September 1988 the Vienna Federal Police Authority, having heard the applicant, fined him ATS 500 for failure to comply with his duties as the registered owner of a motor vehicle, with thirty hours' imprisonment in default. His appeal to the Vienna regional government was rejected and appeal to the Administrative Court was dismissed on 13 December 1989 without a hearing.

With regard to the first application he complained that he had not had a fair and public hearing before a tribunal and that he had not been allowed to defend himself in person. With regard to the second application he complained that he had not had a fair hearing and that witnesses whom he had sought to bring forward had not been heard.

Comm found unanimously in the first case V 6(1) with regard to his right to a tribunal but that the absence of a hearing before the Administrative Court raised no separate issue under A 6(1); in the second case V 6(1) with regard to his right to a tribunal but that neither the absence of a hearing before the Administrative Court nor the way in which the evidence was considered raised any separate issue under 6(1).

Court found unanimously it had jurisdiction only to consider the applicant's allegations of violation of the Convention in so far as they related to the two sets of proceedings referred to in the Commission's decisions on admissibility, V 6(1) in both sets of proceedings, not necessary to consider 6(3)(c) or (d).

Judges: Mr R Bernhardt, President, Mr F Matscher, Mr L-E Pettiti, Mrs E Palm, Mr I Foighel, Mr A N Loizou, Mr L Wildhaber, Mr B Repik, Mr P Jambrek.

The scope of the case before the Court was determined by the Commission's decision on admissibility. The third set of proceedings referred to by the applicant was not encompassed by either of the Commission's decisions on admissibility in the present case. Therefore the Court had no jurisdiction to consider the applicant's complaints in so far as they related to those proceedings.

In the cases of *Schmautzer*, *Umlauft*, *Gradinger*, *Pramstaller*, *Palaoro* and *Pfarrmeier*, the Court found that there had been a violation of the applicant's right of access to a tribunal and, in view of that finding, considered it unnecessary to rule specifically on the applicant's other complaints under A 6. There was no reason to follow a different approach in the present case. Accordingly, the Court found that there had been a violation of A 6(1) in each set of proceedings and it was not necessary to rule on the allegations of violation of A 6(3)(c) and (d).

Present judgment constituted sufficient just satisfaction in respect of any non-pecuniary damage sustained. Costs (ATS 100,000).

Cited: Gradinger v A (23.101995), Hussain v UK (21.2.1996), Palaoro v A (23.101995)and Pfarrmeier v A (23.101995), Pramstaller v A (23.101995), Schmautzer v A (23.101995), Umlauft v A (23.101995).

Mauer (No. 2) v Austria 00/165

[Application lodged 23.4.1990; Court Judgment 20.6.2000]

On 23 March 1988, Mr Wolfgang Mauer, was instructed to inform the police who had parked a car belonging to him in the Schlossgasse in Vienna on 18 March 1988 at 5.30pm. He failed to provide the information, and on 11 October 1988 was fined ATS 2,000 for the failure. His complaint to the Administrative Court was ultimately dismissed on 24 January 1990. He complained of violation of A 6(1).

Court found unanimously V 6(1).

Judges Mr J-P Costa, President, Mr W Fuhrmann, Mr L Loucaides, Mr P Kûris, Sir Nicolas Bratza, Mrs H S Greve, Mr K Traja.

The issue under A 6(1) raised by the present case was the same as in the case of *Mauer*, *Schmautzer*, *Umlauft*, *Gradinger*, *Pramstaller*, *Palaoro* and *Pfarrmeier*. In all those cases the Court found that there

had been a violation of the applicant's right of access to a tribunal, given the limited review by the Administrative Court of the decisions of the administrative authorities. There was no reason to follow a different approach in the present case. Accordingly the Court found that there has been a violation of A 6(1).

Finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage sustained by the applicant. Costs and expenses (ATS 40,000).

Cited: Gradinger v A (23.101995), Hussain v UK (21.2.1996), Mauer v A (18.2.1997), Palaoro v A (23.101995), Pfarrmeier v A (23.101995), Pramstaller v A (23.101995), Schmautzer v A (23.101995), Umlauft v A (23.101995).

Mavronichis v Cyprus 98/31

[Application lodged 10.7.1995; Commission report 15.1.1997; Court Judgment 24.4.1998]

Mr Michael Mavronichis was an accountant by profession. On his failure to obtain a post he had applied for, Head of Accounts with the Industrial Training Authority, he filed a recourse action against the decision to appoint the only other candidate for the post. On 30 November 1990, the District Court delivered a judgment in which it awarded the applicant compensation. There were further appeals and cross-appeals. He complained that his claim for compensation had not been heard within a reasonable time.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Bernhardt, President, Mr F Matscher, Mr L-E Pettiti, Mr A Spielmann, Mr N Valticos, Mrs E Palm, Mr AN Loizou, Mr J Casadevall, Mr P van Dijk.

There was a dispute between the applicant and the authorities over his right to compensation following the annulment of the Industrial Training Authority's decision not to recruit him. The central issue concerned the classification of that right for the purposes of the applicability of A 6(1). Disputes relating to, *inter alia*, the recruitment of civil servants were as a general rule outside the scope of A 6(1), but in this case the issue of recruitment to a public-sector post was not at the heart of the applicant's civil action. The sole aim of the applicant's civil action against the authorities was to obtain compensation for damage. Having regard to the clear terms of the domestic legislation, there were arguable grounds for concluding that the domestic law of the respondent State recognised that a right to seek compensation accrued to the applicant once he had secured the annulment of the Industrial Training Authority's decision. The public-law features of the civil action did not outweigh the predominantly private-law characteristics of the proceedings, the outcome of which was decisive as to whether the applicant was entitled to recover damages against the defendant authority and, in the affirmative, the quantum: the compensation proceedings involved a determination of a purely pecuniary right having a basis in domestic law. In conclusion, the civil action involved a dispute over a 'civil right', and A 6(1) was applicable in the case.

The only set of proceedings to be considered for the purposes of the assessment of the reasonable time requirement was the civil action initiated by the applicant on 13 April 1987 and terminated on 20 June 1995. The earlier recourse action was to be excluded from its assessment. Notwithstanding its relevance to the issue of the applicability of A 6(1), the length of that action never formed the subject matter of the applicant's complaint to the Convention institutions. The total length of time taken by the impugned civil action was eight years, two months, eight days. When assessing the reasonableness of the length of the proceedings in the light of the Court's established case-law, regard had to be had to the fact that the period in respect of which it had jurisdiction *ratione temporis* began to run from 1 January 1989, when Cyprus recognised the right of individual petition for the purposes of A 25. However, account had to be taken of the state of the case on that date in making its determination. The case was not complex. There were delays on the part of the authorities, no steps were taken by the registry of the Supreme Court to process the appeal

proceedings between 8 January 1991 and 15 March 1995. Excessive delay could not be excused on the ground of volume of work, A 6(1) imposed on Contracting States the duty to organise their judicial systems in such a way that their courts could meet each of its requirements, including the obligation to hear cases within a reasonable time. Accordingly there had been a violation of A 6(1) in that the applicant's civil right was not determined within a reasonable time.

Non-pecuniary damage (CYP 3,000), costs and expenses (CYP 4,784.60 less FF 2,000).

Cited: Duclos v F (17.12.1996); Neves e Silva v P (27.4.1989); Neigel v France (17.3.1997); Philis v GR (No 2) (27.6.1997); Robins v UK (23.9.1997); Proszak v PL (16.12.1997).

Maxwell v UK (1995) 19 EHRR 97 94/37

[Application lodged 25.3.1991; Commission report 4.5.1993; Court Judgment 28.10.1994]

Mr Peter Maxwell was convicted of assault and sentenced to five years' imprisonment. He complained that the refusal of legal aid for his appeal against conviction violated A 6(3)(c). He also complained under A 6(1) about the conduct of his defence by legal representatives and a number of other matters arising out of his trial.

Comm found by majority (17–2) V 6(3)(c).

Court unanimously found V 6(3)(c).

Judges: Mr R Ryssdal, President, Mr R Macdonald, Mr J De Meyer (c), Mrs E Palm, Mr JM Morenilla, Mr F Bigi, Sir John Freeland (c), Mr AB Baka, Mr J Makarczyk.

A 6: given the nature of the proceedings, the wide powers of the High Court, the limited capacity of an unrepresented appellant to present a legal argument and, above all, the importance of the issue at stake in view of the severity of the sentence, the interests of justice required the applicant to be granted legal aid for representation at his appeal hearing.

Finding of a violation sufficient to constitute just satisfaction.

Cited: Granger v UK (28.3.1990); Monnell and Morris v UK (2.3.1987); Pakelli v D (25.4.1983); Quaranta v CH (24.5.1991).

Mazurek v France 0/42

[Application lodged 13.12.1996; Court Judgment 1.2.2000]

Mr Claude Mazurek, was born in 1942 when the marriage of his parents still existed, but was registered only under the name of his mother as the couple had separated. After the mother's death, the elder son, who was legitimated by her marriage, applied to the tribunal de grande instance for the division of her estate and for a declaration that the applicant as the child of an adulterous union could only claim, under the French Civil Code, one quarter of the estate. The applicant argued unsuccessfully that this was incompatible with the Convention.

Court found unanimously V P1A1+14, by majority (5–2) not necessary to examine 8+14.

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr L Loucaides (pd), Mrs F Tulkens (pd), Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The protection of the traditional family, which formed the basis of the discrimination under the law, could be considered a legitimate purpose. Nevertheless, developments in family law tended towards the abolition of discrimination with respect to adulterine children. Interpretation of the Convention being necessarily evolutive, those developments had to be taken into account. In this case there was no justification for the different treatment of an adulterine child in the division of the estate, since such discrimination would have the effect of penalising the child for events which were not his fault.

Pecuniary damage (FF 376,034.61), non-pecuniary damage (FF 20,000), costs and expenses (FF 100,000).

Cited: Abdulaziz, Cabales and Balkandali v UK (28.5.1985), Hoffmann v A (23.6.1993), Inze v A (28.10.1987), Johnston and Others v IRL (18.12.1986), Karlheinz Schmidt v D (18.7.1994), Rasmussen v DK (28.11.1984).

McCallum v United Kingdom (1991) 13 EHRR 596 90/18

[Application lodged 31.8.1981; Commission report 4.5.1989; Court Judgment 30.8.1990]

On 11 March 1980 Mr Michael Peter McCallum was convicted by the High Court of Justiciary at Glasgow of assault and robbery and sentenced to six years' imprisonment, to run from 26 November 1979. Whilst in custody he lost 509 days' remission of sentence for a series of offences against prison discipline. He was released from prison on 18 April 1985. During the course of his sentence, Mr McCallum spent two periods in the Segregation Unit at Inverness Prison for assaults on and abuse of staff, the first from 22 November 1980 to 27 January 1981 and the second from 30 June to 15 October 1981. The second period exceeded the usual three months' maximum in view of his particularly uncooperative attitude whilst he was there. During 1981 and 1982, the prison authorities imposed the following particular restrictions on the applicant's correspondence; Two letters from the applicant, one to his solicitor and one to a Member of Parliament and each dated 24 June 1981, were stopped as were a letter of 5 October 1981 from the applicant to the editor of the Daily Record, a letter dated 18 December 1981 from the applicant to the Procurator Fiscal, a letter dated 19 January 1982 from the applicant to Miss Hampson of Dundee University, letters dated 20 and 23 February 1982 from the applicant to his representative were delayed, copies of letters written by his representative to the Prison Service Headquarters on 4 June 1982 and to the Secretary of State on 22 June 1982 were withheld from the applicant. On 22 December 1982 the Visiting Committee of Barlinnie Prison imposed on the applicant a disciplinary award which included an absolute prohibition for 28 days on all correspondence. The applicant raised various complaints concerning the conditions and circumstances of his imprisonment.

Comm found unanimously V 8 in respect of the stopping of the two letters of 24 June 1981 and of the letters of 5 October 1981, 18 December 1981 and 19 January 1982, the withholding of the copies of the letters dated 4 and 22 June 1982 and the 28-day restriction on correspondence imposed by the disciplinary award, unanimously, NV 8 in respect of the delaying of the letters of 20 and 23 February 1982, not necessary to examine 10, unanimously V 13 in relation to the applicant's complaints under 8 concerning the stopping of the letters of 24 June 1981 and 18 December 1981 and the restriction under the disciplinary award, unanimously NV 13 in relation to the applicant's complaints under 8 concerning the stopping of the letters of 5 October 1981 and 19 January 1982, the delaying of the letters of 20 and 23 February 1982 and the withholding of the copies of the letters dated 4 and 22 June 1982, by majority (9–6) V 13+3.

Court found unanimously V 8 in respect of the measures affecting the applicant's correspondence with the exception of the delaying of the letters of 20 and 23 February 1982, not necessary to examine 10, 13+3 or 13+8.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Sir Vincent Evans, Mr J De Meyer, Mrs E Palm, Mr I Foighel.

The measures affecting the applicant's correspondence which were at issue in the present case constituted, with the exception of the delaying of the letters of 20 and 23 February 1982, violations of A 8. Neither the Government nor the applicant contested the opinion of the Commission on the allegations of breach of that provision.

The claim before the Commission under A 10 was not pursued before the Court which saw no need to examine it of its own motion.

The applicant abandoned his claims of violation of A 13 before the Court and the matter was not further pursued by the Delegate of the Commission at the hearing, the Court therefore found it was not necessary to examine the case under that provision.

Finding of violations of A 8 constituted sufficient just satisfaction for the purposes of A 50. Costs and expenses (GBP 3,000).

Cited: Boyle and Rice v UK (27.4.1988).

McCann and Others v UK (1995) 21 EHRR 97 95/28

[Application lodged 14.8.1991; Commission report 4.3.1994; Court Judgment 27.9.1995]

Ms Margaret McCann, Mr Daniel Farrell and Mr John Savage were representatives of the estates of Mr Daniel McCann, Ms Mairead Farrell and Mr Sean Savage. The latter three were suspected IRA terrorists, who were shot and killed by members of the Secret Air Service (SAS) in Gibraltar. They complained that the killings violated A 2.

Comm found by majority (11–6) NV 2.

Court found by majority (10–9) V 2.

Judges: Mr R Ryssdal (d), President, Mr R Bernhardt (d), Mr Thór Vilhjálmsson (d), Mr F Gölcüklü (d), Mr C Russo, Mr A Spielmann, Mr N Valticos, Mrs E Palm(d), Mr R Pekkanen (d), Mr JM Morenilla, Sir John Freeland (d), Mr AB Baka (d), Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr B Repik, Mr P Jambrek (d), Mr P Kûris, Mr U Lôhmus.

A 2, which not only safeguarded the right to life but sets out the circumstances when the deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention – which, in peacetime, admits of no derogation under A 15. A 2(2) extends to, but is not concerned exclusively with, intentional killing. It describes the situations where it is permitted to use force which may result, as an unintended outcome, in the deprivation of life. The use of force, however, must be no more than absolutely necessary for the achievement of one of the purposes set out in sub-paragraphs (a), (b) or (c). The term 'absolutely necessary' in A 2(2) indicates that a stricter and more compelling test of necessity must be employed from that normally applicable when determining whether State action is 'necessary in a democratic society' under para 2 of A 8–11. In particular, the force used must be strictly proportionate to the achievement of the aims set out in the sub-paragraphs. A general legal prohibition of arbitrary killing by the agents of the State would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities. Public inquest proceedings, at which the applicants were legally represented took place and involved a detailed review of the events surrounding the killings. The lawyers acting on behalf of the applicants were able to examine and cross-examine key witnesses, including the military and police personnel involved in the planning and conduct of the anti-terrorist operation, and to make the submissions they wished to make in the course of the proceedings. The alleged various shortcomings in the inquest proceedings did not substantially hamper the carrying out of a thorough, impartial and careful examination of the circumstances surrounding the killings. Therefore there had been no breach of A 2(1) on this ground. The establishment and verification of the facts was primarily a matter for the Commission, accordingly, it was only in exceptional circumstances that the Court would use its powers in that area. The Court took the Commission's establishment of the facts and findings to be an accurate and reliable account of the facts underlying the present case. The Court, in determining whether there had been a breach of A 2 was not assessing the criminal responsibility of those directly or indirectly concerned. It was not established that there was an execution plot at the highest level of command in the Ministry of Defence or in the Government. Nor was there evidence that there was an implicit encouragement by the authorities or hints and innuendoes to execute the three suspects. The United Kingdom authorities received information that there would be a terrorist attack in Gibraltar. They were confronted by an active service unit of the IRA composed of persons who had been convicted of bombing offences and a known explosives expert. They had also had prior warning of the impending terrorist action and thus had ample opportunity to plan their reaction and, in co-ordination with the local Gibraltar authorities, to take measures to foil the attack and arrest the suspects. It was subsequently discovered that the suspects were unarmed, that they did not have a detonator device on their persons and that there was no bomb in the car. All four soldiers admitted that they shot to kill. They considered that it was necessary to continue to fire at the suspects until they were rendered physically incapable of detonating a device. According to the pathologists' evidence Ms Farrell was hit by eight bullets, Mr

McCann by five and Mr Savage by sixteen. The soldiers honestly believed, in the light of the information that they had been given, that it was necessary to shoot the suspects in order to prevent them from detonating a bomb and causing serious loss of life. The use of force by agents of the State in pursuit of one of the aims delineated in A 2(2) may be justified under that provision where it was based on an honest belief which was perceived, for good reasons, to be valid at the time but which subsequently turned out to be mistaken. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others. Having regard to the dilemma confronting the authorities in the circumstances of the case, the actions of the soldiers did not, in themselves, give rise to a violation of A 2(2). Having regard to the decision not to prevent the suspects from travelling into Gibraltar, to the failure of the authorities to make sufficient allowances for the possibility that their intelligence assessments might, in some respects at least, be erroneous and to the automatic recourse to lethal force when the soldiers opened fire, the Court is not persuaded that the killing of the three terrorists constituted the use of force which was no more than absolutely necessary in defence of persons from unlawful violence within the meaning of A 2(2). Accordingly, there had been a breach of A 2.

Not appropriate to make award for pecuniary or non-pecuniary damage. Costs and expenses (GBP 38,700 less FF 37,731).

Cited: Cruz Varas and Others v S (20.3.1991), The Holy Monasteries v GR (9.12.1994), Ireland v UK (18.1.1978), James and Others v UK (21.2.1986), Klaas v D (22.9.1993), Klass and Others v D (6.9.1978), Loizidou v TR (Preliminary Objections) (23.3.1995), Soering v UK (7.7.1989).

McGinley and Egan v United Kingdom (1999) 27 EHRR 1 98/43

[Applications lodged 20.4.1993 and 31.12.1993; Commission report 26.11.1996; Court Judgment 9.6.1998 (merits, A 50), 28.1.2000 (revision request)]

Between 1952 and 1967 the UK carried out a number of atmospheric tests of nuclear weapons in the Pacific Ocean and at Maralinga, Australia, involving over 20,000 servicemen. Among those tests were a series of six detonations at Christmas Island in the Pacific Ocean (November 1957–September 1958) of weapons many times more powerful than those discharged at Hiroshima and Nagasaki. During the Christmas Island tests, service personnel were ordered to line up in the open and to face away from the explosions with their eyes closed and covered until 20 seconds after the blast. Mr Kenneth McGinley was working as a plant operator on the Island and Mr Edward Egan was serving as a stoker on a ship in the area. They complained that they had not been warned of the effects of their alleged exposure to radiation and that they had been denied access to the records compiled in relation to radiation levels and the medical treatment they had received following the explosions, which omissions had exacerbated their suffering and denied them access to, and a fair hearing before the Pensions Appeal Tribunal. In addition, they claimed to have been subjected to harassment and surveillance.

By letters in August 1998, the applicants requested a revision of the European Court's judgment of 9.6.1998 under Rule 80 of the Rules of Procedure, on the ground that certain correspondence constituted facts which were discovered by them, and which could not reasonably have been known to them prior to the delivery of the original judgment of 9 June 1998. They contended that the correspondence would have had a decisive influence on the original judgment of the Court.

Comm found unanimously V 6(1), not necessary to consider 13, by majority (23–3) V 8.

Court found by majority (6–3) NV 6(1), unanimously not necessary to rule on the preliminary objection in respect of 6(1), by majority (5–4) NV 8, unanimously not necessary to rule on the preliminary objection in respect of 8, unanimously not necessary to consider the complaint under 13.

Court by majority (5–2) dismissed the request for revision.

Judges (merits, A 50): Mr R Bernhardt, President, Mr J De Meyer (jd), Mr N Valticos (jd), Mr R Pekkanen (jd), Mr JM Morenilla (jd), Sir John Freeland, Mr AB Baka, Mr G Mifsud Bonnici, Mr V Butkevych.

Judges (revision): Mrs E Palm, President, Mr J Casadevall (d), Mr V Butkevych, Mr T Pantîru, Mr AB Baka, Mr R Maruste (d), Sir Simon Brown, ad hoc judge.

The complaints under A 2 and 3 concerning lack of monitoring during nuclear tests of applicants' exposure to radiation were not raised before the Commission and were based on events in 1958 before the UK's A 25 and 46 declarations. The complaint under A 8 concerning alleged harassment of the first applicant was declared inadmissible by Commission as it was introduced outside the six-month limit. The Court had no jurisdiction to consider those complaints. The complaint under A 3 based on same facts (lack of access to documents) as, and fell more appropriately within the scope of, complaints under A 6(1), 8 and 13.

The Government's argument on non-exhaustion of domestic remedies was closely linked to the substance of the applicants' complaints under A 6(1) and 8. The plea would therefore, be joined to the merits.

A 6(1) was applicable. It was not established that the respondent State had in its possession documents relevant to the questions at issue in pension appeals. In any case, it was open to the applicants to apply for disclosure of the relevant documents. Where a procedure was provided for the disclosure of documents which the applicants failed to utilise, it could not be said that the State prevented the applicants from gaining access to, or falsely denied the existence of, any relevant evidence, or that the applicants were thereby denied effective access to or a fair hearing before the Pensions Appeal Tribunal. It followed that there had been no violation of A 6(1). In view of that conclusion, it was not necessary for the Court to determine whether or not the Government's preliminary objection should be upheld.

A 8: the applicants were in doubt as to whether or not they had been exposed to radiation at levels engendering risk to their health. The issue of access to information which could either have allayed their fears in that respect, or enabled them to assess the danger to which they had been exposed, was sufficiently closely linked to their private and family lives within the meaning of A 8 as to raise an issue under that provision. A 8 was applicable. Where a State engaged in hazardous activities, such as those in issue in the present case, which might have hidden adverse consequences on the health of those involved in such activities, respect for private and family life under A 8 required that an effective and accessible procedure be established which enabled such persons to seek all relevant and appropriate information. In providing the procedure under the tribunal rules, the State had fulfilled its positive obligation under A 8 in relation to the applicants. It followed that there had been no violation of A 8.

In view of that conclusion, it was not necessary for the Court to rule on the Government's preliminary objection.

In view of its conclusion in relation to A 6(1), it was not necessary to examine separately the complaint in relation to A 13, the requirements of which were less strict than and absorbed by those of A 6(1) in this case.

Revision request: A 44 set out the principle of the finality of judgments and the possibility of revision was an exceptional procedure. Requests for revision of judgments were therefore to be subjected to strict scrutiny. The series of correspondence submitted by the applicants with the revision request could be regarded as 'facts'. It had not been previously submitted to the Commission or to the Court. The Court was prepared to accept that the revision request was made to the former Court within six months of the applicants' actually obtaining copies of the correspondence. The Court had to decide whether the facts were 'unknown' or 'could not reasonably have been known' to the applicants, within the meaning of Rule 80, prior to the delivery of the original judgment. The Court was satisfied from the evidence that the applicants had sufficiently detailed knowledge in August 1996, from information and copy letters provided to them at that stage, for it to have been clear to them that a significant amount of correspondence and documentation had been created prior to that date in relation to that Rule 6 application. In those circumstances, while copies of the correspondence upon which the revision request was based may not have been actually obtained by the applicants until after the delivery of the original judgment on 9 June 1998, they manifestly were on notice in August 1996 (when they wrote to the

Commission) of the existence of the correspondence. Consequently, whether or not the correspondence 'might by its nature have a decisive influence' on the original judgment, the Court found it established that those facts 'could reasonably have been known' to the applicants prior to the delivery of the original judgment. The request for revision was, accordingly, rejected.

Cited: Gaskin v UK (7.7.1989), Kremzow v A (21.9.1993), Guerra and Others v I (19.2.1998), Pardo v F (10.7.1996 (revision – admissibility)), Gustafsson v S (30.7.1998 (revision – merits)).

McGoff v Sweden (1986) 8 EHRR 246 84/14

[Application lodged 25.3.1980; Commission report 13.7.1983; Court Judgment 26 October 1984]

Mr Anthony McGoff, an Irish citizen, was a contractor by profession. On 27 October 1977, the District Court of Stockholm issued a warrant for his arrest on the ground of suspicion of gross smuggling and a serious offence against the legislation on narcotics. He was arrested in the Netherlands on 10 July 1979, extradited to Sweden on 24 January 1980 and immediately placed in custody in the main prison in Stockholm. From 25 January 1980, the police inspector in charge endeavoured to interrogate the applicant, but the latter declined to make any statement until he had had the opportunity to consult his own lawyer. The District Court appointed that lawyer who on 28 January visited the applicant in his cell. On 8 February, the District Court held a hearing at the close of which it ordered Mr. McGoff's continued detention and directed that criminal proceedings against him should be instituted no later than 21 February 1980. He was kept in detention. Following trial on 13 March 1980 he was convicted of a serious offence against the legislation on narcotics and sentenced to two years' imprisonment with an order that he should be deported from Sweden on expiry of his sentence. Conviction and sentence were upheld on 12 May 1980 by the Svea Court of Appeal and on 26 June 1980 the Supreme Court refused the applicant's request for leave to appeal. He complained of his detention.

Comm found unanimously V 5(3), NV 5(4).

Court found unanimously no jurisdiction to entertain the complaint as to the alleged existence of hindrances contrary to 25(1), V 5(3), NV 5(4).

Judges: Mr G Wiarda, President, Mr W Ganshof van der Meersch, Mr G Lagergren, Mr E García de Enterría, Sir Vincent Evans, Mr R Macdonald, Mr R Bernhardt.

The Commission's admissibility decision of 13 October 1982 determined the object of the case brought before the Court. The Commission had resolved to take no action with regard to the complaint under A 25, in effect to a declaration of inadmissibility, with the result that the Court was unable to entertain the complaint.

The Stockholm District Court did not hear the applicant in person when it issued a warrant for his arrest in October 1977 and his detention began more than two years later. That being so, the arrest warrant did not preclude the subsequent application of the guarantees in A 5(3). However, 15 days elapsed between the time when the applicant was placed in custody in Sweden (24 January 1980) and when he was brought before the District Court (8 February 1980). An interval of that length could not be regarded as consistent with the required promptness. Accordingly, there had been a breach of A 5(3).

The Commission noted that under the Code of Judicial Procedure the applicant had the possibility, which was not subject to any time-limit, of appealing to the Court of Appeal against the arrest warrant issued by the District Court. In the Commission's view, there was no indication that that remedy would not have satisfied the requirements of A 5(4). The Court saw no cause for differing from the Commission's conclusion and accordingly held that there had been no breach of A 5(4).

Costs and expenses (IRP 2,070.25).

Cited: Campbell and Cosans v UK (22.3.1983), De Jong, Baljet and van den Brink v NL (22.5.1984), Malone v UK (2.8.1984).

McGonnell v United Kingdom 00/66

[Application lodged 29.6.1995; Commission report 20.10.1998; Court Judgment 8.2.2000]

Mr Richard James Joseph McGonnell bought a vinery in Guernsey in 1982. A number of planning applications were made to permit residential use of the land in the ensuing years; they were all refused. In 1986/87, the applicant moved into a converted packing shed on his land. In 1988 he made representations to a planning inquiry which was considering the draft Detailed Development Plan No 6 (DDP6). In his report to the President of the Island Development Committee (IDC), the inspector concluded that a dwelling on the applicant's site would be an intrusion into the agricultural/horticultural hinterland. The States of Deliberation, the island's legislature, presided over by the Deputy Bailiff, debated and adopted DDP6 in June 1990. A retrospective application for planning permission to convert the packing shed into a dwelling was rejected by the IDC on 11 July 1991 as the site was a Developed Glasshouse Area where residential development was not allowed. The applicant was convicted by the magistrates' court of changing the use of the shed without permission, and was fined. The IDC's application for permission to carry out the necessary works to remedy the breach of the planning legislation was granted by the Royal Court comprising the Bailiff (head of the island's administration and president of the States of Deliberation, who presided over Royal Court and Court of Appeal), who determined questions of law, and three Jurats, who determined matters of fact. In 1994 a further application for change of use was rejected by the IDC and in June 1995 the Royal Court comprising the Bailiff and seven Jurats unanimously dismissed his appeal, without giving reasons. The applicant claimed that he did not have the benefit of the guarantees of A 6(1) at the hearing of his case before the Royal Court of Guernsey.

Comm found by majority (25–5) V 6(1).

Court unanimously dismissed the Government's preliminary objection, found V 6.

Judges: Mr J-P Costa, President, Mr P Kûris, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mrs HS Greve, Sir John Laws (c), ad hoc judge.

The Government's preliminary submissions were not raised before the Commission and they were therefore estopped from relying on them.

A 6(1) was applicable to the proceedings. Given the clear statement of the Court of Appeal that the Bailiff's constitutional functions in connection with the States did not impinge on his judicial independence, and the fact that a domestic challenge was not only not pursued by the applicant in the domestic proceedings, but was not raised by the Government until a late stage of the Convention proceedings, the Court found that the applicant's failure to challenge the Bailiff in Guernsey could not be said to have been unreasonable, and could not amount to a tacit waiver of his right to an independent and impartial tribunal. There was no suggestion that the Bailiff was subjectively prejudiced or biased when he heard the applicant's planning appeal in June 1995. The sole question was whether the Bailiff had the required 'appearance' of independence, or the required 'objective' impartiality. The Bailiff's functions were not limited to judicial matters, he was also actively involved in non-judicial functions on the island. The Court did not accept the Government's analysis that when the Bailiff acted in a non-judicial capacity he merely occupied positions rather than exercising functions: even a purely ceremonial constitutional role had to be classified as a 'function'. The Bailiff had personal involvement with the planning matters first in 1990, when, as Deputy Bailiff, he presided over the adoption of DDP6. The second occasion was on 6 June 1995, when he presided over the Royal Court in the determination of the applicant's planning appeal. Any direct involvement in the passage of legislation, or of executive rules, was likely to be sufficient to cast doubt on the judicial impartiality of a person subsequently called on to determine a dispute over whether reasons existed to permit a variation from the wording of the legislation or rules at issue. The States of Deliberation in Guernsey was the body which passed the regulations at issue. The mere fact that the Deputy Bailiff presided over the States of Deliberation when DDP6 was adopted was capable of casting doubt on his impartiality when he subsequently

determined, as the sole judge of the law in the case, the applicant's planning appeal. The applicant therefore had legitimate grounds for fearing that the Bailiff may have been influenced by his prior participation in the adoption of DDP6. That, however slight its justification, was sufficient to vitiate the impartiality of the Royal Court. It followed that there had been a breach of A 6(1).

Costs and expenses (GBP 20,913.90). Finding of violation constituted sufficient just satisfaction for any non-pecuniary damage.

Cited: De Haan v NL (26.8.1997), Findlay v UK (25.2.1997), Håkansson and Sturesson v S (21.2.1990), Procola v L (28.9.1995), Vasilescu v RO (22.5.1998).

McLeod v United Kingdom (1999) 27 EHRR 493 98/82

[Application lodged 22.5.1994; Commission report 9.4.1997; Court Judgment 23.9.1998]

The applicant, Ms Sally McLeod, and her husband separated in 1986 and were divorced in July 1988. The County Court ordered that the former matrimonial home be transferred to the applicant on payment of GBP 30,000. The Court ordered the division of property in accordance with a list identified in the order and on 23 August 1989 ordered Ms McLeod to make arrangements for the delivery of her ex-husband's property within fourteen days. The order was backed by a penal notice. On 3 October 1989 Mr McLeod, accompanied by his siblings and a solicitor's clerk, and fearing there would be a breach of the peace, having made arrangements for two police officers to be present went to remove his remaining property. The applicant was not home but her mother allowed Mr McLeod and his party access to the property. The applicant returned home. She was angry and objected to the removal of the property. The applicant instituted criminal proceedings against those involved in the incident, which were unsuccessful. Together with her mother, she then instituted three sets of civil proceedings for trespass, one against her ex-husband and his siblings, one against the solicitor's clerk and a third against the two police officers. On 12 November 1992 the High Court dismissed the action against the police officers on the grounds that they had not trespassed on the applicant's land or goods. Her appeal was dismissed by the Court of Appeal on 3 February 1994. The House of Lords refused her application for leave to appeal. On 27 November 1992 the Brentford County found that the applicant's ex-husband, his brother and sister and his solicitors had trespassed on her land and property and awarded her compensation. The applicant complained that the entry of the police into her house on 3 October 1989 and the subsequent failure of the courts to grant her legal protection amounted to a violation of her right to respect for her home and private life and to the peaceful enjoyment of her possessions.

Comm found by majority (14–2) NV 8, unanimously NV P1A1.

Court found by majority (7–2) V 8, unanimously not necessary to examine P1A1.

Judges: Mr Thór Vilhjálmsson, President, Mr A Spielmann, Sir John Freeland (jpd), Mr M A Lopes Rocha, Mr G Mifsud Bonnici (jpd), Mr B Repik, Mr P Kûris, Mr J Casadevall, Mr P Van Dijk.

The entry of the police into the applicant's home on 3 October 1989 constituted an interference with her right to respect for her private life and home. The concept of breach of the peace had been clarified by the English courts. The police had a duty to prevent a breach of the peace that they reasonably apprehended would occur and to stop a breach of the peace that was occurring. In the execution of that duty, the police had the power to enter into and remain on private property without the consent of the owner or occupier. That power was preserved by s 17(6) of the Police and Criminal Evidence 1984 Act. The power of the police to enter private premises without a warrant to deal with or prevent a breach of the peace was defined with sufficient precision for the foreseeability criterion to be satisfied. The interference was, therefore, in accordance with the law. The aim of the power enabling police officers to enter private premises to prevent a breach of the peace was clearly a legitimate one for the purposes of A 8, namely the prevention of disorder or crime, and there was nothing to suggest that it was applied in the present case for any other purpose. Since Mr McLeod's solicitors genuinely believed that a breach of the peace might occur when their client removed his property from the former matrimonial home, the police could not be

faulted for responding to their request for assistance. However, the police did not take any steps to verify whether Mr McLeod was entitled to enter the applicant's home on 3 October 1989 and remove his property. Upon being informed that the applicant was not present, the police officers should not have entered her house, as it should have been clear to them that there was little or no risk of disorder or crime occurring. Therefore the means employed by the police officers were disproportionate to the legitimate aim pursued. Accordingly, there had been a violation of A 8.

Having regard to the finding that the entry of the police officers into the applicant's home was not justified under A 8(2), the Court did not consider it necessary to examine further the complaint of failure to comply with a positive obligation.

The complaint under P1A1 was not maintained before the Court which saw no reason to examine it of its own motion.

Finding of violation sufficient just satisfaction for any non-pecuniary damage suffered by the applicant. Costs and expenses (GBP 15,000).

Cited: Margareta and Roger Andersson v S (25.2.1992), Incal v TR (9.6.1998), Kopp v CH (25.3.1998), Olsson (No 1) v S (24.3.1988), Robins v UK (23.9.1997), Sunday Times (No 1) v UK (26.4.1979).

McMichael v UK (1995) 20 EHRR 205 95/7

[Application lodged 11.10.1989; Commission report 31.8.1993; Court Judgment 24.2.1995]

The first applicant, Antony McMichael, and the second applicant, Margaret McMichael were married on 24 April 1990. On 29 November 1987 the second applicant gave birth to a son, A. The first applicant, who was then known as Antony Dench, and the second applicant, were living together and at the time the second applicant expressly denied that the first applicant was A's father, he was not identified on the birth certificate. The second applicant had a history of severe and recurrent mental illness, diagnosed as manic depressive psychosis. A was taken into care. The applicants complained that they had been deprived of the care and custody of their son and thereby of their right to found a family, as well as of access to the child who had ultimately been freed for adoption. They alleged that they had not received a fair children's hearing and not had access to confidential reports and other documents submitted to the hearing. The first applicant also submitted that, as a natural father, he had no legal right to obtain custody of A or to participate in the custody or adoption proceedings and that, accordingly, he had been discriminated against.

Comm found unanimously V 8, by majority (11–2) NV 6(1) in respect of the first applicant, unanimously V 6(1) in respect of the second applicant, unanimously NV 14 in respect of the first applicant.

Court found unanimously no jurisdiction to entertain the applicants' complaints directed against the taking of A into care, the termination of access to A and the freeing of A for adoption, unanimously not necessary to rule whether it had jurisdiction to entertain the applicants' complaint relating to the fairness of the adoption proceedings, unanimously 6(1) not applicable to the first applicant's complaint, unanimously V 6(1) in respect of the second applicant, by majority (6–3) V 8 in respect of the first applicant, unanimously V 8 in respect of the second applicant, unanimously NV 14+6(1) or 14+8 in respect of the first applicant.

Judges: Mr R Ryssdal, President (jpd), Mr F Gölcüklü, Mr L-E Pettiti, Mr R Macdonald, Mr C Russo, Mr A Spielmann, Mrs E Palm (jpd), Mr I Foighel, Sir John Freeland (jpd).

The compass of the case before the Court was delimited by the Commission's decision on admissibility. Accordingly, since the grievances in question were declared inadmissible by the Commission as being manifestly ill-founded, the Court had no jurisdiction to entertain them. In the light of the Court's finding in relation to the care and to the fact that full disclosure of relevant documents was made in the later adoption proceedings themselves, the Court did not consider it necessary to rule whether the scope of the case as referred to the Court also extended to the further complaint regarding fairness. The new material the applicants claimed was included in the Government's memorial and took the form either of further particulars as to the facts underlying the complaints declared admissible by the Commission or of legal argument relating to those facts.

The Court was not precluded from taking cognisance of that material in so far as it was judged to be pertinent.

A 6(1): In respect of the second applicant, A 6(1) was applicable to the care proceedings before the children's hearings and the Sheriff Court. The Court agreed with the Commission's reasoning that A 6(1) had no application to the complaint of the first applicant, that he was unable to see the confidential reports and documents submitted in the care proceedings. Even to the extent that the first applicant could claim 'civil rights' under Scots law in respect of the child A, the care proceedings in question did not involve the determination of any of those rights, since he had not taken the requisite prior step of seeking to obtain legal recognition of his status as a father. It was not necessary for the Court to resolve the disputed issue as to whether the children's hearing could be regarded as a tribunal within the meaning of A 6(1) in the present case. In this sensitive domain of family law there may be good reasons for opting for an adjudicatory body that did not have the composition or procedures of a court of law of the classic kind. Nevertheless, notwithstanding the special characteristics of the adjudication to be made, as a matter of general principle the right to a fair, adversarial, trial meant the opportunity to have knowledge of and comment on the observations filed or evidence adduced by the other party. In the present case, the lack of disclosure of such vital documents as social reports was capable of affecting the ability of participating parents not only to influence the outcome of the children's hearing in question but also to assess their prospects of making an appeal to the Sheriff Court. In relation to disputes between a parent and a local authority over children taken into care, the Sheriff Court satisfied the conditions of A 6(1) as far as its composition and jurisdiction were concerned. However, the requirement of an adversarial trial was not fulfilled before the Sheriff Court, any more than it had been on the relevant occasions before the children's hearing. Therefore, Mrs McMichael did not receive a fair hearing, within the meaning of A 6(1) at either of the two stages in the care proceedings concerning her son A and there had accordingly been a breach of A 6(1).

The mutual enjoyment by parent and child of each other's company constituted a fundamental element of family life and domestic measures hindering such enjoyment amounted to an interference with the right protected by A 8. In relation to both applicants the care and custody measures resulting from the procedures complained of not only came within the scope of A 8(1) but also involved an interference within the meaning of A 8(2). Whilst A 8 contained no explicit procedural requirements, the decision-making process leading to measures of interference had to be fair and such as to afford due respect to the interests safeguarded by A 8. After the initial denial by the second applicant of the first applicant's paternity of A, the two applicants had acted in concert in their endeavour to recover the custody of and have access to A and were living together and leading a joint family life. There was a difference in the nature of the interests protected by A 6(1) and 8. Thus, A 6(1) afforded a procedural safeguard, namely the 'right to a court' in the determination of one's 'civil rights and obligations'; whereas not only did the procedural requirement inherent in A 8 cover administrative procedures as well as judicial proceedings, but it was ancillary to the wider purpose of ensuring proper respect for, inter alia, family life. The difference between the purpose pursued by the respective safeguards afforded by A 6(1) and 8 might, in the light of the particular circumstances, justify the examination of the same set of facts under both Articles. In the present case, the facts complained of had repercussions not only on the conduct of judicial proceedings to which the second applicant was a party, but also on a fundamental element of family life of the two applicants. The Government had conceded, in the context of A 6(1), the unfair character of the care proceedings on specified occasions by reason of the inability of the second applicant or the first applicant acting as her representative to have sight of certain documents considered by the children's hearing and the Sheriff Court. The Court took note of that concession and found that in that respect the decision-making process determining the custody and access arrangements in regard to the child did not afford the requisite protection of the applicants' interests as safeguarded by A 8. Having regard to the approach taken in the present judgment in regard to the treatment of the applicants' complaint under A 8, the Court did not deem it appropriate to draw any material distinction between the two applicants as regards the

extent of the violation found, despite some differences in their legal circumstances. There had been a breach of A 8 in respect of both applicants.

A difference of treatment was discriminatory if it had no reasonable and objective justification, that is, if it did not pursue a legitimate aim or if there was not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The first applicant's complaint was essentially directed against his status as a natural father under Scots law. As the Commission remarked, it is axiomatic that the nature of the relationships of natural fathers with their children will inevitably vary, from ignorance and indifference at one end of the spectrum to a close stable relationship indistinguishable from the conventional matrimonial-based family unit at the other. As explained by the Government, the aim of the relevant legislation of 1986, was to provide a mechanism for identifying meritorious fathers who might be accorded parental rights, thereby protecting the interests of the child and the mother. In the Court's view, that aim was legitimate and the conditions imposed on natural fathers for obtaining recognition of their parental role respected the principle of proportionality. Therefore there was an objective and reasonable justification for the difference of treatment complained of. In conclusion, there had been no violation of A 14 taken in conjunction with A 6(1) or 8.

Non-pecuniary damage (GBP 8,000).

Cited: B v UK (8.7.1987), Golder v UK (21.2.1975), Keegan v IRE (26.5.1994), Marckx v B (13.6.1979), O v UK (8.7.1987, 9.6.1988), Powell and Rayner v UK (21.2.1990), Ruiz-Mateos v E (23.6.1993), W v UK (8.7.1987, 9 June 1988), X v UK (5.11.1981).

Megyeri v Germany (1993) 15 EHRR 584 92/49

[Application lodged 22.10.1986; Commission report 26.2.1991; Court Judgment 12.5.1992.

Mr Zoltan Istvan Megyeri was a Hungarian citizen living in Germany. On 14 March 1983 the Cologne Regional Court, before which the applicant was represented by officially-appointed counsel, ordered that he be detained in a psychiatric hospital. The court found that he had performed acts which constituted criminal offences (insulting behaviour, assault occasioning bodily harm, resisting the police, causing a traffic hazard and unauthorised departure from the scene of an accident) but that he could not be held responsible because he was suffering from schizophrenic psychosis with signs of paranoia. His applications for release were refused. In July 1986 the Aachen Regional Court considered the applicant's possible release. It relied on expert evidence and on its own impression of the applicant and considered that the applicant's continued detention was proportionate to the aim pursued, that was, the protection of the public. On 2 September 1986 the Cologne Court of Appeal dismissed his appeal against the Regional Court's decision. The applicant was not represented by counsel in the 1986 proceedings concerning his possible release. He complained that the failure to appoint a lawyer to assist him in the 1986 proceedings before the Aachen Regional Court and the Cologne Court of Appeal concerning his possible release had given rise to a violation of A 5(4).

Comm found unanimously V 5(4).

Court found unanimously V 5(4).

Judges: Mr R Ryssdal, President, M L-E Pettiti, Mr C Russo, Mr R Bernhardt, Mr J De Meyer, Mr N Valticos, Mrs E Palm, Mr I Foighel, Mr F Bigi.

The Court recalled its case-law: A person of unsound mind who was compulsorily confined in a psychiatric institution for an indefinite or lengthy period was in principle entitled, at any rate where there was no automatic periodic review of a judicial character, to take proceedings at reasonable intervals before a court to put in issue the lawfulness of his detention. A 5(4) required that the procedure followed have a judicial character and give to the individual concerned guarantees appropriate to the kind of deprivation of liberty in question; in order to determine whether a proceeding provided adequate guarantees, regard had to be had to the particular nature of the circumstances in which such proceeding took place. The judicial proceedings referred to in A 5(4) did not always need to be attended by the same guarantees as those required under A 6(1)

for civil or criminal litigation. None the less, it was essential that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation. Special procedural safeguards might prove called for in order to protect the interests of persons who, on account of their mental disabilities, were not fully capable of acting for themselves. A 5(4) did not require that persons committed to care under the head of 'unsound mind' should themselves take the initiative in obtaining legal representation before having recourse to a court. It followed therefore that where a person was confined in a psychiatric institution on the ground of the commission of acts which constituted criminal offences but for which he could not be held responsible on account of mental illness, he should, unless there were special circumstances, receive legal assistance in subsequent proceedings relating to the continuation, suspension or termination of his detention. The importance of what was at stake for him – personal liberty – taken together with the very nature of his affliction – diminished mental capacity – compelled that conclusion. The Aachen Regional Court not only considered expert reports but also heard the applicant in person. It was doubtful whether the applicant, acting on his own, was able to marshal and present adequately points in his favour on the issue, involving as it did matters of medical knowledge and expertise. It was even more doubtful whether, on his own, he was in a position to address adequately the legal issue arising. By July 1986 he had already spent more than four years in a psychiatric hospital. As required by German law, his confinement was reviewed by the courts at yearly intervals and the 1986 proceedings before the Aachen Regional Court formed part of that series. Accordingly, whilst different considerations might apply, as regards the need to appoint counsel, where a detainee applied for release more frequently than at reasonable intervals, that was not the situation in this case. Nothing revealed that this was a case in which legal assistance was unnecessary, even if the applicant did not specifically ask the Aachen Regional Court or the Cologne Court of Appeal to assign counsel to him in the proceedings in question. Nor did the Court perceive any other special circumstances which would lead it to a different conclusion. There had therefore been a breach of A 5(4).

Non-pecuniary damage (DM 5,000), costs and expenses (DM 21,000 less FF 6,900).

Cited: Wassink v NL (27.9.1990), Winterwerp v NL (24.10.1979), X v UK (5.11.1981).

Mehemi v France 97/72

[Application lodged 25.8.1994; Commission report 15.5.1996; Court Judgment 26.9.1997]

Mr Ali Mehemi was an Algerian national who was born in France and had lived all of his life in France until being deported to Algeria (ie, 33 years) where he resided at the date of hearing. He went to school in France until the age of 17. His parents lived in France and had lived there for about 40 years. His two brothers and two sisters also lived in France. He was the father of three children of French nationality, born in 1982, 1983 and 1984 and, in 1986, had married their mother, an Italian national lawfully resident in France since 1978.

In January 1991 the applicant was convicted and sentenced to six years' imprisonment for possession and illegal importation of 7 kg of hashish together with eight other people. Subsequently his permanant exclusion from France was ordered on the grounds that 'public-policy considerations preclude the presence within French territory of an alien engaged as a principal in the offence of drug trafficking'. His appeal was rejected and the permanent exclusion order was enforced on 28 February 1995. He claimed that his expulsion from France was in breach of A 8.

Comm found by majority (10–3) V 8.

Court found, unanimously, V 8.

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr R Macdonald, Mr C Russo, Mr I Foighel, Sir John Freeland, Mr MA Lopes Rocha, Mr L Wildhaber, Mr E Levits.

The applicant was born in France, had lived there for over 30 years until the permanent exclusion order was enforced and received all his schooling there. His parents, his two brothers (one of whom is French and the other the father of two French children) and his two sisters (one of whom

is French and the other the wife of a French national) lived there. He was the father of three minor children born in France in 1982, 1983 and 1984, who had French nationality, and had kept in touch with them since he was deported. In 1986 he married their mother and it did not appear that any separation or divorce proceedings had subsequently been brought. Thus, the permanent exclusion order amounted to interference with the applicant's right to respect for his private and family life. The permanent exclusion order was in accordance with the law, being based on the Public Health Code. The interference sought to achieve aims compatible with the Convention, namely the prevention of disorder or crime. It was for the Contracting States to maintain public order, in particular by exercising their right, as a matter of well-established international law and subject to their treaty obligations, to control the entry and residence of aliens and notably to order the expulsion of aliens convicted of criminal offences. However, their decisions in this field must, in so far as they may interfere with a right protected under para 1 of A 8, be necessary in a democratic society, that is to say, justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued. The Court's task was to ascertain whether the measure in issue struck a fair balance between the relevant interests, namely the applicant's right to respect for his private and family life, on the one hand, and the prevention of disorder or crime, on the other. The applicant was born in France, received all his schooling there and lived there until the age of 33, before the permanent exclusion order was enforced. His parents and his four brothers and sisters live there, as do his wife and his three minor children, who were born in France and have French nationality. It had not been established that the applicant had links with Algeria other than his nationality. He had made a number of trips to North Africa before he was deported, but to Morocco, not, with the exception of a brief visit, to Algeria. Furthermore, the Government's assertion that Mr Mehemi was a member of a trafficking network 'mainly composed of Algerians and Tunisians' was not based on any real evidence; on the contrary, the applicant's eight co-defendants included four French nationals, one Portuguese, one Franco-Tunisian, one Tunisian and one person born in Algeria of unspecified nationality. As regards establishing the household in Italy, while that was not inconceivable, since Mrs Mehemi was an Italian national, it would mean a radical upheaval for the couple's children. Moreover, because of the applicant's criminal record, there would no doubt be legal obstacles to his entry into and establishment in Italian territory which the Government had not shown to be surmountable. The fact that in 1989 the applicant had participated in a conspiracy to import a large quantity of hashish counted heavily against him. Nevertheless, in view of the applicant's lack of links with Algeria, the strength of his links with France and above all the fact that the order for his permanent exclusion from French territory separated him from his minor children and his wife, the measure in question was disproportionate to the aims pursued. There had accordingly been a breach of A 8.

Judgment constituted sufficient just satisfaction with regard to non-pecuniary damage. Costs and expenses (FF 50,000).

Cited: Saïdi v F (20.9.1993); Bouchelkia v F (29.1.1997).

Melin v France (1994) 17 EHRR 1 93/22

[Application lodged 21.11.1986; Commission report 9.4.1992; Court Judgment 22.6.1993]

Mr Pierre-André Melin had formerly practised as a lawyer. On 6 May 1985 the Nanterre Criminal Court convicted him of fraud and sentenced him to a suspended term of 16 months' imprisonment, combined with an order requiring him, *inter alia*, to compensate the victim for the damage which he had sustained. His appeals, conducted himself, to the Versailles Court of Appeal and the Court of Cassation were dismissed. He complained that he had not received in good time a copy of the judgment of the Versailles Court of Appeal and that he had been informed neither of the time-limit for submitting a memorial to the Court of Cassation nor of the date of the hearing at which his appeal was examined.

Comm found unanimously V 6(1)+6(3)(b) and (c).

Court found by majority (5–4) NV 6.

Judges: Mr R Bernhardt (jd), President, Mr F Gölcüklü, Mr L-E Pettiti, Mr SK Martens, Mr R Pekkanen (jd), Mr AN Loizou, Mr JM Morenilla, Mr AB Baka (jd), Mr L Wildhaber (jd).

As the requirements of A 6(3)(b) and (c) were specific aspects of the right to a fair trial, guaranteed under A 6(1), the Court considered all the applicant's complaints in the light of the three provisions taken together. The applicant had practised as a lawyer and had worked in the chambers of a lawyer of the Conseil d'Etat and Court of Cassation Bar. He therefore knew the provisions of the legislation and the routines of judicial procedure. He could not claim that the authorities made it impossible for him to produce a memorial. As he had deliberately waived his right to be assisted by a lawyer, he was under a duty to show diligence himself. Accordingly, he did not suffer any interference with the effective enjoyment of the rights guaranteed under A 6.

Cited: De Geouffre de la Pradelle v F (16.12.1992), Hadjianastassiou v GR (16.12.1992).

Mellacher and Others v Austria (1990) 12 EHRR 391 89/24

[Applications lodged 5.8.1983, 22.5.1984 and 4.7.1984; Commission report 11.7.1988; Court Judgment 19.12.1989]

Mr Leopold and Mrs Maria Mellacher, the first applicants, Mr Johannes, Mr Ernst and Mr Anton Mölk and Mrs Maria Schmid, the second applicants, and Mrs Christiane Weiss-Tessbach and Mrs Maria Brenner-Felsach, the third applicants, were property owners who complained that the Austrian authorities had deprived them of a proportion of their future rental income by the operation of the Rent Act 1981. They invoked P1A1 and A 14.

Comm found unanimously V P1A1 first two applications, by a majority (10–1) NV P1A1 in respect of the third application, unanimously no separate issue under 14 in respect of the second application.

Court found by a majority (12–5) NV P1A1 in the first two applications, unanimously NV P1A1 in the third application, unanimously not necessary to examine 14+P1A1.

Judges: Mr R Ryssdal, President, Mr J Cremona (jd), Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert (jd), Mr F Gölcüklü (jd), Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt (jd), Mr A Spielmann (jd), Mr J De Meyer, Mr SK Martens, Mrs E Palm, Mr I Foighel.

It was not disputed that the reductions in rent made pursuant to the Rent Act 1981 constituted an interference with the enjoyment of the applicants' rights as owners of the rented properties. The measures taken did not amount either to a formal or to a *de facto* expropriation, there was no transfer of the applicants' property, nor were they deprived of their right to use, let or sell it; the measures amounted to a control of the use of property. In order to implement social and economic policies, the legislature has to have a wide margin of appreciation both with regard to the existence of a problem of public concern warranting measures of control and as to the choice of the detailed rules for the implementation of such measures. The Court would not interfere with the legislature's judgment as to what was in the general interest unless it was manifestly without reasonable foundation. The explanations given for the legislation in question (to reduce excessive and unjustified disparities between rents for equivalent flats and to combat property speculation) could not be characterised as manifestly unreasonable; the Act had a legitimate aim in the general interest. In remedial social legislation and in particular in the field of rent control, it had to be open to the legislature to take measures affecting the further execution of previously concluded contracts in order to attain the aim of the policy adopted. Some factors in the Rent Act placed some landlords at a greater disadvantage than others. However, legislation instituting a system of rent control and aiming, *inter alia*, at establishing a standard of rents for equivalent apartments at an appropriate level had to, perforce, be general in nature. The exceptions and exclusions complained of could not be said to be inappropriate or disproportionate. Having taken into account the provisions of the Rent Act and the legitimate aims pursued by the legislation, the measures complained of did not did not fall outside the State's margin of appreciation.

Cited: Bönisch v A (2.6.1986), James v UK (21.2.1986), Lithgow v UK (8.7.1986), Marckx v B (13.6.1979), Sporrong and Lönnroth v S (23.9.1982).

Mentes and Others v Turkey (1998) 26 EHRR 595 97/93

[Application lodged 20.12.1993; Commission report 7.3.1996; Court Judgment 28.11.1997 (merits), 24.7.1998 (A 50)]

The applicants, Ms Azize Mentes, Ms Mahile Turhalli and Ms Sulhiye Turhalli and Ms Sariye Uvat lived in south-east Turkey. Relying on A 3, 5, 6, 8, 13, 14 and 18 they complained that their homes had been burnt and that they had been forcibly and summarily expelled from their village by State security forces on 25 June 1993. The fourth applicant also invoked A 2 in relation to the death of her twins who were born prematurely after her expulsion from her home.

Comm found with respect to the first three applicants, by majority (27–1) V 8, (26–2) V 3, unanimously NV 5, (26–2) V 6, (26–2) V 13, unanimously NV 14 or 18, with regard to the fourth applicant, unanimously NV 2, 3, 5, 6, 8, 13, 14 and 18.

Court dismissed by majority (15–6) the Government's preliminary objection, found (16–5) V 8 with respect to the first three applicants, (20–1) non-examination A 3 with respect to the first three applicants, unanimously not necessary to examine A 5(1) with respect to the first three applicants, unanimously not necessary to consider A 6(1) with respect to the first three applicants, (16–5) V 13 with respect to the first three applicants, unanimously NV 14 and 18 with respect to the first three applicants, unanimously NV 2, 3, 5, 6, 8, 13, 14 and 18 of the Convention with regard to the fourth applicant.

Judges (merits): Mr R Ryssdal, President, Mr R Bernhardt, Mr F Gölcüklü (jpd/pd), Mr F Matscher (jpd), Mr B Walsh, Mr C Russo (pd), Mr A Spielmann, Mr J De Meyer (pd), Mr N Valticos, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla, Mr AB Baka, Mr G Mifsud Bonnici (pd), Mr D Gotchev (pd), Mr P Jambrek (pd), Mr P Kûris, Mr U Lôhmus, Mr E Levits, Mr V Butkevych.

Judges (A 50): Mr R Bernhardt, President, Mr F Gölcüklü (jpd), Mr F Matscher (jpd), Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr J De Meyer (jpd), Mr N Valticos, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla, Mr AB Baka, Mr G Mifsud Bonnici, Mr D Gotchev (jpd), Mr P Jambrek, Mr P Kûris, Mr U Lôhmus, Mr E Levits, Mr V Butkevych.

The applicants had not themselves approached any domestic authority with their Convention grievances. However, after becoming aware of their allegations, the competent public prosecutors did not carry out any meaningful investigation into the matter. The insecurity and vulnerability of the applicants' position following the destruction of their homes had to be borne in mind. In the absence of any convincing explanations from the Government in rebuttal, the applicants had demonstrated the existence of special circumstances which dispensed them at the time of the events complained of from the obligation to exhaust domestic remedies. In the exceptional circumstances of this case, the Court was not satisfied that remedies before the administrative and civil courts were adequate and sufficient in respect of the applicants' complaint that their homes had been destroyed by the security forces. The Government's preliminary objection of non-exhaustion was dismissed. However, the ruling was confined to the exceptional circumstances of the present case and was not to be interpreted as a general statement that remedies were ineffective in this area of Turkey or that applicants were absolved from the obligation under A 26 to have normal recourse to the system of remedies which were available and functioning.

The establishment and verification of the facts were primarily a matter for the Commission. While the Court was not bound by the Commission's findings of fact and remained free to make its own appreciation in the light of all the material before it, it was only in exceptional circumstances that it would exercise its powers in this area. In the case under consideration, the Commission reached its findings of fact on the basis of an investigation, in the course of which documentary evidence, including written statements, was submitted and oral evidence of 11 witnesses was taken by three delegates at hearings in Ankara. The Court, having itself carefully examined the evidence gathered by the Commission, was satisfied that the facts as established were proved beyond reasonable doubt as far as concerned the first three applicants' allegations, but not those of the fourth applicant.

There was no reason to distinguish between the first applicant and the second and third applicants. Given her strong family connection and the nature of her residence, the first applicant's

occupation of the house fell within scope of A 8 of the Convention. Furthermore, the facts established by Commission and which Court had accepted disclosed a particularly grave interference with the first three applicants' right to respect for private life, family life and home as guaranteed by A 8 and that the measure was devoid of justification. There had therefore been a breach of A 8 with respect to the first three applicants.

In view of the specific circumstances of the case and the finding of a violation under A 8 it was not necessary to examine further the allegation under A 3.

Before the Court, the applicants stated that they did not wish to pursue the complaint under A 5(1) and the Court did not find it necessary to deal with the matter of its own motion.

It was appropriate to examine the complaint under A 6 in relation to the more general obligation on States under A 13 to provide an effective remedy in respect of violations of the Convention and therefore it was not necessary to determine whether there has been a violation of A 6(1).

Although the applicants had not approached any domestic authority before bringing their application to Strasbourg, the manner in which investigations were conducted, following the Commission's communication of the application to the respondent Government, could be taken into account in examination of the applicants' initial complaint that they did not dispose of an effective remedy. No thorough and effective investigation had been conducted into the applicants' allegations and this had resulted in undermining the exercise of any remedies at their disposal, including the pursuit of compensation before the courts. There had therefore been a breach of A 13 in respect of the first three applicants.

On the basis of the facts as established by the Commission there was no violation of A 14 or 18.

The evidence established by the Commission was insufficient to allow the Court to reach a conclusion concerning the existence of any administrative practice of the violation of A 8 and 13.

The fourth applicant accepted before the Court that no facts had been established with respect to the fourth applicant's specific complaints.

Costs and expenses (GBP 27,795 to first three applicants less 13,295 FF to first three applicants). Pecuniary damage (by majority (15–4) GBP 18,000 to Azize Mentes, GBP 26,000 to Mahile Turhalli, GBP 24,000 to Sulhiye Turhalli), non-pecuniary damage (by majority (15–4) GBP 8,000 to each of the three applicants).

Cited (merits): Ireland v UK (18.1.1978), Akdivar and Others v TR (16.9.1996), Aksoy v TR (18.12.1996), Aydin v TR (25.9.1997).

Cited (A 50): Mentes and Others v TR (28.11.1997), Akdivar and Others v TR (1.4.1998) (A 50), Selçuk and Asker v TR (24.4.1998).

Messina v Italy 93/13

[Application lodged 27.10.1987; Commission report 20.2.1992; Court Judgment 26.2.1993]

Mr Antonio Messina was arrested on 18 October 1985. He was charged with membership of a 'Mafia' organisation and with drugs offences. The applicant remained in detention on remand. During his detention, the applicant had met with problems in connection with the forwarding of his mail: according to the applicant, he never received the correspondence which had been sent to him in prison, with the exception of a letter from his lawyer. The correspondence allegedly included a telegram from his wife, which had been sent in April 1987. The applicant claimed that he had on several occasions asked the investigating judge for his mail to be delivered, but to no avail. The Government claimed that the applicant's correspondence had been subject to inspection by the investigating judge from 4 November 1985 onwards. Without being able to provide further details, they stated that the applicant had been officially informed of this, at the latest, when the first duly approved letter reached him. According to the Government, nine letters addressed to the applicant or sent by him were submitted for inspection, although they conceded that the applicant had on several occasions complained in writing that he had not received the letters sent to him in prison. The applicant complained of the length of the criminal proceedings brought against him and of interference with his right to respect for his correspondence.

Comm found unanimously V 6(1) and V 8.

Court held unanimously V 6(1), and by a majority (7–2) V 8.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr N Valticos, Mr SK Martens, Mrs E Palm, Mr F Bigi.

The applicant alleged that the criminal proceedings brought against him had not been conducted within a 'reasonable time' as required by A 6(1). The period to be taken into consideration began with the applicant's arrest on 18 October 1985, and had not ended at the time of the hearing as the proceedings were still pending in the Marsala District Court. The reasonableness of the length of proceedings was to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. In view of the nature of the charges preferred against the applicant, the judicial authorities must have encountered some difficulties linked to the number of people to be questioned and the number of witnesses to be heard, as well as to the need for evidence to be taken on commission. However, it was not reasonable in this case to have a lapse of time which was already more than seven years for proceedings which had still to be completed. There was therefore a violation of A 6(1).

Regarding the complaint under A 8, whether there was in fact 'interference by a public authority' – over and above the requirement of the investigating judge's approval – was disputed. The applicant claimed that he had never received the relevant letters, post card and telegram, whereas the Government maintained that they had been delivered. The Court was confronted with a dispute concerning the exact circumstances of the case rather than a legal problem. The information obtained led the Commission, to which the establishment and verification of the facts primarily fell, to give credence to the applicant's allegations, and at the same time the Government conceded that the applicant had made written complaint of not receiving his correspondence. A Contracting State could not claim to have discharged its obligations under A 8 merely by supplying a record of a prisoner's incoming mail. In the absence of documents or other evidence such as might establish the contrary, the Court could not be certain that the items in question reached their addressee, and accordingly concluded that there was a violation of A 8.

Non-pecuniary damage (ITL 5,000,000).

Cited: Campbell v UK (25.3.1992), Cruz Varas and Others v Sweden (20.3.1991) Silver and Others v UK (25.3.1983).

Miailhe v France (1993) 16 EHRR 332 93/5

[Application lodged 11.12.1986; Commission report 8.10.1991; Court Judgment 25.2.1993]

The three applicants were Mr William Miailhe, who had dual French and Philippine nationality, was a company director, and was also honorary consul of the Philippines in Bordeaux, Mrs Victoria Miailhe and Mrs Brigitte Miailhe, both of French nationality, the mother and the wife of the first applicant. In January 1983 customs officers accompanied by a senior police officer made two searches of premises which housed the head offices of the companies managed by Mr Miailhe and which served as the Philippines consulate. The searches and seizures were based on the Customs Code and were part of an investigation to determine whether the applicants were to be regarded as being resident in France and whether they had contravened the legislation on financial dealings with foreign countries. Documents were seized and a judicial investigation in respect of the three applicants was commenced on 19 February 1985. The applicants' proceedings against the Director General of Customs and Excise to have the seizures declared null and void in the Paris District Court, tribunal de grande instance and Court of Cassation were unsuccessful. The applicants complained that the searches and seizures made on their premises infringed A 8 and 13.

Comm found by majority (11–7) NV 8, unanimously NV 13.

Court unanimously dismissed the Government's preliminary objection, found by majority (8–1) V 8, unanimously not necessary to examine 13.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson (d), Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr N Valticos, Mr JM Morenilla, Mr MA Lopes Rocha, Mr L Wildhaber.

The applicants brought proceedings to have customs reports on the facts and on the seizures declared null and void and pursued them to a conclusion, without omitting to plead A 8. They could not be criticised for not having made use of a legal remedy (complaint before the Criminal Court) which would have been directed to essentially the same end. The Government's objection was therefore dismissed.

There was an interference with the applicants' private life and their correspondence. It was not necessary to determine the issue of whether the interferences should have been judicially authorised in order to be in accordance with the law, they were in other respects incompatible with A 8. The interferences had a legitimate aim of the economic well-being of the country. Contracting States had a certain margin of appreciation in assessing the need for an interference, but that went hand in hand with European supervision. The exceptions provided for in para 2 of A 8 were to be interpreted narrowly and the need for them in a given case had to be convincingly established. Due to the difficulties States encountered in preventing capital outflows and tax evasion it might be necessary to have recourse to measures such as house searches and seizures in order to obtain physical evidence of exchange-control offences and, where appropriate, to prosecute those responsible. Nevertheless, the relevant legislation and practice had to afford adequate and effective safeguards against abuse. That was not so in the instant case. At the material time the customs authorities had very wide powers; in particular, they had exclusive competence to assess the expediency, number, length and scale of inspections. Above all, in the absence of any requirement of a judicial warrant the restrictions and conditions provided for in law appeared too lax and full of loopholes for the interferences with the applicants' rights to have been strictly proportionate to the legitimate aim pursued. The seizures made on the applicants' premises were wholesale and, above all, indiscriminate, to such an extent that the customs considered several thousand documents to be of no relevance to their inquiries and returned them to the applicants. There had therefore been a breach of A 8.

The applicants did not rely on A 13 before the Court, which did not consider that it had to examine the issue of its own motion.

A 50 reserved.

Cited: Klass and Others v D (6.9.1978), Niemietz v D (16.12.1992).

Miailhe (No 2) v France (1997) 23 EHRR 491 96/36

[Application lodged 16.9.1991; Commission report 11.4.1995; Court Judgment 26.9.1996]

Mr William Miailhe, who had dual French and Philippine nationality and was formerly honorary consul of the Philippines in Bordeaux was convicted of tax evasion. Relying on A 6 he complained that he had not had access to all the documents relied on by the Revenue which had been seized in violation of A 8.

Comm found by a majority (11–2) V 6(1).

Court dismissed the Government's preliminary objections, found unanimously NV 6(1).

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr C Russo, Mr N Valticos, Mrs E Palm, Mr R Pekkanen, Mr AN Loizou, Mr P Jambrek, Mr P Kûris.

The applicant complained that he had not had access to all the documents held by the Revenue and that this had contravened the principle of equality of arms during the administrative stage before the Tax Offences Board (CIF) gave its opinion and had infringed the rights of the defence during the criminal trial. He relied on A 6(1). The Government's preliminary objections that the application was incompatible *ratione materiae* and that domestic remedies had not been exhausted were devoid of purpose. The Court noted that the documents seized by the customs were passed on by them to the Revenue in May 1983. Three years later the Revenue lodged a complaint alleging

tax evasion against the applicant. It had already served supplementary tax assessments on him in 1985. The applicant now complained that he had not been given the documents seized by the customs in breach of A 8 so that he could contest the fraud charges by proving that he was resident for tax purposes in the Philippines, both during the criminal proceedings and during the preceding stage before the CIF. The *Miailhe (No 1)* judgment on the merits was given on 25 February 1993, after the customs had passed documents on to the Revenue. Of the private letters and personal documents referred to in the judgment, those which were used for the judicial investigation in the criminal proceedings had been annexed to the summary tax-audit report filed by the Revenue in support of its complaint. At the investigating judge's request, the Revenue added documents from the Philippines. All those documents were in the criminal case file, to which the applicant had access. That file did not contain all of the documents provided by the Philippine authorities; however, the documents relevant to the criminal case were added to the file during the judicial investigation, at the request of the investigating judge. By himself filing some of the documents from the Philippines, the applicant had the possibility of establishing the genuineness of his links with the Philippines. Such evidence, however, was relevant only to the first offence of failure to declare his general income for the year 1981, as the second offence concerned agricultural and land income that he had declared in France. It was not for the Court to substitute its view for that of the national courts which were primarily competent to determine the admissibility of evidence. It had to nevertheless satisfy itself that the proceedings as a whole were fair, having regard to any possible irregularities before the case was brought before the courts of trial and appeal and checking that those courts had been able to remedy them if there were any. In the instant case the ordinary courts did, within the limits of their jurisdiction, consider the objections of nullity raised by the applicant and dismissed them. Furthermore, it appeared clearly from their decisions that they based their rulings solely on the documents in the case file, on which the parties had presented argument at hearings before them, thereby ensuring that the applicant had a fair trial. The failure to produce certain documents during the procedure of consulting the CIF or in the criminal proceedings therefore did not infringe the applicant's defence rights or the principle of equality of arms. The Court noted that before the CIF the taxpayer could, within 30 days of the application to it, communicate any information he deemed necessary. When it was consulted on the advisability of lodging a complaint for offences the CIF would give an opinion which was binding on the Minister. The criminal courts had unfettered discretion to assess the facts of an alleged fraud and may acquit. The fact that there were no adversarial proceedings before the CIF gave its opinion may in some cases give rise to a fear that the taxpayer would find himself in a more difficult position. Nevertheless, only the preliminary intervention of an advisory body was concerned. In the instant case there was a judicial investigation and no direct summons. Furthermore, the criminal proceedings that were set in motion following the Revenue's complaint were conducted at two levels of jurisdiction – first instance and appeal – and this enabled the applicant, to whom it was further open to lodge an appeal on points of law, to present argument on the prosecution evidence and the charges against him. The proceedings in issue, taken as a whole, were fair. There was no breach of A 6(1).

Cited: Bendenoun v F (24.2.1994), Imbrioscia v CH (24.11.1993), Miailhe (No 1) v F (25.2.1993), Schenk v CH (12.7.1988),

Milasi v Italy (1988) 10 EHRR 333 87/11

[Application Lodged 18.7.1983; Commission report 4.12.1985; Court Judgment 25.6.1987]

In June 1973 Mr Elio Milasi was informed by the Italian Public Prosecutor that criminal proceedings were being instituted against him for public order offences in relation to the Fascist Party. The various matters were not finally disposed of until a District Court gave judgment on 7 March 1983, almost 10 years later.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mrs D Bindschedler-Robert, Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr J Gersing.

The period to be considered began not on 18 June 1973, when the applicant was informed that the proceedings were being instituted, but only on 1 August 1973, when the Italian declaration recognising the right of individual petition took effect. In order to determine the reasonableness of the length of time which elapsed after that date, regard had to be had, however, to the state of the case at that moment. The period ended on 7 March 1983, when the Reggio Calabria District Court gave judgment. The period to be considered amounted to more than nine years, seven months. The reasonableness of the length of proceedings had to be assessed according to the circumstances of the case and having regard to the criteria laid down in the Court's case-law. No problem arose as regards the applicant's conduct. The charges against the accused did not raise any difficult points of law. The facts to be investigated and the procedure to be followed were somewhat complicated on account of the number of persons involved, 35, but that could not justify a delay of nearly ten years. The Convention placed Contracting States under a duty to organise their legal systems so as to enable the courts to comply with the requirements of A 6(1), including that of trial within a reasonable time; nonetheless, a temporary backlog of business did not involve liability on the part of the Contracting States provided that they took, with the requisite promptness, remedial action to deal with an exceptional situation of this kind. Despite the efforts made to improve the functioning of the Reggio Calabria District Court, the applicant had to wait nearly 10 years before the criminal charge against him was the subject of a judicial determination at first instance. A period of that length could not be regarded as the consequence of a passing crisis. The Court did not underestimate the importance of the political and social background, however, it does not consider that they justified a delay of nearly 10 years which, moreover, continued well beyond the cessation of the disturbances in Reggio Calabria. In the light of all the circumstances of the case, the applicant was not tried within a reasonable time and there was accordingly a violation of A 6(1).

JS (ITL 7,000,000).

Cited: Foti and Others v I (10.12.1982), Zimmermann and Steiner v CH (13.7.1983).

Minelli v Switzerland (1983) 5 EHRR 554 83/3

Application lodged 20.6.1979; Commission report 16 May 1981; Court Judgment 25.3.1983]

Mr Ludwig Minelli was a journalist. As a result of an article he published on 27 January 1972, containing accusations of fraud against a company and its director, a criminal complaint of defamation committed through the press was brought by them against him. On 12 May 1976, the Chamber of the Canton of Zürich Assize Court decided that it could not hear the complaint against the applicant because the absolute limitation period of four years had expired on 27 January 1976. It directed that the applicant should bear two-thirds of the court costs and also ordered him to pay to each of the complainants compensation in respect of their expenses. An appeal against that decision, relying on A 6(2), was dismissed by the Court of Cassation on 30 September 1976. A further appeal was dismissed by the Public-Law Chamber of the Federal Court on 16 May 1979. He complained that the decision of 12 May 1976 of the Chamber of the Canton of Zürich Assize Court, ordering him to pay costs and compensation, amounted to 'a punishment on suspicion' and thus violated A 6(2).

Comm found unanimously V 6(2).

Court found unanimously V 6(2).

Judges: Mr G Wiarda, President, Mrs D Bindschedler-Robert, Mr G Lagergren, Mr F Gölcüklü, Mr F Matscher, Mr R Macdonald, Mr C Russo.

The infringement of an individual's 'civil' right sometimes also constituted a criminal offence. To determine whether there was a 'criminal charge', an examination had to be made of the situation of the accused – as it arose under the domestic legal rules in force – in the light of the object of A 6, namely, the protection of the rights of the defence. In Switzerland, defamation proceedings were

criminal in nature. A 6(2) governed criminal proceedings in their entirety, irrespective of the outcome of the prosecution, and not solely the examination of the merits of the charge. In this case, the apportionment of the costs was the corollary of and necessary complement to the termination of the prosecution. Although limitation had extinguished the criminal action instituted against the applicant, an official procedural act of the Chamber of the Assize Court was required to establish the fact, and it was precisely such a finding that was contained in the decision complained of. The wording, that 'the charge cannot be heard' and then that 'the accused' had to bear some of the costs and expenses, that at that final stage of the proceedings the Chamber of the Assize Court still regarded the applicant as being 'charged with a criminal offence', within the meaning of A 6. A 6(2) was therefore applicable in the case.

The presumption of innocence would be violated if, without the accused's having previously been proved guilty according to law and, notably, without his having had the opportunity of exercising his rights of defence, a judicial decision concerning him reflected an opinion that he was guilty. That might be so even in the absence of any formal finding; it sufficed that there was some reasoning suggesting that the court regarded the accused as guilty. The reasoning of the Chamber of the Assize Court showed that it was satisfied of the guilt of the applicant, an accused who had not had the benefit of the guarantees contained A 6(1) and 6(3). Notwithstanding the absence of a formal finding and despite the use of certain cautious phraseology ('in all probability', 'very probably'), the Chamber proceeded to make appraisals that were incompatible with respect for the presumption of innocence. The Federal Court judgment added certain nuances to the decision of the Assize Court, however, it was confined to clarifying the reasons for that decision, without altering their meaning or scope. By rejecting the applicant's appeal, the judgment confirmed the decision in law; at the same time, it approved the substance of the decision on the essential points. Accordingly, there had been a violation of A 6(2).

Adequate compensation furnished by the finding of a violation. Costs and expenses (CHF 8,668.65).

Cited: Adolf v A (26.3.1982), Artico v I (13.5.1980), Deweer v B (27.2.1980) Le Compte, Van Leuven and De Meyere v B (18.10.1982), Neumeister v A (7.5.1974).

Miragall Escolano and Others v Spain 00/9

[Applications lodged 1997 and 1998; Court Judgment 25.1.2000]

The National Order of Pharmacists challenged the validity of a decree changing the profit margins of pharmacists. The Supreme Court annulled that decree. Its decision was served three days later on the National Order of Pharmacists, but not on the applicants, who were not parties to the proceedings. The decision was published some months later in the Official Gazette. The applicants filed applications with the public authority for compensation for the damage caused to them by the annulled decree. Since the public authority did not respond, the applicants commenced proceedings in the High Court. The High Court rejected their claims on the ground that their applications for compensation had been filed with the public authority one year and two days after the delivery of the decision quashing the decree and were therefore out of time. The applicants' argument before the Constitutional Court at that time should have started running on the date of publication of the decision in the Official Gazette or the date of notification of the decision to the National Order of Pharmacists. The applicants complained of lack of access to a court.

Court found by majority (6–1) V 6(1).

Judges: Mr M Pellonpää (d), President, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mr I Cabral Barreto, Mrs N Vajic, Mr MJ Hedigan.

Interpretation of the provisions governing the time for entering an appeal should not have the effect of depriving the public of the remedies available. In this case, it was highly unlikely that the applicants had knowledge of a decision which was not addressed to them and delivered in a case in which they were not parties. In this context, the High Court's decision to reject their appeal on

points of law for being out of time on the ground that the appeal should have been lodged within the time-limit of one year running from the date of publication of the court's decision was an unreasonable interpretation of a procedural requirement and infringed the right to effective judicial protection. The date on which time started to run for the purpose of calculating final dates for appeals had to be the date on which the public could actually have learned of the court decisions which concerned them. The purpose of notification was to allow the parties to be informed of the court's decision so that should the need arise, they could exercise their right of appeal. There had therefore been a violation of A 6(1).

A 50 reserved.

Cited: Axen v D (8.12.1983), Brualla Gómez de la Torre v E (19.12.1997), Edificaciones March Gallego SA v E (19.2.1998), Papachelas v GR (25.3.1999), Pérez de Rada Cavanilles (28.10.1998).

Mitap and Müftüoglu v Turkey (1996) 22 EHRR 209 96/12

[Application lodged 14.9.1989; Commission report 8.12.1994; Court Judgment 25.3.1996]

Mr Nasuh Mitap was an economist and Mr Abdullah Oguzhan Müftüoglu was a lawyer. After being arrested by the Ankara police, they were placed in police custody, Mr Mitap on 22 January 1981 and Mr Müftüoglu the following day, on the ground that they were members of the central committee of the Dev-Yol (Revolutionary Way) organisation. They were remanded in custody. They made numerous unsuccessful applications for conditional release. In July 1989, the Martial Law Court found them guilty and sentenced them to life imprisonment. They were released on parole on 23 July 1991. On 28 December 1995, the Court of Cassation upheld the penalties of the lower court. The applicants complained of the length of their detention pending trial, that their case had not been heard within a reasonable time, by a tribunal established by law or fairly by an independent and impartial tribunal.

Comm found unanimously V 5(3), V 6(1).

Court found unanimously no jurisdiction to deal with complaints relating to the length of detention pending trial, lawfulness, independence and impartiality of the Martial Law Court and the fairness of the proceedings before it or the objections raised on these points by the Government, found V 6(1) on account of the length of the criminal proceedings.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr L-E Pettiti, Mr R Macdonald, Mr C Russo, Mr SK Martens, Mr I Foighel, Mr JM Morenilla, Mr P Jambrek.

Turkey accepted the Court's jurisdiction only in respect of facts or events that had occurred since 22 January 1990, when the relevant declaration was deposited. Of the applicants' complaints, only that relating to the excessive length of the criminal proceedings in issue satisfied that condition. The other complaints therefore fell outside the Court's jurisdiction. In addition, the Court could only deal with the complaint relating to the length of the criminal proceedings as from 22 January 1990. However, in doing so, it took account of the state of the proceedings at the time when the declaration was deposited.

The proceedings began on 22 and 23 January 1981, when the applicants were arrested and placed in police custody; they ended on 28 December 1995 with the judgment of the Court of Cassation. They thus lasted just under 15 years. However, only the period of nearly six years that elapsed after 22 January 1990, the date of Turkey's declaration, could be considered. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law. The case was complex, but no evidence was submitted capable of justifying such a lengthy period, especially as account had to be taken of the fact that the proceedings at first instance lasted approximately eight years and six months. The length of the criminal proceedings in issue contravened A 6(1).

Non-pecuniary damage (FF 80,000), costs and expenses (FF 15,179 jointly).

Cited: Mansur v TR (8.6.1995), Yagci and Sargin v TR (8.6.1995).

Mlynek v Austria (1994) 18 EHRR 591 92/66

Application lodged 21.3.1989; Commission report 9.12.1991; Court Judgment 27.10.1992]

On 21 May 1980, criminal proceedings were brought against Mr Hannes Mlynek which led to his conviction, on 30 May 1984, on counts of misappropriation of funds and fraud. On 30 January 1987, the Supreme Court quashed the judgment and remitted the case to the same court, which reopened the proceedings on 11 January 1988. The applicant lodged a first application with the European Commission of Human Rights, which on 10 March 1988 found that the length of the proceedings had exceeded a 'reasonable time'. The Committee of Ministers of the Council of Europe recommended that the Government pay the applicant ATS 275,000 as just satisfaction. In the meantime, after 33 days of hearings, including, *inter alia*, the taking of evidence from some hundred witnesses, the Regional Court had, on 23 March 1988, sentenced the applicant to three years' imprisonment, two of which were suspended, for misappropriation of funds and negligent bankruptcy. The Supreme Court quashed the judgment on 1 June 1990 and once again remitted the case to the Vienna Regional Court. The proceedings were still pending. The applicant lodged a second application with the Commission complaining of the length of the proceedings after 10 March 1988.

Comm found unanimously V 6(1).

Court unanimously struck case out of the list.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr C Russo, Mr A Spielmann, Mrs E Palm, Mr R Pekkanen, Mr F Bigi, Sir John Freeland, Mr L Wildhaber.

The Court took formal note of the friendly settlement reached between the Government and the applicant. It discerned no reason of public policy militating against striking the case out of the list.

FS (Government to exonerate the applicant from the obligation to pay the costs and fees incurred in the proceedings before the Vienna Regional Criminal Court), therefore SO.

Modinos v Cyprus (1993) 16 EHRR 485 93/17

[Application lodged 22.5.1989; Commission report 3.12.1991; Court Judgment 22.4.1993]

Mr Alecos Modinos was a homosexual involved in a sexual relationship with another male adult. He was the President of the 'Liberation Movement of Homosexuals in Cyprus'. He stated that he suffered great strain, apprehension and fear of prosecution by reason of the legal provisions which criminalised certain homosexual acts. He complained that the prohibition on male homosexual activity constituted a continuing interference with his right to respect for private life.

Comm found unanimously V 8.

Court found by majority (8–1) V 8.

Judges: Mr R Ryssdal, President, Mr F Matscher (c), Mr R Bernhardt, Mr A Spielmann, Mr I Foighel, Mr F Bigi, Sir John Freeland, Mr AB Baka, Mr G Pikis (d), ad hoc judge.

The prohibition of male homosexual conduct in private between adults still remained on the statute book. Moreover, the Supreme Court of Cyprus in another case considered that the relevant provisions of the Criminal Code violated neither the Convention nor the Constitution. Whatever the status in domestic law of those remarks, the Court could not fail to take into account such a statement from the highest court of the land on matters so pertinent to the issue before it. Although, since the *Dudgeon v UK* judgment, the Attorney-General had followed a consistent policy of not bringing criminal proceedings in respect of private homosexual conduct on the basis that the relevant law was a dead letter, nevertheless, the policy provided no guarantee that action would not be taken by a future Attorney-General to enforce the law, particularly when regard was had to statements by Government ministers which appeared to suggest that the relevant provisions of the Criminal Code were still in force. Moreover, the applicant's private behaviour could be the subject of investigation by the police or an attempt could be made to bring a private

prosecution against him. Against that background, the existence of the prohibition continuously and directly affected the applicant's private life. There was therefore an interference with the applicant's rights. The Government had limited their submissions to maintaining that there was no interference with the applicant's rights and had not sought to argue that there existed a justification under A 8(2) for the impugned legal provisions. In the light of that concession and having regard to the Court's case-law, a re-examination of that question was not called for. Accordingly, there was a breach of A 8.

Costs and expenses (unanimously CYP 6,836).

Cited: Dudgeon v UK (22.10.1981), Norris v IRL (26.10.1988), Pine Valley Developments Ltd and Others v IRL (29.11.1991).

Monaco v Italy (1992) 92/6

[Application lodged 14 May 1987; Commission report 15.1.1991; Court Judgment 26.2.1992]

On 28 February 1985 Mrs Angelina Monaco took proceedings against the Istituto Nazionale della Previdenza Sociale (INPS) before the Rome magistrate's court in order to establish her disability pension right. On 30 October 1985 the magistrate's court dismissed her claim. She appealed and in March 1989 the court allowed her claim. The text of the decision was lodged with the registry on 27 November 1989. She complained of the length of the civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, M C Russo, Mr A Spielmann, Mr N Valticos, Mr S K Martens.

The period to be taken into consideration began on 28 February 1985 when the proceedings against the INPS were instituted in the magistrate's court. It ended, at the latest, on 27 November 1990 when the judgment of the Rome District Court became final. The reasonableness of the length of proceedings was to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. Special diligence was necessary in employment disputes, which included pensions disputes. The Government pleaded the backlog of cases in the relevant courts, but A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. The present case did not give rise to any complex question of fact or law. Moreover the proceedings were conducted at a normal pace in the magistrate's court. In addition, the State could not be held responsible for the period of approximately ten and a half months which elapsed between the decision of 30 October 1985 and the filing of the applicant's appeal; nor was it answerable for the year which went by before the judgment, which was lodged with the registry on 27 November 1989, became final. On the other hand, the appeal proceedings were dormant for more than two years and it was hard to understand why it should have taken more than eight months to lodge the judgment in question with the registry. Accordingly and in view of what was at stake in the proceedings for the applicant, the Court could not regard as reasonable the lapse of time in the present case. There had therefore been a violation of A 6(1).

Non-pecuniary damage (ITL 5,000,000), costs and expenses (ITL 2,000,000).

Cited: Pugliese (II) v I (24.5.1991), Vocaturo v I (24.5.1991).

Monnell and Morris v United Kingdom (1988) 10 EHRR 205 87/3

[Applications lodged 5.8.1981, 13.3.1982; Commission report 11.3.1985; Court Judgment 2.3.1987]

Mr Brian Arthur Monnell was convicted on 4 September 1981 of burglary and pleaded guilty to other offences and was sentenced to a total of three years and nine months imprisonment. Against the advice of his counsel he appealed. The notice of appeal warned inter alia that a Judge could refuse the application and direct that part of the time in custody after putting in the notice of

application should not count towards the sentence. A renewed application to a Court of three Judges could also result in a direction of more loss of time. The result would be a later date of release. On 20 May 1982, the full Court of Appeal rejected his application and ordered that 28 days spent by him in custody pending the hearing of his application should not count towards his sentence.

Mr Neville Morris was sentenced after conviction in August 1980 of conspiracy to supply heroin to three and a half years' imprisonment. Against the advice of his counsel he appealed to the Court of Appeal. He received the warning concerning loss of time. On 27 October 1981, the full Court of Appeal refused his application and ordered that the 56 days of the period spent in custody by him awaiting the outcome of his application for leave to appeal did not count towards service of his sentence.

Both applicants complained that the loss-of-time orders made by the Court of Appeal resulted in a deprivation of liberty not permitted by A 5, that they had been denied a fair trial in breach of A 6 because they had not been allowed to attend or be represented in the proceedings before the court, and that the loss-of-time procedure was discriminatory.

Comm found by majority (10–1) V 5(1), (9–2) V 6 in regard to both applicants, unanimously not necessary to examine separately whether there had been a breach of 14+5 or (7–4) 6.

Court found by majority (5–2) NV 5(1), (6–1) 6 applicable, (5–2) NV 6(1), NV 6(3)(c), unanimously NV 14+5 or 14+6.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr L-E Pettiti (d), Sir Vincent Evans, Mr R Macdonald, Mr J Gersing (so), Mr A Spielmann (d).

The contested periods of detention fell to be examined in the first place under A 5(1)(a). The principal issue for decision was whether the periods of detention in question were undergone 'after conviction by a competent court', within the meaning of that sub-para. Each applicant was the subject of a conviction by a competent court. The word 'after' in sub-paragraph (a) did not simply mean that the detention had to follow the conviction in point of time: in addition, the detention had to result from, follow and depend upon or occur by virtue of the conviction. In short, there had to be a sufficient causal connection between the conviction and the deprivation of liberty at issue. The effect of a loss-of-time direction was a later date of release. Whilst the loss of time ordered by the Court of Appeal was not treated under domestic law as part of the applicants' sentences as such, it did form part of the period of detention which resulted from the overall sentencing procedure that followed conviction. As a matter of English law, a sentence of imprisonment passed by a Crown Court was to be served subject to any order which the Court of Appeal might, in the event of an unsuccessful application for leave to appeal, make as to loss of time. The power to order loss of time was exercised to discourage abuse of the Court's own procedures. As such, it was an inherent part of the criminal appeal process following conviction of an offender and pursued a legitimate aim under A 5(1)(a). The technical and formal difference in the way in which sentencing procedures were arranged in the UK as compared with other Convention countries was not such as to exclude the applicability of A 5(1)(a) in the present case. There was a sufficient and legitimate connection for the purposes of the deprivation of liberty permitted under A 5(1)(a), between the conviction of each applicant and the additional period of imprisonment undergone as a result of the loss-of-time order made by the Court of Appeal. The time spent in custody by each applicant under that head was accordingly to be regarded as 'detention of a person after conviction by a competent court', within the meaning of A 5(1)(a). The Court was satisfied in the circumstances of the present case as to the lawfulness and procedural propriety of the contested periods of loss of liberty. The relevant rules and procedures under English law were properly observed by the English courts in relation to the making of the loss-of-time orders. Those orders depriving the applicants of their liberty issued from and were executed by an appropriate authority and were not arbitrary. The contested deprivation of liberty had, therefore, to be found to have been both lawful and effected in accordance with a procedure prescribed by law. There had accordingly been no breach of A 5(1) in respect of either applicant.

In accordance with the procedure normally followed before the Court of Appeal, the applicants were not present in person nor heard in oral argument in the leave-to-appeal proceedings which resulted in their being ordered to lose time in the calculation of their service of sentence. The manner in which A 6(1) and (3)(c) was to be applied in relation to appellate or cassation courts depended upon the special features of the proceedings involved. Account had to be taken of the entirety of the proceedings conducted in the domestic legal order and of the role of the appellate or cassation court. At first instance before the Crown Court each applicant had received the benefit of a fair trial. The limited nature of the subsequent issue of the grant or refusal of leave to appeal did not call for oral argument at a public hearing or the personal appearance of the two men before the Court of Appeal. The Court of Appeal's power to direct loss of time was intended to serve as a deterrent against clearly unmeritorious applications for leave to appeal. The aim pursued by the domestic legislation was a legitimate one in the interests of the proper administration of justice. The principle of equality of arms was respected in that the prosecution, like the two accused, was not represented before either the single judge or the full Court of Appeal. However, even in the absence of a prosecuting party, a trial would not be fair if it took place in such conditions as to put the accused unfairly at a disadvantage. The applicants had the benefit of free legal advice on appeal but both chose to ignore the advice of their trial counsel that there were no reasonable prospects of successfully appealing. Both were aware of the warnings as to loss of time. Nevertheless and despite the fact that the single judge had refused leave, they renewed their applications to the full Court of Appeal on the same grounds as in their original applications. They were afforded the opportunity to submit written grounds of appeal. Both the single judge and the full Court of Appeal had before them all the relevant papers, including the grounds of appeal, a transcript of the trial and, for Mr Monnell, the social enquiry and psychiatric reports prepared on him. Under para 6(3)(c) they were guaranteed the right to be given legal assistance free only so far as the interests of justice so required. The interests of justice could not, however, be taken to require an automatic grant of legal aid whenever a convicted person, with no objective likelihood of success, wished to appeal after having received a fair trial at first instance in accordance with A 6. Each applicant benefited from free legal assistance both at his trial and in being advised as to whether he had any arguable grounds of appeal. The issue to be decided did not call, as a matter of fairness, for oral submissions on behalf of the applicants in addition to the written submissions and material already before the Court of Appeal. In short, the interests of justice and fairness could, in the circumstances, be met by the applicants being able to present relevant considerations through making written submissions. The Court also bore in mind that, as the power was exercised in practice, the maximum loss of time risked was in the order of two months and not the whole of the period spent in custody between conviction and determination by the Court of Appeal. The Court had no cause to doubt that the Court of Appeal's decision to refuse the applicants leave to appeal and, further, to impose loss of time was based on a full and thorough evaluation of the relevant factors. Having regard to the special features of the context in which the power to order loss of time was exercised and to the circumstances of the case, the Court found that neither applicant was denied a fair procedure as guaranteed by A 6(1) and (3)(c). There had accordingly been no breach of either of those provisions of the Convention.

The aim pursued by the Court of Appeal's power to order loss of time was to expedite the process of hearing applications and so to reduce the period spent in custody by an applicant with a meritorious appeal. The great majority of applications for leave to appeal were lodged by those in custody. That being so, even assuming that the situation of the applicants was comparable to that of convicted persons at liberty, the difference in treatment complained of had an objective and reasonable justification. Therefore no violation of A 14 and 5.

In so far as the risk of loss of time could operate in practice as an impediment to access to the Court of Appeal by convicted prisoners as compared with convicted persons at liberty, there was a difference of treatment for the purposes of A 14. However, that difference of treatment had an objective and reasonable justification for the same reasons as above. Therefore no violation of A 14 and 6.

Cited: Axen v D (8.12.1983), 'Belgian Linguistic' case (23.7.1968), Colozza v I (12 .2.1985), Delcourt v B (17.1.1970), Marckx v B (13.6.1979), Pakelli v D (25.4.1983), Sanchez-Reisse v CH (21.10.1986), Sutter v CH (22.2.1984), Weeks v UK (2.3.1987), Wemhoff v D (27.6.1968), Winterwerp v NL (24.10.1979).

Monnet v France (1994) 18 EHRR 27 93/45

[Application lodged 26.11.1987; Commission report 1.7.1992; Court Judgment 27.10.1993]

In March 1969 Mr Claude Monnet, a doctor specialising in radiology, married Miss C Grosclaude. They had two children; the first was born on 8 January 1971 and the second on 2 August 1973. On 15 September 1981, the applicant's wife filed an application for judicial separation and on 30 December 1981 she instituted judicial separation proceedings from him. On 12 October 1988, the Court of Cassation gave its judgment. The applicant complained of the length of the judicial separation and divorce proceedings.

Comm found by majority (7–1) V 6(1).

Court found unanimously NV 6(1).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr L-E Pettiti, Mr R Macdonald, Mr A Spielmann, Mr J De Meyer, Mr SK Martens, Mr AN Loizou, Mr JM Morenilla.

The period to be taken into consideration began on 15 September 1981, the date on which the petition for judicial separation was filed. It ended on 12 October 1988, when the Court of Cassation delivered its judgment. It therefore lasted seven years and approximately one month. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case and with reference to the criteria laid down in the Court's case-law, notably the complexity of the case and the conduct of the parties and of the relevant authorities. The large number of interlocutory applications filed by the parties, especially the applicant, made the case complex. Only delays for which the State could be held responsible could justify a finding that a reasonable time had been exceeded. The parties, especially the applicant, contributed considerably to prolonging the proceedings. With regard to the conduct of the authorities, in respect of the financial report, the applicant waited seven months before depositing the amount fixed by the relevant judge, thus making it impossible to appoint an accountant earlier. The social inquiry report showed that the expert had encountered all manner of difficulties in his dealings with the Monnets, who were bitterly divided on the question of the children. The period of one year did not appear unreasonable in view of the consequences that the report might have on the future of those concerned. The two years that the appeal proceedings lasted did not appear excessive in the light of the conduct of the applicant, who caused the adjournment. The cassation proceedings did not give rise to criticism. Having regard to all the circumstances of the case and in particular to the role of the parties in the conduct of the proceedings, the total length of the proceedings was not excessive.

Cited: H v F (24.10.1989), Vernillo v F (20.2.1991).

Monti v Italy 00/61

[Application lodged 3.11.1995; Court Judgment 8.2.2000]

Mr Enrico Monti complained about the length of proceedings in the administrative courts.

Court found unanimously V 6(1).

Judges: Mrs E Palm, President, Mr B Conforti, Mr L Ferrari Bravo, Mr Gaukur Jörundsson, Mr B Zupancic, Mr T Pantîru, Mr R Maruste.

The period to be taken into consideration began on 14 March 1984 and ended on 11 January 2000, a period of 15 years and 10 months at one level of jurisdiction, which could not be regarded as reasonable.

Non-pecuniary damage (ITL 48,000,000), costs and expenses (ITL 1,000,000).

Cited: Bottazzi v I (28.7.1999).

Moore and Gordon v United Kingdom (2000) 29 EHRR 728 99/56

[Applications lodged 10.6.1997 and 7.8.1997; Court Judgment 29.9.1999]

Mr Jonathan Moore and Mr Garrick Gordon were serving in the Royal Air Force and were tried by district courts-martial. The Air Force Act 1955 applied in their case. Central to the system under the 1955 Act was the role of the 'convening officer' who assumed responsibility for every case to be tried by court-martial. Mr Moore was found guilty of common assault and fined. His subsequent petitions and appeals, as far as the single judge of the Courts-Martial Appeal Court, were unsuccessful. Mr Gordon was found guilty of two charges of disgraceful conduct of an indecent kind and he was sentenced to a reduction in rank. His subsequent petitions and appeals, as far as the Courts-Martial Appeal Court, were unsuccessful. The applicants complained that they did not have a fair or public hearing by an independent and impartial tribunal established by law.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Sir Nicolas Bratza, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mrs HS Greve, Mr K Traja.

The Court noted the potential penalty of six months' imprisonment in Mr Moore's case and of two years' imprisonment in Mr Gordon's case, together with the nature of the charges of which the applicants were found guilty. It considered that the applicants' court-martial proceedings involved the determination of charges of a criminal nature within the meaning of A 6(1).

In the *Findlay* judgment, the Court held that a general court-martial convened pursuant to the Army Act 1955 did not meet the requirements of independence and impartiality set down by A 6(1) in view, in particular, of the central part played in its organisation by the convening officer. The convening officer was central to the applicant's prosecution and was closely linked to the prosecution authorities; the members of the court-martial were subordinate to the convening officer; and the convening officer also acted as confirming officer. A district court-martial convened pursuant to the Air Force Act 1955 had similar deficiencies. In the present case district air force courts-martial were convened pursuant to the Air Force Act 1955 to try the applicants. There was no reason to distinguish the present cases from those of Mr Findlay, Mr Coyne or Mr Cable and Others as regards the part played by the convening officer in the organisation of their courts-martial. Accordingly, the applicants' courts-martial did not meet the independence and impartiality requirements of A 6(1). Since the applicants were faced with, *inter alia*, charges of a serious and criminal nature and were therefore entitled to a first instance tribunal complying with the requirements of A 6(1), such organisational defects in their courts-martial could not be corrected by any subsequent review procedure. The courts-martial which dealt with the applicants' case were not independent and impartial within the meaning of A 6(1), and consequently could not guarantee either of the applicants a fair trial. In view of those conclusions it was not necessary also to examine the complaints of the applicants that their courts-martial were not public or established by law.

A 41 claim not submitted.

Cited: Cable and Others v UK (18.2.1999), Findlay v UK (25.2.1997), Garyfallou Aebe v GR (24.9.1997), Huvig v F (24.4.1990).

Moreira de Azevedo v Portugal (1991) 13 EHRR 721 (1992) 14 EHRR 113 90/25

[Application lodged 16.11.1984; Commission report 10.7.1989; Court Judgment 23.10.1990 (merits), 28.8.1991 (A 50)]

Mr Manuel Moreira de Azevedo was a bus driver. On 23 January 1977 one of his brothers-in-law shot him in the head following a family quarrel. On the same day the police arrested the suspect. On 2 June 1977 the applicant stated that he wished to intervene as an assistant (assistente) of the prosecuting authority in the preliminary investigation. His application was allowed on 18 June 1977. On 18 February 1985 the court acquitted the accused on the charge of attempted murder.

However, it sentenced him to 14 months' imprisonment for causing grievous bodily harm and ordered him to pay damages to the applicant. The applicant and the accused filed appeals. On 30 October 1985 the Oporto Court of Appeal allowed the accused's appeal. The applicant's appeal to the Supreme Court was dismissed on 7 May 1986. The letter of notification was sent to the applicant on the following day. He was deemed to have received it on the third day after its despatch. He complained of the length of the proceedings.

Comm found by majority (8–6) NV 6(1).

Court unanimously dismissed the Government's preliminary objection, found V 6(1).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr J Pinheiro Farinha, Mr A Spielmann, Mr J De Meyer, Mr S K Martens, Mrs E Palm.

The Government submitted that the applicant ought to have brought civil proceedings separately from the criminal proceedings. Such proceedings would however have dealt with the substantive issue in dispute before the Portuguese courts, the applicant's right to compensation, and not the failure to complete the proceedings within a reasonable time, the applicant's only complaint before the European Court. A 26 required remedies to be exercised only in so far as they related to the violations complained of before the organs whose task it was to ensure the observance of the Convention. In addition, it would be pointless to speculate as to whether such proceedings would have led to a decision being given more rapidly, because in any event they constituted a remedy too indirect to be taken into consideration. The objection therefore had to be dismissed.

The right to a fair trial held so prominent a place in a democratic society that there could be no justification for interpreting A 6(1) restrictively. The case concerned the determination of a right; the result of the proceedings was decisive for that right. To intervene in proceedings as an 'assistente' was equivalent to filing a claim for compensation in civil proceedings. By acquiring that status, the applicant demonstrated the importance which he attached not only to the criminal conviction of the accused but also to securing financial reparation for the damage sustained. Moreover, his application that the decision as to quantum be deferred until the subsequent enforcement proceedings confirmed that he genuinely expected to be paid damages. A 6 applied to the case.

The incident took place on 23 January 1977 and the accused was arrested and interviewed on the same date. However, the period to be considered began to run on 9 November 1978, when the Convention entered into force with regard to Portugal. In order to determine the reasonableness of the time which elapsed after that date it was necessary to take into account the stage which the proceedings had reached at that point. The relevant period ended on 11 May 1986, the third day following the despatch of the letter of notification to the applicant. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities. The dispute was not complex. The investigation conducted between 23 January 1977 and 5 July 1984 was secret and the applicant did not have free access to the file. In any event the applicant was under no duty to take the steps referred to by the Government; moreover, they would not have shortened the proceedings. Regarding the conduct of the relevant Portuguese courts, the proceedings had scarcely progressed from 26 May 1980 to 5 July 1982, and the time taken to complete the medical examinations of the applicant was excessive. The State was responsible for all its authorities and not merely its judicial organs. The Court was not unaware of the difficulties which sometimes delayed the hearing of cases by national courts and which were due to a variety of factors. The Court was mindful of the reforms carried out by the Portuguese State regarding the organisation of the investigation authorities. Nevertheless the Government had failed to show what practical and effective measures Portuguese law provided in the present case to accelerate the progress of the criminal proceedings. The reasonable time was exceeded and there was accordingly a violation of A 6(1).

Damage (PTE 4,000,000), costs and expenses (PTE 946,800 less FF 20,153.90).

Cited: Ciulla v I (22.2.1989), Deweer v B (27.2.1980), Duinhof and Duijf v NL (22.5.1984), Guincho v P (10.7.1984), H v F (24.10.1989), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Martins Moreira v P (26.10.1988), Neves e Silva v P (27.4.1989).

Morel v France 00/159

[Application lodged 20.7.1996; Court Judgment 6.6.2000]

Mr Hubert Morel lodged a notice with the commercial court that construction companies of which he was the head were unable to pay their debts. The insolvency judge made a number of orders and following the report prepared by the insolvency judge and the judicial administrator, the court subsequently made an order for the liquidation of the companies. The insolvency judge was appointed president of the court chamber dealing with the liquidation. The applicant complained of the fairness of proceedings.

Court found unanimously NV 6(1) as regards a fair hearing, NV 6(1) as regards an impartial tribunal.

Judges: Mr W Fuhrmann, President, Mr J-P Costa, Mr L Loucaides, Mrs F Tulkens, Mr K Jungwiert, Sir Nicolas Bratza, Mr K Traja.

The right to an *inter partes* hearing implied in principle that the parties to a trial were to have the opportunity to peruse any document or observation presented to the court, even by a judge, with a view to influencing its decision or to discuss it. The principle of equality of arms required the parties to be given a reasonable opportunity to state their case in conditions which did not place them at a distinct disadvantage in comparison with their opponent. In the course of the hearing before the Court the Government relied on a clerical error in the drafting of the judgment, without being contradicted by the applicant's lawyer. The procedure followed by the commercial court was laid down in A 61 of the January 1985 Law, not A 36. The course taken by the proceedings confirmed that argument. There was no provision in the A 61 procedure for a written report to be filed by the insolvency judge, unlike the A 36 procedure. The reference to such a report in the judgment was therefore incorrect. The applicant relied on those references in the judgment as the basis for his complaint. His reasoning was therefore based on incorrect references in the judgment of the commercial court.

Regarding the personal impartiality of the insolvency judge, there was insufficient evidence to establish that he had acted with personal prejudice. The impartiality of the bench had to be considered. The insolvency judge adopted a number of measures concerning the companies during the observation stage and subsequently presided over the court which determined the fate of those companies. Such a situation could lead the applicant to doubt the impartiality of the commercial court. However, the mere fact that the insolvency judge had adopted certain decisions during the observation stage could not in itself justify the applicant's concerns as to its impartiality. During the observation stage the insolvency judge made a number of orders concerning the management of the economic and financial survival of the companies and the management of their staff. He was responsible, under domestic law, for ensuring that the matter proceeded expeditiously and that the relevant interests were protected. Following an application under A 61, the court over which he presided was required to assess the long term viability of the proposal that the companies should continue to trade which the applicant had submitted at the end of the observation stage. The court therefore had to examine the financial guarantees and other evidence produced by the applicant at the hearing and also the state of the companies at that date. The court also relied on the evidence provided by the administrator. The insolvency judge was therefore faced with two separate issues. There was no objective reason to believe that the nature and scope of the insolvency judge's role during the observation stage implied any prejudice on the part of the court in its assessment of the viability of the proposal that the companies should continue to trade. In short the applicant's complaints were unfounded.

Cited: Douiyeb v NL (4.8.1999), Gautrin and Others v F (20.5.1998), Hauschildt v DK (24.5.1989), Lobo Machado v P (20.2.1996), Nideröst-Huber v CH (18.2.1997), Nortier v NL (24.8.1993), Padovani v I (26.2.1993), Saraiva de Carvalho v P (22.4.1994).

Morena v Italy 00/194

[Application lodged 8.6.1993; Court Judgment 27.7.2000]

Mrs Filomena Morena complained about the length of civil proceedings.

Court found by majority (6–1) V 6(1).

Judges: Mr G Ress, President, Mr B Conforti (d), Mr A Pastor Ridruejo, Mr L Caflisch,Mr J Makarczyk, Mrs N Vajic, Mr M Pellonpää.

The period to be taken into consideration began on 27 February 1993 and was still pending on 26 May 2000, a period of approximately seven years and three months, which could not be regarded as reasonable.

Non-pecuniary damage (ITL 10,000,000), costs and expenses (ITL 1,615,680).

Cited: Bottazzi v I (28.7.1999).

Morese v Italy 00/31

[Application lodged 9.7.1997; Court Judgment 25.1.2000]

Mr Vittorio Morese complained about the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 10 September 1985 and was still pending on 22 December 1999, a period of nearly 14 years and three months at one level of jurisdiction, which could not be regarded as reasonable.

Non-pecuniary damage (ITL 44,000,000), costs and expenses (ITL 2,000,000).

Cited: Bottazzi v I (28.7.1999).

Moretti v Italy 00/193

[Application lodged 2.2.1995; Court Judgment 27.7.2000]

Mr Luigi Moretti complained about the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr G Ress, President, Mr B Conforti, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mrs N Vajic, Mr M Pellonpää.

The period to be taken into consideration began on 14 April 1992 and ended on 13 November 1997, a period of five years and seven months, which could not be regarded as reasonable.

Non-pecuniary damage (ITL 10,000,000), costs and expenses (ITL 5,000,000).

Cited: Bottazzi v I (28.7.1999).

Morganti v France (1996) 21 EHRR 34 95/22

[Application lodged 15.2.1990; Commission report 30.11.1994; Court Judgment 13.7.1995]

Mr Michel Morganti was charged on 22 November 1985 with the attempted murder of two Spanish Basque refugees, membership of a criminal organisation, unauthorised possession and transport without a lawful reason of category 4 arms and ammunition and handling stolen goods. On the same day he was remanded in custody. He submitted numerous applications for release which were all dismissed. The criminal proceedings lasted from December 1985 to 21 June 1990, when the applicant was sentenced to 15 years' imprisonment by the Pyrénées-Atlantiques Assize Court. On 16 October 1991 the Court of Cassation dismissed an appeal on points of law by the applicant. He complained, *inter alia*, of the length of his pre-trial detention.

Comm found unanimously V 5(3).

Court unanimously held that it could not deal with the merits of the case.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Mr J De Meyer, Mrs E Palm, Mr F Bigi, Mr D Gotchev, Mr P Jambrek, Mr K Jungwiert.

The French Government referred the case to the Court on 13 April 1995, whereas the Commission's report was sent to the Committee of Ministers on 11 January 1995. The Government did not dispute the fact that they had exceeded the time they were allowed. The explanations put forward (postal strike and delay in forwarding fax) did not disclose any special circumstance of a nature to suspend the running of time or justify its starting to run afresh. It followed that the application bringing the case before the Court was inadmissible as it was out of time (under A 32).

Cited: Figus Milone v I (22.9.1993), Goisis v I (22.9.1993), Istituto di Vigilanza v I (22.9.1993).

Mori v Italy 91/20

[Application lodged on 26.11.1987; Commission report 5.12.1989; Court Judgment 19.2.1991]

Mrs Bruna Mori was a teacher. Proceedings were brought against her for defamation following a complaint lodged with the Genoa prosecuting authorities on 12 January 1981 by a judge at the Regional Administrative Court, in which he alleged that the applicant had asserted in insulting terms that he had, out of personal interest, induced the Administrative Court to deliver a judgment unfavourable to the applicant. The proceedings were the outcome of a series of complaints and accusations in which the applicant and the judge were the active parties. The applicant was formally notified of the charges against her on 13 October 1982. Following hearing, she was acquitted on the grounds of insufficient evidence in 1987. She appealed with a view to obtaining an unqualified acquittal. The prosecuting authorities appealed to obtain a conviction. On 30 March 1988, the Genoa District Court pronounced the applicant's acquittal. On 21 April 1988, the prosecuting authorities appealed to the Court of Cassation. On 22 September 1988, the Court of Cassation, sitting in private, decided that the offence was then time-barred. The applicant complained of the length of the proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Sir Vincent Evans, Mr C Russo, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla.

The period to be taken into consideration began on 13 October 1982, the date on which the applicant was formally notified of the criminal proceedings. It ended on 22 September 1988 with the Court of Cassation's judgment finding that the offence was time-barred. A 6(1) guaranteed to everyone who was the object of criminal proceedings the right to a final decision within a reasonable time on the charge against him. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case. The case was a very simple one. The applicant's conduct did not give rise to any delay, she took steps to expedite the proceedings. It followed that the Court could not regard as reasonable in the instant case a lapse of time of nearly six years.

Non-pecuniary damage (ITL 2,000,000) costs and expenses (ITL 5,000,000).

Cited: Obermeier v A (28.6.1990).

Mosca v Italy 00/24

[Application lodged 8.3.1997; Court Judgment 8.2.2000]

Mr Romano Mosca complained about the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mrs E Palm, President, Mr B Conforti, Mr J Casadevall, Mr L Ferrari Bravo, Mr C Bîrsan, Mr B Zupancic, Mrs W Thomassen.

The period to be taken into consideration began on 6 February 1992 and ended on 17 April 1998, a period of approximately six years and two months at two levels of jurisdiction, which could not be regarded as reasonable.

Non-pecuniary damage (ITL 10,000,000), costs and expenses (ITL 5,000,000).

Cited: Bottazzi v I (28.7.1999).

Motta v Italy (1992) 14 EHRR 432 91/8

[Application lodged 22.4.1985; Commission report 6.11.1989; Court Judgment 19.2.1991]

Mr Luciano Motta, a doctor, had criminal proceedings brought against him on 20 October 1979 for fraudulent claims on the health insurance service. On 29 June 1983 the court decided that the criminal proceedings should be discontinued because of an amnesty. The applicant's appeals were finally dismissed on 4 December 1987. The criminal proceedings had lasted over seven years, six months. He complained of the length of those proceedings and also of the length of civil proceedings he had brought against the State on 15 June 1979 for sums owed for services rendered.

Comm found V 6(1) (unanimously for criminal proceedings and by majority (14–3) for civil proceedings).

Court held unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Sir Vincent Evans, Mr C Russo, Mr J De Meyer, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla.

In assessing the reasonableness of the length of the proceedings, account had to be taken of all the circumstances of the case including the complexity of the case, conduct of the applicant and of the competent authorities. In the present case the criminal proceedings were not complex, the applicant had not delayed. The lapse of seven years, six months was not reasonable. The civil proceedings had been prevented from progressing by the slowness of the criminal proceedings. There had therefore been, in both cases, a violation of A 6(1).

Non-pecuniary injury (ITL 10,000,000), costs and expenses (ITL 2,000,000).

Cited: Baggetta v I (25.6.1987), Obermeier v A (28.6.1990).

Moustaquim v Belgium (1991) 13 EHRR 802 91/3

[Application lodged 13.5.1986; Commission report 12.10.1989; Court Judgment 18.2.1991]

Mr Abderrahman Moustaquim was a Moroccan national living in Belgium, having arrived there when he was one year old. While the applicant was still a minor, the Liège Juvenile Court dealt with 147 charges against him, making various custodial, protective and educative orders. In December 1981, the applicant appeared before the Liège Criminal Court charged with 26 offences. Following appeal, the applicant was convicted of 22 offences and he was sentenced to imprisonment, being released in April 1984. In February 1984, a deportation order for 10 years was served on the applicant on the grounds of his serious prejudice to public order; he left Belgium in June 1984. In December 1989, a royal order was issued, temporarily suspending the deportation order. The applicant returned in January 1990 and received a residence permit which was valid for one year and was renewable. The applicant alleged that his deportation from Belgium infringed several provisions of the Convention.

Comm found by a majority (10–3) V 8, NV 14+8, unanimously NV 3, NV 7.

Court held by a majority (7–2) V 8, unanimously NV 14+8, not necessary to examine case under 3 and 7.

Judges: Mr R Ryssdal, President, Mrs D Bindschedler-Robert (d), Mr F Matscher, Sir Vincent Evans, Mr R Bernhardt, Mr J De Meyer, Mr N Valticos (d), Mrs E Palm, Mr I Foighel.

The Government's claim that the application had become devoid of purpose, in that the deportation order had been suspended by royal order and the applicant was therefore authorised to reside in Belgium, was rejected. The royal order only suspended the deportation order and did not make reparation for its consequences, which the applicant suffered for more than 5 years. The applicant claimed that his deportation interfered with his family and private life, in breach of A 8. The applicant, his parents and seven brothers and sisters all lived in Belgium. He had never broken off relations with his family, and the measure complained of resulted in his being separated from them for more than five years, although he tried to remain in contact by correspondence. Accordingly there was interference with the right to respect for family life guaranteed in A 8(1). The deportation was lawful, and the interference was for the legitimate aim of the prevention of disorder. However, the measure was disproportionate. Whilst the Court did not underestimate the concern to maintain public order, in particular in exercising Contracting States' right to control the entry, residence and expulsion of aliens, interference with the rights protected by A 8(1) had to be shown to be necessary in a democratic society, that is to say justified by a pressing social need and proportionate to the legitimate aim pursued. In the applicant's case, the alleged offences went back to when he was an adolescent; proceedings in the criminal courts were brought in respect of only 26 of them, which were spread over less than a year, and which resulted in 22 convictions; the latest conviction was over 3 years before the deportation order, and during that period the applicant was in detention for some 16 months, but at liberty for nearly 23 months. In addition, all the applicant's close relatives had been living in Belgium for a long while: one acquiring Belgian nationality and three being born there. The applicant himself was less than two years old when he arrived in Belgium, and had lived there for 20 years with his family. His family life was thus seriously disrupted by the measure taken against him, and the means disproportionate to the legitimate aim pursued. There was therefore a violation of A 8. It was unnecessary to consider whether the deportation was also a breach of the applicant's right to respect for his private life.

The applicant claimed to be discriminated against on the ground of nationality, contrary to A 14 taken together with A 8, compared to juvenile delinquents of two categories: Belgian nationals, since they could not be deported; and citizens of another Member State of the European Communities, as a criminal conviction was not sufficient to render them liable to deportation. The Court held that the applicant could not be compared to Belgian juvenile delinquents, as they have a right of abode in their own country and cannot be expelled from it, and as for the preferential treatment given to nationals of the other Member States of the Communities, there was objective and reasonable justification for it as those States belonged to a special legal order. There was therefore no breach of A 14 taken together with A 8.

Before the Commission the applicant also relied on A 3 and 7, but did not raise them again before the Court, which did not consider itself bound to deal with those questions of its own motion.

Damages (BEF 440,000 less FF 10,730).

Cited: Abdulaziz, Cabales and Balkandali (28.5.1985), Berrehab (21.6.1988), Eckle (15.7.1982), Marckx (13.6.1979).

Muller v France 97/11

[Application lodged 8.3.1993; Commission report 6.9.1995; Court Judgment 17.3.1997]

Mr Patrick Muller and his brother were arrested on 13 December 1988 and taken into police custody. They immediately admitted the offences of armed robbery, attempted armed robbery, theft and criminal conspiracy of which they were accused. The applicant was held in pre-trial detention for the entire duration of the judicial investigation. He complained, *inter alia*, of the length of his detention pending trial.

Comm found unanimously V 5(3).

Court found unanimously V 5(3).

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr N Valticos, Mr R Pekkanen, Sir John Freeland, Mr B Repik, Mr E Levits.

The period to be taken into consideration started on 13 December 1988, when the applicant was taken into police custody, and ended on 9 December 1992, when the Assize Court delivered its judgment. It therefore lasted almost four years. In order to assess whether continued detention was justified, it fell in the first place to the national judicial authorities to examine all the circumstances arguing for or against the existence of such a requirement and to set them out in their decisions on the applications for release. It was essentially on the basis of the reasons given in those decisions and of the undisputed facts stated by the applicant in his appeals that the Court was called upon to decide whether or not there had been a violation of A 5(3). The persistence of reasonable suspicion that the person arrested had committed an offence was a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer sufficed: the Court had to then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were relevant and sufficient, the Court had to also ascertain whether the competent national authorities displayed special diligence in the conduct of the proceedings. As justification for deciding to continue detention pending trial, the relevant authorities relied on both the seriousness of the offences and the risk that the applicant would abscond or reoffend. To justify refusing Mr Muller's applications for release, they relied simultaneously on the complexity of the case, the needs of the investigation and the risk that the applicant would collude with his co-accused, abscond or reoffend. The investigation of the case was complex in that it had been necessary to amalgamate the proceedings, which had originally been conducted in three different jurisdictions simultaneously. However, as soon as he was arrested, the applicant had admitted the offences. The judge closed the criminal investigation on 7 November 1991 and on 12 December the applicant and his accomplices were committed to stand trial at the Assize Court. The risk of collusion between the persons involved must therefore have disappeared by then. It was not apparent from the decisions not to release the applicant that there was a real risk of his absconding. Although such a danger may exist where the sentence faced was a long term of imprisonment, the risk of absconding could not be gauged solely on the basis of the severity of the sentence faced. With regard to the danger of re-offending, a reference to a person's antecedents could not suffice to justify refusing release. Therefore, by 7 November 1991 at the latest – when the order closing the investigation with a view to a committal to the Assize Court was made – the detention in issue had ceased to be based on relevant and sufficient reasons. It was therefore necessary to consider the conduct of the proceedings. The trial was adjourned on account of the prison warders' strike causing a few weeks' delay. The proceedings included the removal of two investigating judges from the case and the subsequent replacement of the investigating judge on three occasions. Whilst the joinder of the various sets of proceedings was certainly necessary for the proper administration of justice, the successive changes of judge contributed to slowing down the investigation. The judicial authorities did not act with all due expedition, although the applicant had admitted the offences once and for all as soon as the investigation had begun and did not thereafter make any application that might have slowed its progress. The period spent by the applicant in detention pending trial therefore exceeded the reasonable time laid down in A 5(3).

Present judgment constituted just satisfaction in respect of the non-pecuniary damage sustained by the applicant. Costs and expenses (FF 40,000).

Cited: Clooth v B (12.12.1991), Kemmache v F (27.11.1991), Tomasi v F (27.8.1992), Van der Tang v E (13.7.1995), W v CH (26.1.1993).

Müller and Others v Switzerland (1991) 13 EHRR 212 88/5

[Application lodged 22.7.1983; Commission report 8.10.1986; Court Judgment 24.5.1988]

Mr Josef Felix Müller was a painter and the other nine applicants were organisers of an exhibition mounted in 1981. The applicants were convicted of the publication of obscene material and fined (the first applicant's paintings included sodomy, fellatio and bestiality). The paintings were confiscated. Their appeals were dismissed. The paintings were returned in 1988.

Comm found by majority (11–3) V 10 regarding confiscation of paintings, unanimously NV 10 regarding conviction.

Court found by majority (6–1) NV 10 regarding conviction, (5–2) NV 10 regarding confiscation of paintings.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mrs D Bindschedler-Robert, Sir Vincent Evans, Mr R Bernhardt, Mr A Spielmann (d), Mr J De Meyer (pc/pd).

A 10 does not distinguish between the various forms of expression. However, it included freedom of artistic expression which afforded the opportunity to take part in the public exchange of cultural, political and social information and ideas of all kinds. The applicants suffered interference by public authority by reason of their conviction and confiscation of the paintings. The conviction was prescribed by law, the Swiss Criminal Code, and had the legitimate aim of protection of public morals. 'Necessary' implied the existence of a pressing social need. States had a margin of appreciation; the requirements of morals varied with time and State authorities were in a better position to give an opinion on the requirements and the necessity of the restriction or penalty to meet them. The paintings depicted sexual relations particularly between men and animals, they were painted on the spot (one of the aims of the exhibition) and the public had free access to them. The paintings were liable to grossly offend the sexual propriety of persons of ordinary sensitivity and having regard to the margin of appreciation the Swiss courts were entitled to consider it necessary for the protection of morals to impose a fine for publication of obscene material. The disputed measure did not infringe A 10.

The confiscation of the painting was prescribed by law, Criminal Code. It had a legitimate aim to protect public morals by preventing any repetition of the offence. The same reasons which applied to the applicant's convictions applied to the confiscation order. The confiscation order deprived the applicant of the opportunity of showing his painting elsewhere. However he could have applied earlier for their return, there was no evidence that he would have failed in that application.

Cited: Barthold v D (25.3.1985), Handyside v UK (7.1.1976), Lingens v A (8.7.1986), Olsson v S (24.3.1988).

Murray v UK (1995) 19 EHRR 193 94/35

[Application lodged 28.9.1988; Commission report 17.2.1993; Court Judgment 28.10.1994]

Mrs Margaret Murray and Mr Thomas Murray, the first and second applicants, were husband and wife. The other four applicants were their children, Mark, Alana, Michaela and Rossina Murray. Mrs Murray was arrested at her family home on suspicion of involvement in the collection of money for the purchase of arms for the IRA in the US. She complained that her arrest and detention for two hours for questioning gave rise to a violation of A 5(1) and (2), for which she had no enforceable right to compensation under A 5(5); and that the taking and keeping of a photograph and personal details about her was in breach of her right to respect for private life under A 8. The other five applicants alleged a violation of A 5(1), (2) and (5) as a result of being required to assemble for half an hour in one room of their house while the first applicant prepared to leave with the Army. They further argued that the recording and retention of certain personal details about them, such as their names and relationship to the first applicant, violated their right to respect for private life under A 8. All six applicants claimed that the entry into and search of

their home by the Army were contrary to their right to respect for their private and family life and their home under A 8; and that, contrary to A 13, no effective remedies existed under domestic law.

Comm found in the case of the first applicant by majority (11–3) V 5(1), (10–4) V 5(2), (11–3) V 5(5), (13–1) NV 8, not necessary to examine complaint under 13, in the case of the first applicant NV 13 unanimously, in relation to either the entry into and search of her home or by majority (10–4) in relation to the taking and keeping of a photograph and personal details about her.

Court found by majority (14–4) NV 5(1) in respect of the first applicant, (13–5) NV 5(2) in respect of the first applicant, (13–5) NV 5(5) in respect of the first applicant, (15–3) NV 8 in respect of any of the applicants, unanimously not necessary to examine A 13 regarding the first applicant's complaint concerning remedies for her claims under 5(1) and 5(2), unanimously NV 13 in respect of the first applicant.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr F Gölcüklü, Mr R Macdonald, Mr A Spielmann, Mr SK Martens, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou (jd), Mr JM Morenilla (jd), Sir John Freeland, Mr AB Baka, Mr MA Lopes Rocha, Mr L Wildhaber, Mr G Mifsud Bonnici (pd), Mr J Makarczyk (jd), Mr P Jambrek (pd), Mr K Jungwiert.

A 5: the first applicant alleged that A 5(1)(c) had been breached because she had not been arrested on 'reasonable suspicion' of having committed a criminal offence and that the purpose of her arrest and subsequent detention had not been to bring her before a 'competent legal authority'. Having regard to both the object of questioning under A 5(1)(c), to further a criminal investigation, which meant that the facts which raised a suspicion did not need to be of the same level as those necessary to bring a charge or justify a conviction which came at later stages in the process and the special exigencies of investigating terrorist crime, the Court was satisfied, notwithstanding the lower standard of suspicion under domestic law, that the first applicant was arrested and detained on 'reasonable suspicion' of the commission of a criminal offence. The purpose of the arrest and detention was genuinely to bring the first applicant before a competent legal authority.

There was no breach of A 5(2) because it must have been apparent to the first applicant during the interview that she was being questioned about her possible involvement in the collection of funds for the purchase of arms for the Provisional IRA by her brothers in the US and the interview took place promptly after her arrest.

In view of the Court's conclusions in relation to A 5(1) and (2), no issue arose under A 5(5).

A 8: 'In accordance with the law' required the measure to have some basis in domestic law, referred to the quality of the law and required it to be accessible, foreseeable and compatible with the rule of law. This was satisfied in relation to each of the applicants' complaints, as was the legitimate aim of the prevention of crime. The means employed by the authorities in relation to the entry into and search of the applicants' home and the recording and retention of the applicants' basic personal details were not disproportionate to the aim pursued and therefore the various measures complained of were necessary in a democratic society for the prevention of crime.

A 13: The first applicant had an effective remedy in domestic law in relation to her complaints concerning the entry into and search of her home because the competent national authority could deal with both the substance of the relevant Convention complaint and grant appropriate relief in meritorious cases. Neither was the article breached in relation to the arrest, detention and lack of information about reasons for arrest because the entitlement to a remedy for this was *lex specialis* A 5(4), which had not been invoked. Nor in relation to the recording and retention of personal details because the Convention did not go as far as to guarantee a remedy allowing her to have challenged the content, rather than application, of domestic law before a national authority.

Cited: Brannigan and McBride (26.5.1993), Brogan and Others v UK (29.11.1988), Fox, Campbell and Hartley v UK (30.8.1990), James and Others v UK (21.2.1986), Klass and Others v D (6.9.1978), Vilvarajah and Others v UK (30.10.1991), X v UK (3.11.1981).

Murray, John v United Kingdom (1996) 22 EHRR 29 96/2

[Application lodged 16.8.1991; Commission report 27.6.1994; Court Judgment 8.2.1996]

Mr John Murray was arrested by police officers at 5.40 pm on 7 January 1990 under the Prevention of Terrorism (Temporary Provisions) Act 1989. He was cautioned by the police but said that he had nothing to say. His request for access to a solicitor was delayed for a period of 48 hours from the time of detention on the basis that the detective superintendent had reasonable grounds to believe that access would, *inter alia*, interfere with the gathering of information about the commission of acts of terrorism or make it more difficult to prevent an act of terrorism. On 7 January a police constable cautioned the applicant pursuant to Article 6 of the Criminal Evidence (Northern Ireland) Order 1988, *inter alia*, requesting him to account for his presence at the house where he was arrested. He was warned that if he failed or refused to do so, a court, judge or jury might draw such inference from his failure or refusal as appeared proper. He refused to say anything. He was able to see his solicitor for the first time at 6.33 pm on 9 January. In subsequent interviews he stated that he had been advised by his solicitor not to answer any questions. His solicitor was not permitted to be present at any of these interviews. In May 1991 the applicant was tried by a single judge, the Lord Chief Justice of Northern Ireland, sitting without a jury, for the offences of conspiracy to murder, the unlawful imprisonment, with seven other people, of a certain Mr L, a police informer, and of belonging to a proscribed organisation, the Provisional Irish Republican Army (IRA). Acting on the advice of his solicitor and counsel, the applicant chose not to give any evidence. The trial judge drew adverse inferences against the applicant under both Articles 4 and 6 of the Order. On 8 May 1991 he was found guilty of the offence of aiding and abetting the unlawful imprisonment of Mr L and sentenced to eight years' imprisonment. He was acquitted on the remaining charges. The applicant's appeal against conviction and sentence was dismissed by the Court of Appeal in Northern Ireland on 7 July 1992. He complained that he was deprived of the right to silence in the criminal proceedings against him and of his lack of access to a solicitor during his detention and the fact that the practice concerning access to solicitors differed between Northern Ireland and England and Wales.

Comm found by majority (15–2) NV 6(1) and 6(2), (13–4) V 6(1)+6(3)(c), (14–3) not necessary to examine 14+6.

Court found by majority (14–5) NV 6(1) and 6(2) arising out of the drawing of adverse inferences from the applicant's silence, (12–7) V 6(1)+6(3)(c) as regards the applicant's lack of access to a lawyer during the first 48 hours of his police detention, unanimously not necessary to examine 14+6.

Judges: Mr R Ryssdal, President (jpd), Mr R Bernhardt, Mr F Matscher (jpd), Mr L-E Pettiti (pd), Mr B Walsh (pd), Mr N Valticos (jpd), Mr S K Martens, Mrs E Palm (jpd), Mr I Foighel (jpd), Mr R Pekkanen, Mr A N Loizou, Mr F Bigi, Sir John Freeland (jpd), Mr M A Lopes Rocha, Mr L Wildhaber (jpd), Mr J Makarczyk (jpd), Mr D Gotchev, Mr K Jungwiert (jpd), Mr U Lôhmus (jpd).

The right to remain silent under police questioning and the privilege against self-incrimination were generally recognised international standards which lay at the heart of the notion of a fair procedure under A 6. On the one hand it was incompatible with the immunities under consideration to base a conviction solely or mainly on the accused's silence or on a refusal to answer questions or to give evidence himself. On the other hand those immunities could not and should not prevent that the accused's silence, in situations which clearly called for an explanation from him, be taken into account in assessing the persuasiveness of the evidence adduced by the prosecution. Therefore the right to silence was not absolute. Whether the drawing of adverse inferences from an accused's silence infringed A 6 was a matter to be determined in the light of all the circumstances of the case, having particular regard to the situations where inferences may be drawn, the weight attached to them by the national courts in their assessment of the evidence and the degree of compulsion inherent in the situation. A system which warned the accused that adverse inferences may be drawn from a refusal to provide an explanation to the police for his presence at the scene of a crime or to testify during his trial, when taken in conjunction with the

weight of the case against him, involved a certain level of indirect compulsion. However, since the applicant could not be compelled to speak or to testify that factor on its own could not be decisive. The proceedings were without a jury, the trier of fact being an experienced judge. Furthermore, the drawing of inferences under the Order was subject to an important series of safeguards designed to respect the rights of the defence and to limit the extent to which reliance could be placed on inferences. Warnings had to been given to the accused as to the legal effects of maintaining silence. Moreover, the prosecutor had to first establish a prima facie case against the accused. The national court could not conclude that the accused was guilty merely because he choose to remain silent. It was only common-sense inferences which the judge considered proper, in the light of the evidence against the accused, that could be drawn under the Order. In addition, the trial judge had a discretion whether, on the facts of the particular case, an inference should be drawn. Furthermore in trials without a jury, the judge had to explain the reasons for the decision to draw inferences and the weight attached to them. The exercise of discretion in this regard was subject to review by the appellate courts. Having regard to the weight of the evidence against the applicant, the drawing of inferences from his refusal, at arrest, during police questioning and at trial, to provide an explanation for his presence in the house was a matter of common sense and could not be regarded as unfair or unreasonable in the circumstances. Nor could it be said, against that background, that the drawing of reasonable inferences from the applicant's behaviour had the effect of shifting the burden of proof from the prosecution to the defence so as to infringe the principle of the presumption of innocence. The applicant maintained silence right from the first questioning by the police to the end of his trial. There was no indication that the applicant failed to understand the significance of the warning given to him by the police prior to seeing his solicitor. Under those circumstances the fact that during the first 48 hours of his detention the applicant had been refused access to a lawyer did not detract from the conclusion that the drawing of inferences was not unfair or unreasonable and did not infringe of the presumption of innocence. Accordingly, there had been no violation of A 6(1) or (2).

A 6 of the Convention applied even at the stage of the preliminary investigation into an offence by the police. A 6, especially 6(3), might be relevant before a case was sent for trial if and so far as the fairness of the trial was likely to be seriously prejudiced by an initial failure to comply with its provisions . The manner in which A 6(3)(c) was to be applied during the preliminary investigation depended on the special features of the proceedings involved and on the circumstances of the case. The Court had no reason to doubt that the restriction of access amounted to a lawful exercise of the power. It was of paramount importance for the rights of the defence that an accused had access to a lawyer at the initial stages of police interrogation. At the beginning of police interrogation an accused was confronted with a fundamental dilemma relating to his defence. If he chose to remain silent, adverse inferences might be drawn against him. On the other hand, if he opted to break his silence during the interrogation, he run the risk of prejudicing his defence without necessarily removing the possibility of inferences being drawn against him. Under such conditions the concept of fairness enshrined in A 6 required that the accused had the benefit of the assistance of a lawyer at the initial stages of police interrogation. To deny access to a lawyer for the first 48 hours of police questioning, in a situation where the rights of the defence might be irretrievably prejudiced, was – whatever the justification for such denial – incompatible with the rights of the accused under A 6. Although after consultation with his solicitor the applicant was advised to continue to remain silent and during the trial he chose not to give evidence or call witnesses, it was not for the Court to speculate on what the applicant's reaction, or his lawyer's advice, would have been had access not been denied during this initial period. The applicant was undoubtedly directly affected by the denial of access and the ensuing interference with the rights of the defence. There had therefore been a breach of A 6(1) in conjunction with 6(3)(c) as regards the applicant's denial of access to a lawyer during the first 48 hours of his police detention.

In the light of the above conclusion the Court did not consider that it was necessary to examine the complaint under A 14 and 6.

As regards pecuniary and non-pecuniary damage finding of a violation of 6(1)+6(3)(c) sufficient just satisfaction for A 50. Costs and expenses (GBP 15,000 less FF 37,968.60).

Cited: Brogan and Others v UK (29.11.1988), Funke v F (25.2.1993), Imbrioscia v CH (24.11.1993).

Musial v Poland 99/17

[Application lodged 10.1.1994; Commission report 4.3.1998; Court Judgment 25.3.1999]

Mr Zbigniew Musial was committed to a psychiatric hospital in 1988 after criminal proceedings for the manslaughter of his wife were discontinued on the grounds that he was not criminally responsible. In March 1993, the applicant's lawyer lodged a request with the Katowice Regional Court for the applicant's release from the psychiatric institution where he had been detained since 1988. His lawyers insisted that psychiatrists from Cracow University, rather than from the hospital of his detention, should examine the applicant, claiming that it was only from this institution that an unbiased opinion could be obtained. The court agreed and the applicant's medical records were forwarded to Cracow University. From 31 January to 4 February 1994 the applicant underwent an examination at Cracow University. In an opinion of 30 November 1994, the psychiatrists stated that the applicant's condition required continued detention. This opinion was submitted to the Katowice Regional Court on 15 December 1994, as a result of which the court decided that the applicant's detention should be maintained. Release was again refused in March and December 1996. In September 1996, the applicant had attempted suicide. In June 1997, the Katowice Regional Court ordered the applicant's release. The applicant alleged a violation of A 5(4) in that the proceedings concerning a judicial review of his psychiatric detention were unreasonably long.

Comm found by a majority (13–2) V 5(4).

Court held by a majority (16–1) V 5(4).

Judges: Mr L Wildhaber, President, Mrs E Palm, Sir Nicolas Bratza, Mr MP Pellonpää, Mr B Conforti, Mr A Pastor Ridruejo (d), Mr G Bonello, Mr J Makarczyk, Mr P Kûris, Mrs F Tulkens, Mrs V Stráznická, Mr M Fischbach, Mr V Butkevych, Mr J Casadevall, Mrs HS Greve, Mr R Maruste, Mrs S Botoucharova.

The period to be taken into consideration began not on 16 March 1993 but on 1 May 1993, when the declaration whereby Poland recognised the right of individual petition for the purposes of former A 25 of the Convention became effective. It ended on 9 January 1995, the date on which the Regional Court dismissed the applicant's request for release: a period of one year, eight months and nine days. However, in order to assess the length of the proceedings in question, the Court took into account the stage reached at the beginning of the period under examination. A person of unsound mind who was compulsorily confined in a psychiatric institution for an indefinite or lengthy period was entitled under A 5(4) to take proceedings at reasonable intervals before a court to put in issue the lawfulness of his or her detention, inasmuch as the reasons initially warranting confinement may cease to exist. A 5(4) also proclaimed the right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful. The contested proceedings were instituted by the applicant's request for release of March 1993. In a decision of April 1993, the Regional Court acceded to the request for examination by psychiatrists from Cracow University, but the applicant's medical file was sent to the University almost five months later. The applicant was admitted to the University hospital after a further delay of four months and nine days. His examination was completed after only five days, although it took the experts a further 10 months to prepare their report, which was eventually submitted to the Regional Court in December 1994, following which his detention was continued. Such a lapse of time would be incompatible with the notion of speediness within the meaning of A 5(4) unless there were exceptional grounds to justify it. The applicant's explicit wish to be examined by doctors from an institution other than Rybnik did not waive his procedural rights under A 5(4). Similarly, the fact that the Regional Court appointed experts at the applicant's specific request did not in itself discharge that court from its obligation to rule speedily on his request for release. There was no cause in this case for the Court to depart from the usual principle

that the primary responsibility for delays resulting from the provision of expert opinions rested ultimately with the State. In proceedings concerning a review of a psychiatric detention, the complexity of the medical issues involved was a factor which may be taken into account when assessing compliance with A 5(4). However, the complexity of a medical dossier, however exceptional, could not absolve national authorities from their essential obligations under this provision. It had not in any event been shown that there was a causal link between the complexity of the medical issues which might have been involved in the assessment of the applicant's condition and the delay in the preparation of the expert opinion. The Government failed to show that there were such exceptional grounds as could justify the period in question. Under Polish law, the Regional Court could have fined the experts for failing in their obligation to submit a report, yet chose not to do so in the present case. The Regional Court failed to expedite the production of the report. The Katowice Regional Court, when giving its decision of January 1995 ordering the applicant's continued detention, had regard to the medical opinion prepared on the basis of the applicant's examination which had taken place from 30 January to 4 February 1994: thus deciding on the basis of information about his health which had been obtained 11 months earlier. As a result, the decision was based on medical information which did not necessarily reflect the applicant's condition at the time of the decision. Such a delay between clinical examination and preparation of a medical report was in itself capable of running counter to the principle underlying A 5 of the Convention, namely the protection of individuals against arbitrariness as regards any measure depriving them of their liberty. The lawfulness of the applicant's detention was not decided speedily in the contested proceedings, as required by A 5(4), and there was accordingly a violation.

Non-pecuniary damage (PLN 15,000). No details of costs and expenses submitted.

Cited: Belziuk v PL (25.3.1998), Capuano v I (25.6.1987), Luberti v I (23.2.1984), Megyeri v D (12.5.1992), Podbielski v PL (30.10.1998), Proszak v PL (16.12.1997), Styranowski v PL (30.10.1998), Van der Leer v NL (21.2.1990), Winterwerp v NL (24.10.1979).

Muso (No 1) v Italy 99/114

[Application lodged 30.4.1993; Court Judgment 14.12.1999]

Mr Aurelio Muso complained about the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mrs M Tsatsa-Nikolovska, Mr A Baka.

The period to be taken into consideration began on 8 May 1986 and ended 8 April 1999, a period of 12 years and 11 months at two levels of jurisdiction, which could not be regarded as reasonable.

Non-pecuniary damage (ITL 28,000,000), costs and expenses (ITL 1,975,000).

Cited: Bottazzi v I (28.7.1999).

Muso (No 2) v Italy 00/116

[Application lodged 30.4.1993; Court Judgment 5.4.2000]

Mr Aurelio Muso complained about the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mrs M Tsatsa-Nikolovska, Mr A Baka.

The period to be taken into consideration began on 12 October 1976 and ended on 24 April 1997, a period of 20 years and six months at one level of jurisdiction, which could not be regarded as reasonable.

Non-pecuniary damage (ITL 50,000,000), costs and expenses (ITL 3,000,000).

Cited: Bottazzi v I (28.7.1999).

Muti v Italy 94/12

[Application lodged 15.6.1988; Commission report 5.5.1993; Court Judgment 23.3.1994]

Mr Giovanni Muti was declared physically unfit to continue to perform his duties at the Bergamo State Counsel's office in March 1975. His application for an enhanced pension was refused and on 1 June 1979 he appealed to the Court of Audit against that decision. The court adopted a decision which partly granted his application in that it recognised his right to an enhanced pension in respect of the health problems that had arisen from the performance of his duties. The judgment was filed at the registry on 8 January 1988 and communicated to the applicant's lawyer on 22 April 1988. He complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr F Gölcüklü, Mr L-E Pettiti, Mr C Russo, Mr N Valticos, Mr I Foighel, Mr R Pekkanen, Mr G Mifsud Bonnici.

The period to be taken into consideration began on 1 June 1979, the date of the appeal to the Court of Audit, and ended on 8 January 1988 when that court's judgment was filed. It thus lasted slightly more than eight years and seven months. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The Government's argument based on the excessive workload, could not be taken into consideration since A 6(1) imposed on the Contracting States the duty to organise their judicial systems in such a way that their courts could meet each of its requirements. It did not appear that the applicant's alleged passivity contributed to slowing down the proceedings. However, there were two main periods of stagnation attributable to the respondent State: Principal State Counsel waited four years and four months before requesting an expert opinion, and there was then a period of two years and eight months before the medical report was filed. Accordingly and in view of what was at stake in the proceedings for the applicant, the Court could not regard as reasonable the time which elapsed in the case. There had therefore been a violation of A 6(1).

Non-pecuniary damage (ITL 10,000,000), costs and expenses (ITL 5,011,050).

Cited: Massa v I (24.8.1993).

Muyldermans v Belgium (1993) 15 EHRR 204 91/40

[Application lodged 22.12.1983; Commission report 2.10.1990; Court Judgment 23.10.1991]

Mrs Marie-Louise Muyldermans worked as an accountant in the post office. A deficit appeared in her accounts which was then automatically submitted to the Audit Court, which ruled on the question on 5 May 1982 in private and on the basis solely of the administrative file. It found that the applicant had failed to perform properly several of her duties and ordered her to reimburse the Post Office the sum of BEF 2,000,000. By two judgments of the same day, it found two other officials, L and C, liable to pay the balance of the deficit. The three officials appealed to the Court of Cassation. On 30 June 1983, the Court of Cassation dismissed the applicant's appeal finding that A 6(1) was not applicable to the case before it. The court quashed the judgments concerning L and C as it considered that they were subordinate officials who did not have the status of accountants in relation to the Treasury, and the Audit Court therefore lacked jurisdiction to rule in their regard. The applicant complained that she had not received a public hearing and there had been no adversarial argument or oral submissions.

Comm found by majority (9–2) V 6(1).

Court unanimously struck case out of list.

Judges: Mr J Cremona, President, Mrs D Bindschedler-Robert, Mr B Walsh, Mr C Russo, Mr R Bernhardt, Mr J De Meyer, Mr N Valticos, Mr JM Morenilla, Mr F Bigi.

The Court took formal note of the agreement concluded between the Government and Mrs Muyldermans. The agreement would give satisfaction to the latter. In addition, the amended legislation provided that the Audit Court would hold adversarial and public hearings. The adoption of the legislation by the relevant Belgian authorities would remove any reason of public policy for the European Court to decide on the merits of the case. Accordingly, it was appropriate to strike the case out of its list.

FS (Belgian Government agreed in principle not to enforce the judgment of the Audit Court against the applicant and to amend the legislation concerning the organisation of the Audit Court and the legislation on public accounts. Reimbursement of applicant's costs and fees (BEF 50,000). Compensation for pecuniary damage (BEF 20,000), therefore SO.

N

Nardone v Italy 00/15

[Application lodged 24.10.1997; Court Judgment 25.1.2000]

Ennio and Antonella Nardone complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 22 June 1989 and was still pending. It had lasted more than 10 years and six months. The period could not be considered reasonable.

Non-pecuniary damage (ITL 28,000,000), costs and expenses (ITL 1,500,000).

Cited: Bottazzi v I (28.7.1999).

Nasri v France (1996) 21 EHRR 458 95/21

[Application lodged 30.1.1992; Commission report 10.3.1994; Court Judgment 13.7.1995]

Mr Mohamed Nasri, an Algerian national, was born deaf and dumb in June 1960, in Algeria. He came to France with his family in February 1965. He had criminal convictions for thefts from 1981–83 which had resulted in terms of imprisonment, gang rape in 1986, which had resulted in five years' imprisonment, two of which were suspended and five years' probation, theft with violence in 1987 and 1988 for which he received imprisonment, assaulting a public official in 1989 for which he was fined, theft and receiving stolen goods in 1990 for which he was imprisoned, criminal damage and thefts in 1982, 1992 and 1993. On 21 August 1987, the Minister of the Interior ordered his deportation on the ground that his presence on French territory represented a threat to public order. On 10 March 1988 the Versailles Administrative Court quashed the above-mentioned order. On 15 February 1991 the Conseil d'Etat overturned the Administrative Court's judgment and dismissed the applicant's applications for the quashing of the order or for a stay of execution. On 31 January 1992 the Nanterre tribunal de grande instance issued a compulsory residence order requiring him to live with his parents. His application to the Paris Administrative Court was dismissed in October 1992. The compulsory residence order was renewed. He complained that his deportation to Algeria would entail a violation of A 3 and 8.

Comm found by majority (19–3) V 3 if deported, (20–2) V 8 if deported.

Court found unanimously V8 if decision to deport executed, by majority (7–2) not necessary to examine 3.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr F Matscher, Mr L-E Pettiti (c), Mr J De Meyer (pd), Mr JM Morenilla (pd), Mr MA Lopes Rocha, Mr L Wildhaber (c), Mr D Gotchev.

The execution of the deportation measure would amount to an interference with the exercise by the applicant of his right to respect for his family life. The deportation order was in accordance with the law and pursued the legitimate aims of prevention of disorder and the prevention of crime. It was for the Contracting States to maintain public order, in particular by exercising their right to control the entry and residence of aliens and notably to order the expulsion of aliens convicted of criminal offences. However, their decisions in this field, in so far as they may interfere with a right protected under A 8(1), had to be necessary in a democratic society, that was to say, justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued. The applicant's deportation was decided following his conviction for gang rape. The perpetrator of such a serious offence would unquestionably represent a grave threat to public order. In the present case, however, there were other aspects to be taken into account. The Assize Court accepted that there were extenuating circumstances and that was reflected in the sentence, it also recognised implicitly that the applicant had not been the instigator of the offence. The applicant had not re-offended as far as that offence was concerned. The applicant had been deaf and dumb since birth and his condition had been aggravated by illiteracy. In view of his difficulties, the family was especially important, not only in terms of providing a home, but also because it could

help to prevent him from lapsing into a life of crime, particularly so in this case as the applicant had received no therapy for his condition. He had always lived with his parents. Most of his siblings had acquired French nationality and had no close ties with Algeria. He had received all his schooling in France. He did not understand Arabic. In view of the accumulation of special circumstances, the decision to deport the applicant, if executed, would not be proportionate to the legitimate aim pursued. It would infringe the right to respect for family life and therefore constitute a breach of A 8.

Having regard to the conclusion under A 8, it was not necessary to examine A 3.

Not necessary to apply A 50 (no claim made for costs and expenses, legal aid granted for Convention organs).

Cited: Beldjoudi v F (26.3.1992), Moustaquim v B (18.2.1991), Saïdi v F (20.9.1993).

National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v United Kingdom (1998) 25 EHRR 127 97/83

[Applications lodged 15.1.1993, 21.12.1992 and 11.1.1993; Commission report 25.6.1996; Court Judgment 23.10.1997]

The applicants were building societies. Following changes to the tax system on interest paid to investors in building societies in 1986, a gap period was exposed between the end of the applicant societies' accounting periods in 1985–86 and the start of the first quarter under the new regime. Transitional regulations were introduced which deemed payments falling into the gap period to have been made in a later accounting period, with the result that they formed the basis for an assessment to tax under the new 'actual-year' arrangements. In the view of the Government the legislative intention was to ensure that the same amount of tax was collected as would have been collected if the previous arrangements had continued and that the building societies did not receive an undeserved windfall in respect of the gap period. The applicant societies considered that the effect of the Regulations was to impose tax again on interest they had paid in 1985–86, a fiscal year for which liability on their investors' interest had already been discharged. In June 1986 the Woolwich commenced judicial review proceedings seeking a declaration that Regulation 11 was unlawful (Woolwich 1 proceedings). On 4 July 1986 the Government introduced in Parliament a measure intended to validate retrospectively the impugned Regulations and to give effect to what they claimed to be the original intention of Parliament when adopting it. On 15 July 1987 the Woolwich issued a writ against the Inland Revenue claiming repayment of the sums paid by way of tax under the transitional provisions of the Regulations, as well as interest from the date of payment. On 25 October 1990 the House of Lords allowed the appeal of the Woolwich in the Woolwich 1 proceedings and declared the transitional provisions in the 1986 Regulations to be *ultra vires*. This ruling declaring Regulation 11(4) void on technical grounds meant that no mechanism existed to achieve what the Government claimed to be Parliament's initial intention that interest payments made during the gap period should be assessed for tax. This led the Government to introduce new legislative provisions. Following the House of Lords' decision in the Woolwich 1 proceedings, the applicants commenced proceedings against the Inland Revenue for the restitution of the sums paid pursuant to the 1986 Regulations which had been declared void in the Woolwich 1 proceedings. The legislation to remedy the technical defects in the Regulations became s 53 of the Finance Act 1991. The provision had retrospective effect, save that by sub-s (4) it had no effect 'in relation to a building society which commenced proceedings to challenge the validity of the Regulations before 18 July 1986'. The Woolwich was the only building society which satisfied that condition. Proceedings were commenced by the applicant societies, who also challenged on the ground of unlawfulness, the Treasury Orders establishing the composite-rate tax for 1986–87 and for the following years. On 16 July 1992 s 64 of the Finance (No 2) Act 1992 entered into force. The legislation had been anticipated and was intended to validate retrospectively the impugned Treasury Orders. The effect of s 64 was to extinguish the remaining proceedings lodged by the applicants for judicial review of the validity of the Treasury Orders and for restitution. The

applicant societies complained of breaches of P1A1 and of A 6, taken alone or in conjunction with A 14.

Comm found by majority (13–3) NVP1A1, (14–2) NV 14+P1A1, (9–7) V 6(1), (14–2) not necessary to examine 14+6(1).

Court found unanimously NV P1A1, by majority (8–1) NV 14+P1A1, unanimously NV 6(1), by majority (8–1) NV 14+6(1).

Judges: Mr R Ryssdal, President, Mr R Macdonald, Mr N Valticos, Mrs E Palm, Mr R Pekkanen, Sir John Freeland, Mr P Jambrek (pc/pd), Mr K Jungwiert, Mr E Levits.

The interest paid in the gap period in issue would have been taxed, and subsequent gap periods would have been brought into account in future fiscal years in accordance with the same logic. The voluntary arrangements made no provision for interest to be omitted for tax-assessment purposes. The amounts were lodged in the applicant's reserves waiting to be brought into account. If steps had not been taken to bring those amounts into account in the move from the prior-period system to the actual-year system, the applicant societies would have been left with considerable sums of money representing unpaid tax. It could not be maintained that the effect of the transitional arrangements in the 1986 Regulations was to subject those amounts of money to double taxation, since no tax had ever been paid on the interest paid in the gap period before the changeover to the new actual-year scheme of assessment. Parliament intended interest to be taxed, it could not be maintained that it was misled as to the effect of the transitional arrangements. The Court considered the claims of the applicant societies that they were deprived of their legal rights to restitution of the monies paid to the Inland Revenue under the invalidated Regulations on the clear understanding that those monies were intended by Parliament to be charged to tax, had not been subjected to a double imposition and were not therefore wrongfully expropriated. While expressing no concluded view as to whether any of the claims asserted by the applicant societies could properly be considered to constitute possessions, the Court, was prepared to proceed on the working assumption that in the light of the Woolwich 2 ruling the applicant societies did have possessions in the form of vested rights to restitution which they sought to exercise in direct and indirect ways in the various legal proceedings instituted in 1991 and 1992. The retroactive measures operated in a way which constituted an interference with the enjoyment of the applicant societies' possessions. The Court proceeded on the working assumption that the legal claims in issue amounted to possessions within the meaning of P1A1. The Court recalled its case-law. The Court examined the complaints from the angle of a control of the use of property in the general interest 'to secure the payment of tax', which fell within the rule in the second paragraph of A 1. In enacting s 53 of the 1991 Act with retroactive effect Parliament was concerned to restore and reassert its original intention which had been stymied by the finding of the House of Lords in the Woolwich 1 litigation that the 1986 Regulations were *ultra vires* on technical grounds. The decision to remedy the technical deficiencies of the Regulations with retroactive effect was taken before 7 March 1991, namely before the date when the Leeds and the National & Provincial issued their writs and without regard to the imminent launch of the first set of restitution proceedings. Although s 53 had the effect of extinguishing the restitution claims of those two applicant societies, it did not appear that the ultimate aim of the measure was without reasonable foundation having regard to the public-interest considerations which underpinned the proposal to legislate with retroactive effect and Parliament's endorsement of that proposal. Section 64 was enacted to safeguard the tax paid by the applicant societies and the attempts to recover that tax. If the enactment of that provision could be considered to be justified on public-interest grounds, it had to also be the case that the same public-interest justification could be lawfully asserted by the respondent State to thwart the challenge to the Treasury Orders. The public-interest considerations in removing any uncertainty as to the lawfulness of the revenue collected had to be seen as compelling and such as to outweigh the interests defended by the applicant societies in contesting the legality of the rate set by the Treasury Orders in order to try once again to circumvent Parliament's original intention. Therefore the actions taken by the respondent State did not upset the balance which had to be struck between the protection of the applicant societies' rights to

restitution and the public interest in securing the payment of taxes. There had accordingly been no violation of P1A1.

The applicant societies were not in a similar position to Woolwich, which alone took an independent and bold stance by mounting a legal challenge to the validity of the Regulations and alone bore the costs and risks of the litigation, taking complex and expensive proceedings as far as the House of Lords and secured victories before the Leeds and the National & Provincial had issued writs. Even if it were possible to regard the applicant societies as having been in a relevantly similar situation to the Woolwich, there was nevertheless a reasonable and objective justification for the distinction made in s 53 of the 1991 Act. It was understandable that Parliament did not wish to interfere with a judicial decision which brought to an end litigation which had lasted over three years. Section 64 of the 1992 Act applied generally. It could not be maintained that s 64 perpetuated any difference in treatment between the Woolwich and the applicant societies. Therefore there had been no breach of P1A1 taken in conjunction with A 14.

A 6: Both sets of restitution proceedings were private-law actions and were decisive for the determination of private-law rights to quantifiable sums of money. The judicial review proceedings were closely interrelated with the second set of restitution proceedings and were part of a calculated strategy to reassert the private-law claims which had been extinguished by s 53 of the 1991 Act. In those circumstances and irrespective of the public-law nature of that litigation, the judicial review proceedings had to also be considered to have been decisive of private-law rights. Therefore A 6(1) was applicable.

The right of access was not absolute, but may be subject to limitations. The effect of s 53 of the 1991 Act was to deprive the Leeds and the National & Provincial of their chances of winning their restitution proceedings against the Inland Revenue. The Court had to examine whether the action taken by the legislature constituted an interference with the applicants' right of access to a court. In so doing, it had regard to all the circumstances of the case and subjected to close scrutiny the reasons adduced by the respondent State for justifying any intervention which may have occurred in pending litigation as a result of the retrospective effects of s 53 of the 1991 Act and s 64 of the 1992 Act. By enacting the relevant measures Parliament clearly affirmed its intention to bring the interest paid in the gap period into account for tax purposes in the manner indicated in the 1986 Regulations. Having regard to the clear aim of Parliament in adopting the impugned measures, those two applicant societies must reasonably be considered to have anticipated at the close of the Woolwich 1 litigation that the Treasury would seek Parliament's approval to cure the technical defects in the 1986 Regulations and would not be content on public-interest grounds to allow a substantial amount of already collected revenue to be lost on account of a technicality. The Leeds and the National & Provincial instituted their restitution proceedings after the authorities had formally decided to seek Parliament's approval for the retrospective validation of the 1986 Regulations. In those circumstances, those proceedings had to be considered to have been an attempt to benefit from the vulnerability of the authorities' situation following the outcome of the Woolwich 1 litigation and to pre-empt the enactment of remedial legislation. The decision of the authorities to legislate with retrospective effect to remedy the defect in the 1986 Regulations was taken without regard to pending legal proceedings and with the ultimate aim of restoring Parliament's original intention. The legislation was not specifically targeted at Leeds' and National & Provincial's restitution actions even if its effect was to stifle those actions. The Court was especially mindful of the dangers inherent in the use of retrospective legislation which had the effect of influencing the judicial determination of a dispute to which the State was a party, including where the effect was to make pending litigation unwinnable. However, A 6(1) could not be interpreted as preventing any interference by the authorities with pending legal proceedings to which they were a party. The judicial review proceedings launched by the applicant societies had not even reached the stage of an inter partes hearing. Furthermore, in adopting s 64 of the 1992 Act with retrospective effect the authorities in the instant case had even more compelling public-interest motives to make the applicant societies' judicial review proceedings and the contingent restitution proceedings unwinnable than was the case with the enactment of s 53 of the 1991 Act. The challenge to the Treasury Orders created uncertainty over the substantial amounts of revenue

collected from 1986 onwards. It had to also be observed that the applicant societies in their efforts to frustrate the intention of Parliament were at all times aware of the probability that Parliament would equally attempt to frustrate those efforts having regard to the decisive stance taken when enacting s 47 of the Finance Act 1986 and s 53 of the 1991 Act. They had engaged the will of the authorities in the tax sector and must have appreciated that the public-interest considerations in placing the 1986 Regulations on a secure legal footing would not be abandoned easily. Therefore the applicant societies could not in the circumstances justifiably complain that they were denied the right of access to a court for a judicial determination of their rights. There had accordingly been no breach of A 6(1).

The complaints raised by the applicant societies under A 14 and 6 reflect the substance of their earlier complaints under A 14 and P1A1. For the same reasons there was no violation of A 6(1) taken in conjunction with A 14. Therefore the applicant societies were not victims of a violation under A 14 and 6.

Cited: Editions Périscope v F (26.3.1992), Gasus Dosier und Fördertechnik GmbH v NL (23.2.1995), Pressos Compania Naviera SA and Others v B (20.11.1995), Stran Greek Refineries and Stratis Andreadis v GR (9.12.1994), Stubbings and Others v UK (22.10.1996).

National Union of Belgian Police (1979–80) 1 EHRR 578 75/2

[Application lodged 5.3.1970; Commission report 27.5.1974; Court Judgment 27.10.1975]

The National Union of Belgian Police complained of the Government refusal to recognise it as one of the most representative organisations that the Ministry of the Interior was required to consult under the Act of 27 July 1961, which related to such matters as staff structures, conditions of recruitment and promotion, pecuniary status and salary scales of provincial and municipal staff. The applicant union, which was excluded from that consultation as regards both questions of interest to all such staff and questions peculiar to the municipal police, considered that it was put at a disadvantage compared with the three trade unions open to that staff as a whole, as defined in Royal Decree of 2 August 1966. It complained that the provision greatly restricted its field of action, thereby tending to oblige the members of the municipal police to join the organisations considered to be 'representative' but having a 'political' character incompatible with the 'special vocation' of the police.

Comm found unanimously, that the State, whether acting as legislator or employer, assumed obligations within the scope of 11(1), by majority (8-5) that the right to consultation and freedom to bargain collectively were elements of trade union action falling within the scope of 11, unanimously NV 11(1), 14+11.

Court found unanimously NV 11, by majority (10-4) NV 14+11.

Judges: Mr G Balladore Pallieri, President, Mr H Mosler, Mr A Verdross, Mr E Rodenbourg, Mr M Zekia (so), Mr J Cremona, Mr G Wiarda (jso), Mr P O'Donoghue, Mrs H Pedersen, Mr T Vilhjálmsson, Mr R Ryssdal, Mr W Ganshof Van Der Meersch (jso), Sir Gerald Fitzmaurice (so), Mrs D Bindschedler-Robert (jso).

While A 11(1) presented trade union freedom as one form or a special aspect of freedom of association, it did not guarantee any particular treatment of trade unions, or their members, by the State, such as the right to be consulted by it. The phrase 'for the protection of his interests' denoted purpose and showed that the Convention safeguarded freedom to protect the occupational interests of trade union members by trade union action, the conduct and development of which the Contracting States had to both permit and make possible. Therefore the members of a trade union had a right, in order to protect their interests, that the trade union should be heard. A 11(1) left each State a free choice of the means to be used towards this end. While consultation was one of those means, there were others. What the Convention required was that under national law trade unions should be enabled, in conditions not at variance with A 11, to strive for the protection of their members' interests. The applicant union could engage in various kinds of activity vis-à-vis the Government and it was not alleged that the steps it took were ignored by the Government. In those circumstances, the fact alone that the Minister of the Interior did not consult the applicant

under the Act of 27 July 1961 did not constitute a breach of A 11(1) considered on its own. As regards the alleged infringement of personal freedom to join or remain a member of the applicant union, every member of the municipal police retained this freedom as of a right, notwithstanding the Royal Decree of 2 August 1966. The policy of restricting the number of organisations to be consulted was not on its own incompatible with trade union freedom; the steps taken to implement it escaped supervision by the Court provided that they did not contravene A 11 and 14 read in conjunction. There was no violation of A 11(1).

Although A 14 had no independent existence, it was complementary to the other normative provisions of the Convention and Protocols: it safeguarded individuals, or groups of individuals, placed in comparable situations, from all discrimination in the enjoyment of the rights and freedoms set forth in those provisions. A measure which in itself was in conformity with the requirements of the Article enshrining the right or freedom in question might therefore infringe that Article when read in conjunction with A 14 for the reason that it was of a discriminatory nature. The applicant union was at a disadvantage compared with certain other trade unions on the issue of consultation. Not every distinction amounted to discrimination. The principle of equality of treatment was violated if the distinction had no objective and reasonable justification, and the existence of such a justification had to be assessed in relation to the aim and effects of the measure under consideration. A difference of treatment in the exercise of a right laid down in the Convention had not only to pursue a legitimate aim: A 14 was also violated when it was clearly established that there was no reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Government wish to avoid 'trade union anarchy' and consideration that it was necessary 'to ensure a coherent and balanced staff policy, taking due account of the occupational interests of all provincial and communal staff' was a legitimate aim in itself. A 11 and 14 did not oblige Belgium to set up for provincial and municipal staff, and for the municipal police in particular, a consultation system analogous to the one in operation for State officials. Insofar as consultation covered questions of a general nature which were of interest to all provincial and municipal staff: in that regard, the measure contained in the Royal Decree was a proper means of attaining the legitimate aim sought to be realised. The uniform nature of the rule in the Royal Decree did not justify the conclusion that the Government had exceeded the limits of its freedoms to lay down the measures it deemed appropriate in its relations with the trade unions. It had not been clearly established that the disadvantage suffered by the applicant was excessive in relation to the legitimate aim pursued by the Government. The principle of proportionality had therefore not been offended.

Cited: 'Belgian Linguistic' case (23.7.1968), Golder v UK (21.2.1975).

Navarra v France (1994) 17 EHRR 594 93/47

[Application lodged 31.7.1987; Commission report 9.9.1992; Court Judgment 23.11.1993]

Mr Paul Navarra, a farmer from Upper Corsica, was remanded in custody on 22 November 1985 on a charge of armed robbery. During his detention on remand in Nice prison, he filed six applications for release. He complained that the final decision in respect of his third application for release, namely, the decision of the Montpellier Indictment Division of 24 October 1986, had not been rendered speedily. On 24 March 1986 the investigating judge had dismissed the third application, which had been made on 19 March. On 23 April 1986 the Indictment Division found inadmissible the appeal filed by the applicant on 25 March against that decision. On 28 May 1986 the applicant appealed to the Court of Cassation, which received the file on 19 June. On 13 September 1986 it quashed the contested decision and remitted the case to the Indictment Division of the Montpellier Court of Appeal. On 24 October 1986 the Montpellier Indictment Division declared the appeal of 25 March 1986 ill-founded and confirmed the order made on 24 March dismissing the application for release of 19 March. He complained that his appeal of 25 March 1986 against the order made the previous day had not been heard on its merits speedily.

Comm found by majority (13–6) NV 5(4).

Court unanimously dismissed the Government's preliminary objection, found NV 5(4).

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mrs E Palm, Mr AN Loizou, Mr JM Morenilla, Mr AB Baka, Mr L Wildhaber.

The Government contended that the applicant had failed to exhaust his domestic remedies as he had not brought an action for compensation against the State. An action for damages may be relevant for the purposes of A 26, but the only remedies which that article required to be exhausted were those that related to the breaches alleged and which were available and sufficient. The existence of such remedies had to be sufficiently certain not only in theory but also in practice, failing which they would lack the requisite accessibility and effectiveness. The relevant provision circumscribed the State's liability very narrowly and may not have assisted the applicant. In any event, the right to a speedy decision on the lawfulness of detention had to be distinguished from the right to receive compensation for such detention. In addition, the Compensation Board of the Court of Cassation rejected the applicant's claim as ill-founded. The objection was therefore dismissed.

Regarding the scope of A 5(1) and 5(4), a periodic judicial review, if it was to satisfy the requirements of those provisions, had to comply with both the substantive and the procedural rules of the national legislation and moreover be conducted in conformity with the aim of A 5, namely to protect the individual against arbitrariness. The courts before which the case came gave their decisions within the time-limits laid down by law. There was a delay for which the applicant was responsible, however, the forwarding of the file to the Court of Cassation and subsequently to the Montpellier Indictment Division, following the remittal of the case to that court, took some time. A 5(4) did not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention and for hearing applications for release. Nevertheless, a State which instituted such a system had in principle to accord to the detainees the same guarantees on appeal as at first instance. The applicant retained the right, enshrined in French law, to submit further applications for release at any time. Yet from 25 March to 24 October 1986 he did not file any new applications and did not do so until 20 March 1987. Accordingly, there had been no violation of A 5(4).

Cited: Bouamar v B (29.2.1988), Herczegfalvy v A (24.9.1992), Letellier v F (26.6.1991), Luberti v I (23.2.1984), Tomasi v F (27.8.1992), Toth v A (12.12.1991), Vernillo v F (20.2.1991).

Neigel v France 97/12

[Application lodged 29.1.1991; Commission report 17.10.1995; Court Judgment 17.3.1997]

On 4 July 1978, Miss Florence Neigel started working as an auxiliary shorthand typist for Biarritz Town. She was appointed as a trainee on 1 March 1979 and given a permanent post on 1 March 1980. She took leave of absence and applied for reinstatement thereafter. On 22 July 1986 she applied to the Pau Administrative Court to have the mayor's decision confirming her 'technical reinstatement' and her 'leave of absence without pay' quashed and to obtain an order that he should pay her the salary she should have received. Her application was rejected and an appeal to the Conseil d'Etat was dismissed in January 1991. She complained about the length of the civil proceedings.

Comm found by majority (19–10) V 6(1).

Court found by majority (8–1) A 6 not applicable.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr L-E Pettiti, Mr A Spielmann, Mrs E Palm (d), Sir John Freeland, Mr AB Baka, Mr J Makarczyk, Mr D Gotchev.

The applicant sought reinstatement and the outcome of the proceedings in the administrative courts was directly decisive for her right to reinstatement. There was accordingly a dispute over a right within the meaning of A 6(1). Disputes relating to the recruitment, careers and termination of service of civil servants were as a general rule outside the scope of A 6(1). In the present case it was clear from the evidence that the applicant was essentially seeking reinstatement to the permanent

post of shorthand typist at Biarritz Town Hall that she had held previously. The dispute raised by her clearly related to her recruitment, her career and the termination of her service. It therefore did not concern a 'civil' right within the meaning of A 6(1). Regarding her claim for payment of the salary she would have received if she had been reinstated, an award of such compensation by the administrative court was directly dependent on a prior finding that the refusal to reinstate was unlawful. A 6(1) did not therefore apply to the case.

Cited: Massa v I (24.8.1993), Francesco Lombardo v I (26.11.1992), Zander v S (25.11.1993).

Neumeister v Austria (1979–80) 1 EHRR 136, 591 68/3

[Application lodged 12.7.1963; Commission report 27.5.1966; Court Judgment 27.6.1968 (merits), 7.5.1974 (A 50)]

Mr Fritz Neumeister was formerly the owner and director of a large transport firm. Following investigations in 1959 and 1960 he was arrested and remanded in custody in respect of tax offences and fraud. He was provisionally released but re-arrested and detained in July 1962. His appeals for provisional release were dismissed. On 8 January 1964 his provisional release was ordered against a monetary security and the voluntary deposit of his passport with the Court. The indictment was 219 pages long and concerned ten persons. On 18 June 1965, after one hundred and two days of the hearing, the Regional Criminal Court of Vienna, postponed the completion of the trial indefinitely so that the investigation might be completed. Two counts were discontinued and the trial was resumed before the Regional Criminal Court of Vienna on 4 December 1967. The applicant complained of his detention and length of proceedings.

Comm found by majority (11–1) V 5(3), (6–6 with the President's casting vote) V 6(1) as regards length of proceedings, (8–2 with two abstentions) NV 5(4) or 6(1) as regards the applicant's release.

Court found unanimously V 5(3), by majority (5–2) NV 6(1) as regards the length of the proceedings, unanimously NV 5(4) or 6(1) as to the procedure followed in examining the requests for provisional release.

Judges: Mr H Rolin, President Mr A Holmbäck (d A 6(1)), Mr G Balladore Pallieri, Mr H Mosler, Mr M Zekia (d A 6(1)), Mr S Bilge, Mr H Schima, ad hoc Judge.

Judges: (A 50): Mr G Balladore Pallieri, President, Mr A Holmbäck, Mr A Verdross, Mr H Mosler, Mr M Zekia, Mr J Cremona, Mr P P O'Donoghue.

A 5(3) could not be understood as giving the judicial authorities a choice between either bringing the accused to trial within a reasonable time or granting him provisional release even subject to guarantees. The reasonableness of the time spent by an accused person in detention up to the beginning of the trial had to be assessed in relation to the very fact of his detention. Until conviction, he had to be presumed innocent and the purpose of the provision under consideration was essentially to require his provisional release once his continuing detention ceased to be reasonable. In determining whether or not the detention of an accused person exceeded a reasonable limit, it was for the national judicial authorities to seek all the facts arguing for or against the existence of a genuine requirement of public interest justifying a departure from the rule of respect for individual liberty. It was essentially on the basis of the reasons given in the decisions on the applications for release pending trial and of the true facts mentioned by the applicant in his appeals, that the Court was called upon to decide whether or not there has been a violation of the Convention. The applicant was subjected to two periods of detention on remand, the first from 24 February 1961 to 12 May 1961, lasting two months, 17 days, and the second from 12 July 1962 to 16 September 1964, lasting two years, two months, four days. The first period could not be considered as the applicant did not approach the Commission until after the six-month time-limit laid down in A 26 had expired. That period of detention nevertheless had to be taken into account in assessing the reasonableness of his later detention. The Court could take into consideration detention subsequent to 12 July 1963, the day on which he filed his application as he had complained not of an isolated act but rather of a situation in which he had been for some time

and which was to last until it was ended by a decision granting him provisional release. It would be excessively formalistic and would paralyse the workings of the Commission and Court to demand that an applicant denouncing such a situation should file a new application with the Commission after each final decision rejecting a request for release. For those reasons, the Court had found that it had to examine the applicant's continued detention on remand until his provisional release on 16 September 1964. The reason invoked by the authorities to justify their rejection of the applications for release was the danger of absconding. The danger of flight could not, however, be evaluated solely on the basis of fear of greater gravity of criminal and civil penalties. Other factors, especially those relating to the character of the person involved, his morals, his home, his occupation, his assets, his family ties and all kinds of links with the country in which he was being prosecuted may either confirm the existence of a danger of flight or make it appear so small that it cannot justify detention pending trial. In addition the danger of flight necessarily decreased as the time spent in detention passed by. The Court was not in a position to state an opinion as to the amount of security which could reasonably be demanded of the applicant. However, the concern to fix the amount of the guarantee to be furnished by a detained person solely in relation to the amount of the loss imputed to him did not appear to be in conformity with A 5(3). The guarantee provided for by A 5(3) was designed to ensure not the reparation of loss but rather the presence of the accused at the hearing. Its amount had therefore to be assessed principally by reference to him, his assets and his relationship with the persons who were to provide the security, in other words to the degree of confidence that was possible that the prospect of loss of the security or of action against the guarantors in case of his non-appearance at the trial would act as a sufficient deterrent to dispel any wish on his part to abscond. For those reasons, the Court found that the applicant's continued provisional detention until 16 September 1964 constituted a violation of A 5(3).

The period to be taken into consideration in considering length of proceedings under A 6(1) began with the day on which a person was charged. The applicant was charged on 23 February 1961. The period ended with the judgment determining the charge. In the present case there had not yet been a judgment on the merits. More than seven years had elapsed indicating an exceptionally long period which in most cases should be considered as exceeding the reasonable time laid down in A 6(1). For a period of fifteen months there was no interrogation of the applicant nor any investigation by the Judge. There was a long investigation but nevertheless the trial court was compelled, after sitting for several months, to order further investigations. However it could not be concluded that the reasonable time laid down in A 6(1) was exceeded in the present case. The case was of extraordinary complexity. Investigations had to be conducted abroad. While severance of the applicant's case from his co-accused may have speeded the case there was no suggestion that severance would here have been compatible with the good administration of justice. Neither would allocation of the case to more than one judge, even if legally possible, have necessarily accelerated the case. A concern for speed could not dispense judges responsible for the investigation or the conduct of the trial from taking every measure likely to throw light on the truth or falsehood of the charges. The delays in opening and reopening the hearing were in large part caused by the need to give the legal representatives and the judges time to acquaint themselves with the case.

The procedure followed by the Austrian courts in examining the applicant's requests for provisional release did not contravene either A 5(4) or A 6(1).

Legal costs (ATS 30,000).

Cited: Lawless v IRE (1.7.1961).

Neves e Silva v Portugal (1991) 13 EHRR 535 89/6

[Application lodged 17.10.1984; Commission report 17.12.1987; Court Judgment 27.4.1989]

Mr José Neves e Silva was a retired accountant. In April 1962 the private company Molda Plásticos Nesil, Lda, of which he was one of the owners and the managing director, requested the

Directorate General for Industry for an authorisation to use an automatic machine in order to manufacture plastic fibres from which material its products were made. The request was refused, as were further requests. On 11 May 1972 he instituted proceedings in the Lisbon Administrative Court against the State, a chief engineer in the Directorate General for Industry and shareholders in another company alleging in particular that the chief engineer had acted fraudulently in the exercise of his official duties and that the other defendants had derived benefit from the operation. By a judgment of 30 May 1985, notified to the parties on 9 June, the Supreme Administrative Court upheld the decision of the Lisbon Administrative Court of 1984, finding the action statute-barred. On 7 July 1985, the applicant appealed unsuccessfully to the Supreme Administrative Court and subsequently to the Conferencia, a judicial committee consisting of the judge rapporteur and two other members of the court which on 4 March 1986 upheld the decision of the rapporteur of the Supreme Administrative Court. The applicant complained that the administrative courts had not heard his case within a reasonable time.

Comm found unanimously V 6(1).

Court unanimously dismissed preliminary objections, found V 6(1).

Judges: Mr R Ryssdal, President, Mr J Pinheiro Farinha, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr A Spielmann, Mr N Valticos.

A 6(1) extended to disputes over civil rights which could be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether they were also protected under the Convention. Those conditions are satisfied in the present case. A dispute had arisen between the applicant and the State. It no longer concerned the 'right' to manufacture plastic fibres, but the right to receive compensation for culpable conduct on the part of the administrative authorities. The Administrative Court recognised that the applicant had *locus standi*. The right claimed by the applicant consisted in financial reparation for pecuniary damage. It was therefore a 'civil right', notwithstanding the origin of the dispute and the jurisdiction of the administrative courts. A 6(1) was therefore applicable. The issue before the Court was not whether the applicant met with an unlawful refusal to grant him the authorisation sought, but whether the case was heard within a reasonable time as required under A 6(1). In that respect he was entitled to claim the status of 'victim' for the purposes of A 25. The fact that he was a minority shareholder was immaterial in this connection. The preliminary objection of lack of victim status was therefore rejected.

In this case the period to be considered did not begin to run when the action was first brought before the competent court but only when, on 9 November 1978, the Convention entered into force with regard to Portugal. In order to establish whether the time which elapsed following this date was reasonable, it was however necessary to take account of the stage which the proceedings had reached at that point. The period ended on 9 June 1985, the date of the notification of the Supreme Administrative Court's judgment to the applicant. The period had lasted six years and seven months. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard, *inter alia*, to the complexity of the case and to the conduct of the parties and the competent authorities. The dispute was not a complex one. Although under the Portuguese Code of Civil Procedure it was for the parties to take the initiative with regard to the progress of proceedings, the court was placed under a duty to show diligence. The applicant had to wait, after Portugal's ratification of the Convention, more than six years for a decision which, moreover, merely found that the right relied on was statute-barred. The delays in the proceedings, which were instituted in 1972, could not be regarded as the consequence of a temporary crisis or justified thereby. A reasonable time had been exceeded, resulting in a violation of A 6(1).

Non-pecuniary damages (PTE 500,000) costs and expenses (PTE 400,000).

Cited: Baraona v P (8.7.1987), Golder v UK (21.2.1975), Guincho v P (10.7.1984), H v B (30.11.1987), Martins Moreira v P (26.10.1988), Zimmermann and Steiner v CH (13.7.1983).

News Verlags GmbH & Co KG v Austria 00/5

[Application lodged 13.3.1996; Court Judgment 11.1.2000]

The applicant was the publisher and owner of the magazine *News*. In December 1993 the applicant company published articles dealing with the a letter-bomb campaign directed against politicians and others in the public eye, some of whom had been severely injured. The articles also covered the activities of the extreme right and, in particular, the suspect B including pictures of him. On 21 January 1994 B brought proceedings under s 78 of the Copyright Act against the applicant company, requesting that the latter be prohibited from publishing his picture in connection with reports on any criminal proceedings against him. He also requested a preliminary injunction to that effect. On 9 March 1994 the Vienna Commercial Court dismissed B's motion for a preliminary injunction. B appealed and on 22 September 1994 the Vienna Court of Appeal issued a preliminary injunction prohibiting the applicant company from publishing B's picture in connection with reports on the criminal proceedings against him. On 22 November 1994 the Supreme Court upheld that decision. Appeals by the applicant were dismissed. In December 1995 a first-instance court acquitted B of the charges of assault but convicted him of offences under the Prohibition Act. The criminal proceedings against B received extensive news coverage. Newspapers other than the applicant company remained free to publish B's picture. On 18 December 1995 the Vienna Court of Appeal, in proceedings brought by B under the Media Act, found that the applicant company had violated the presumption of innocence in referring to B in its articles as the perpetrator of the letter bomb terror, and ordered it to pay ATS 50,000 by way of compensation to him. The applicant company complained that its right to freedom of expression had been violated.

Court found unanimously V 10, not necessary to examine 14+10.

Judges: Mrs E Palm, President, Mr J Casadevall, Mr R Türmen, Mr C Bîrsan, Mr W Fuhrmann, Mrs W Thomassen, Mr R Maruste.

The prohibition of the publication of B's picture in the context of reports on the criminal proceedings against him, which limited the applicant company's choice as to the form in which it could present such reports, constituted an interference with its right to freedom of expression. The interference was prescribed by law, the Copyright Act, and pursued a legitimate aim, namely the protection of the reputation or rights of others as well as maintaining the authority and impartiality of the judiciary. In considering whether the interference was necessary in a democratic society, the Court had to look at it in the light of the case as a whole, including the context in which the reports were written. The articles were written against the background of a spectacular series of letter bombs which had been sent to politicians and other persons in the public eye in Austria and had severely injured several victims. The attacks, thus, were a news item of major public concern. B was a right-wing extremist, he had entered the public scene well before the letter-bomb series and the offences he was suspected of, namely, offences under the Prohibition Act and aiding and abetting assault through letter bombs, were offences with a political background directed against the foundations of a democratic society. The photographs of B, with the possible exception of one wedding picture, did not disclose any details of his private life and so did not encroach upon B's right to privacy. The essential function the press fulfilled in a democratic society also had to be taken into account. Although the press should not overstep certain bounds, its duty was nevertheless to impart information and ideas on all matters of public interest. The media had the task of imparting the information and ideas and the public had a right to receive them, all the more so where, as in the present case, a person was involved who had laid himself open to public scrutiny by expressing extremist views. However, the limits of permissible comment on pending criminal proceedings could not extend to statements which were likely to prejudice, whether intentionally or not, the chances of a person receiving a fair trial or to undermine the confidence of the public in the role of the courts in the administration of justice. Thus, the fact that B had a right under A 6(2) to be presumed innocent until proved guilty was also of relevance for the balancing of competing interests which the Court had to carry out. The Vienna Court of Appeal stated in the reasons for its decision and in its subsequent judgment of 30 August 1995 that it was not the

publication of B's picture in itself but its combination with comments which were insulting and contrary to the presumption of innocence that violated B's legitimate interests within the meaning of s 78 of the Copyright Act. Nevertheless, the court prohibited the applicant company from publishing B's picture irrespective of the accompanying text. There might be good reasons for prohibiting the publication of a suspect's picture in itself, depending on the nature of the offence at issue and the particular circumstances of the case. However, no reasons were given by the Vienna Court of Appeal. Nor did it carry out a weighing of B's interest in the protection of his picture against the public interest in its publication which was required under s 78 of the Copyright Act. This was all the more surprising as the publication of a suspect's picture was not generally prohibited under s 7a of the Media Act unless the suspect was a juvenile or the offences were only of a minor nature, but depended precisely on a weighing of the respective interests. In sum, the reasons adduced by the Vienna Court of Appeal, though relevant, were not sufficient. Although the injunctions did not restrict the applicant company's right to publish comments on the criminal proceedings against B, they restricted its choice as to the presentation of its reports, while other media were free to continue to publish B's picture throughout the criminal proceedings against him. Having regard also to the domestic courts' finding that it was not the pictures used by the applicant company, but only their combination with the text, that interfered with B's rights, the absolute prohibition of the publication of B's picture went further than was necessary to protect B against defamation or against violations of the presumption of innocence. There was no reasonable relationship of proportionality between the injunctions as formulated by the Vienna Court of Appeal and the legitimate aims pursued and therefore the interference with the applicant company's right to freedom of expression was not necessary in a democratic society. Accordingly, there had been a violation of A 10.

Having regard to the findings under A 10 it was not necessary to examine the complaint under A 14.

Judgment constituted sufficient just satisfaction for any non-pecuniary damage. Costs and expenses (ATS 276,105.02).

Cited: Immobiliare Saffi v I (28.7.1999), Jersild v DK (23.9.1994), Markt Intern Verlag GmbH and Klaus Beermann v D (20.11.1989), Observer and Guardian v UK (26.11.1991), Sürek (No 1) v TR (8.7.1999), Sunday Times v UK (No 1) (26.4.1979), Bladet Tromsø and Stensaas v N (20.5.1999), Worm v A (29.8.1997).

Nibbio v Italy 92/3

[Application lodged 3.4.1987; Commission report 15.1.1991; Court Judgment 26.2.1992]

Mrs Silvana Nibbio instituted proceedings on 20 October 1982 against the Istituto Nazionale della Previdenza Sociale in the Rome magistrates' court to obtain a declaration of her right to a disability pension. The investigation commenced at the hearing of 22 February 1983. The applicant's appeal to the District Court was dismissed on 1 June 1989. She then appealed to the Court of Cassation, a hearing took place on 27 September 1991, but no judgment had yet been given at the date of the judgment of the Court of Human Rights.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr SK Martens.

The period to be taken into consideration began on 20 October 1982 when the proceedings were instituted in the magistrates' court. They had not yet ended since the applicant's appeal was still pending in the Court of Cassation. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. Special diligence was necessary in employment disputes, which included pensions disputes. A 6(1) imposed on Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. In this case the

magistrates' court took more than three years to give judgment. The applicant did not appeal from the judgment of 12 February 1986 until the following 20 October, for which period the State was not responsible, but the appeal proceedings remained dormant for approximately 25 months. The were further delays on the part of the courts. In addition the Court of Cassation had still not given judgment. In those circumstances and in view of what was at stake in the proceedings for the applicant, a lapse of time which was already more than nine years could not be regarded as reasonable. There had therefore been a violation of A 6(1).

Non-pecuniary damage (ITL 6,000,000), costs and expenses (ITL 2,000,000).

Cited: Capuano v I (25.6.1987), Vocaturo v I (24.5.1991).

Nicodemo v Italy 97/63

[Application lodged 21.8.1993; Commission report 28.11.1995; Court Judgment 2.9.1997]

Mr Aldo Giuseppe Nicodemo, a lawyer who was already employed by the Calabria Regional Council on a fixed-term contract, was taken into its permanent employment. He instituted proceedings in the Calabria Regional Administrative Court on 15 May 1984 seeking implementation of that decision, the difference in remuneration and damages for the delay. The proceedings were still pending.

Comm found by majority (24–5) V 6.

Court by majority (6–3) found V 6(1).

Judges: Mr R Bernhardt (d), President, Mr C Russo, Mr N Valticos, Mr R Pekkanen (c), Mr AB Baka (d), Mr MA Lopes Rocha, Mr G Mifsud Bonnici (d), Mr P Kûris, Mr E Levits.

Before the Administrative Court the applicant sought, in addition to implementation of the Regional Council's decision to recruit him, payment of the difference in salary and damages for the delay in implementing the decision. The right asserted by the applicant was essentially economic and the administrative authorities' discretionary powers were not in issue. Consequently, the private-law features predominated over the public-law features. Accordingly, A 6(1) was applicable. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the parties. Despite the applicant's three applications to the court to fix a date for hearing and although more than 13 years had already elapsed since the case was submitted to it, the Administrative Court had still not fixed a date for the first hearing. Such a lengthy period failed to satisfy the reasonable time requirement laid down in A 6(1).

Non-pecuniary damage (by majority (8–1) ITL 20,000,000).

Cited: Ceteroni v I (15.11.1996), Hussain v UK (21.2.1996), Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993), Scollo v I (28.9.1995).

Nideröst-Huber v Switzerland (1998) 25 EHRR 709 97/3

[Application lodged 17.10.1991; Commission report 23.10.1995; Court Judgment 18.2.1997]

On 9 December 1985 Mr Armin Nideröst-Huber was dismissed without notice from the posts of chairman and managing director of a family-run public limited company incorporated under Swiss law, following a change of majority among the shareholders. On 29 July 1986 he brought proceedings against the company seeking arrears of salary and a severance payment. The Schwyz District Court gave judgment against him on 22 September 1988. On 19 June 1990 the Cantonal Court dismissed his appeal. The Cantonal Court transmitted the appeal to the Federal Court on 22 October together with the case file and one page of observations which were not communicated to the applicant. In those observations it argued that the appeal should be dismissed and refuted some of the grounds of appeal. On 1 March 1991 the Federal Court dismissed the appeal. The applicant complained that contrary to A 6(1) he had not received a copy of the observations sent by

the Schwyz Cantonal Court to the Federal Court and had therefore been deprived of the opportunity to comment on them before the Federal Court gave judgment.

Comm found by majority (26–4) V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr R Macdonald, Mr C Russo, Mr J De Meyer (so), Mr N Valticos, Mr R Pekkanen, Mr L Wildhaber, Mr K Jungwiert.

The filing of observations was not incompatible with the requirements of a fair trial. The principle of equality of arms, one of the elements of the broader concept of fair trial, required each party to be given a reasonable opportunity to present his case under conditions that did not place him at a substantial disadvantage vis-à-vis his opponent. The Cantonal Court's observations were not communicated to either of the parties to the dispute before the Federal Court. The Cantonal Court, which was an independent tribunal, could not be regarded as the opponent of either of the parties. Accordingly, no infringement of equality of arms had been established. However, the concept of fair trial also implied in principle the right for the parties to a trial to have knowledge of and comment on all evidence adduced or observations filed. Even though the observations in issue ran to only one page they nevertheless constituted a reasoned opinion on the merits of the appeal, and explicitly called for it to be dismissed. They were therefore aimed at influencing the Federal Court's decision. The effect they actually had on the decision was of little consequence. As the observations came from an independent tribunal which had a thorough knowledge of the file, having previously considered the merits of the case, it was unlikely that the Federal Court would have paid them no heed. It was therefore all the more needful to give the applicant an opportunity to comment on them if he wished to do so. It was of little consequence that the case concerned civil litigation, where the national authorities enjoyed greater latitude than in the criminal sphere; on that point the requirements derived from the right to adversarial proceedings were the same in both civil and criminal cases. Nor was the position altered when, in the opinion of the courts concerned, the observations did not present any fact or argument which had not already appeared in the decision. Only the parties to a dispute could properly decide whether that was the case. What was particularly at stake here was litigants' confidence in the workings of justice, which was based on, *inter alia*, the knowledge that they had had the opportunity to express their views on every document in the file. The filing of observations may have been calculated to save time and expedite the proceedings but that did not justify disregarding such a fundamental principle as the right to adversarial proceedings. A 6(1) was intended above all to secure the interests of the parties and those of the proper administration of justice. Respect for the right to a fair trial, guaranteed by A 6(1), required that the applicant be informed that the Cantonal Court had sent observations and that he be given the opportunity to comment on them. In addition, according to the Government's explanations at the hearing before the Court, that was the normal practice of the Federal Court. It was not followed in this case. There had accordingly been a breach of A 6(1).

Judgment constituted just satisfaction in respect of any non-pecuniary damage. Costs and expenses (CHF 10,775).

Cited: Acquaviva v F (21.11.1995), Ankerl v CH (23.10.1996), Dombo Beheer BV v NL (27.10.1993), Levages Prestations Services v F (23.10.1996), Lobo Machado v P (20.2.1996), Philis v GR (No 1) (27.8.1991), Vermeulen v B (20.2.1996).

Niedbala v Poland 00/173

[Application lodged 5.2.1995; Commission report 1.3.1999; Court Judgment 4.7.2000]

On 31 August 1994 Mr Maciej Niedbala, the applicant, was arrested and on 2 September 1994 the District Public Prosecutor ordered his remand in custody on suspicion of theft of a car. His appeal to the Katowice Regional Court was dismissed on 12 September 1994. His detention was prolonged by the District Public Prosecutor and his further appeal was dismissed on 10 October 1994. The applicant was not entitled to be present at the court hearings relating to his detention,

the decisions were taken on the basis of the case-file and the prosecutor's submissions which were not communicated to the applicant. On 20 March 1995, he was convicted of possessing stolen goods and released. On 21 April 1995, he was re-arrested in respect of a new offence. A District Prosecutor ordered his detention on remand, his appeal was dismissed by the District Court six days later. Whilst in detention, the applicant wrote a letter to the Ombudsman, complaining about alleged irregularities in the criminal proceedings against him. He complained of his detention and that a letter he had written to the Ombudsman was opened and delayed.

Comm found unanimously V 5(3), V 5(4), V8.

Court found unanimously V 5(3), V 5(4), V 8.

Judges: Mrs E Palm, President, Mrs W Thomassen, Mr J Makarczyk, Mr R Türmen, Mr J Casadevall, Mr B Zupancic, Mr T Pantiru.

The role of the officer referred to in A 5(3) was to review the circumstances militating for and against detention and to decide, by reference to legal criteria, whether there were reasons to justify detention and to order release if there were no such reasons. Before an officer could be said to exercise 'judicial power' within the meaning of the provision, he or she had to satisfy certain conditions providing a guarantee to the person detained against any arbitrary or unjustified deprivation of liberty. The officer had to be independent of the executive and of the parties. The judicial control of the detention had to be automatic. It could not be made to depend on a previous application by the detained person. Prosecutors in Poland were subject to supervision of the executive branch of the Government. They performed investigative and prosecuting functions and had to be seen as a party to criminal proceedings. The prosecutors, who remanded the applicant in custody, questioned him before making the detention order and considered whether in the circumstances of the case his detention would be justified. However, that did not suffice for a finding that the prosecutors offered such guarantees of independence as could be regarded as being in compliance with the requirements of A 5(3). The detention orders were subject to judicial review, carried out after 10 days and six days. However, that review was not automatic as it depended on the application lodged with the court by the applicant. Consequently, the fact that judicial review of his detention was open to him did not remedy the shortcoming that the detention orders were made by the prosecutors. Polish law did not offer any safeguards against the risk that the same prosecutor who decided on the applicant's detention on remand might later take part in the prosecution. There had therefore been a violation of A 5(3).

Under A 5(4), an arrested or detained person was entitled to bring proceedings for the review by a court of the procedural and substantive conditions which were essential for the lawfulness of his or her deprivation of liberty. The procedure under A 5(4) had to have a judicial character and provide appropriate guarantees. The law did not entitle either the applicant himself or his lawyer to attend the court session concerning the detention on remand and the provisions did not require that the prosecutor's submissions in support of the applicant's detention be communicated either to the applicant or to his lawyer. The applicant did not have any opportunity to comment on those. The prosecutor was entitled to be present at any of court sessions in which the court examined the lawfulness of the applicant's detention and on one occasion he was present. There had therefore been a violation of A 5(4).

There was interference by a public authority with the exercise of the applicant's right to respect for his correspondence. The expression 'in accordance with the law' necessitated compliance with domestic law and also related to the quality of that law. Domestic law had to indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities so as to ensure to individuals the minimum degree of protection to which citizens were entitled under the rule of law in a democratic society. Polish law allowed for automatic censorship of prisoners' correspondence by the authorities conducting criminal proceedings without drawing any distinction between the different categories of persons with whom the prisoners could correspond. Consequently, the correspondence with the Ombudsman was subject to censorship. The relevant provisions had not laid down any principles governing the exercise of this censorship. In particular, they failed to specify the manner and the time-frame

within which censorship should be effected. As the censorship was automatic, the authorities were not obliged to give a reasoned decision specifying grounds on which it had been effected. Polish law therefore did not indicate with reasonable clarity the scope and manner of exercise of discretion conferred on the public authorities in respect of control of prisoners' correspondence and accordingly the interference complained of was not 'in accordance with the law'.

Non-pecuniary damage (PLN 2,000), costs and expenses (PLN 10,800 less FF 9,989).

Cited: Aquilina v M (29.4.1999), Baranowski v PL (28.3.2000), Brincat v I (26.11.1992), Brogan and Others v UK (29.11.1988), Campbell v UK (25.3.1992), Calogero Diana v I (15.11.1996), De Jong, Baljet and Van den Brink v NL (22.5.1984), Domenichini v I (15.11.1996), Halford v UK (25.6.1997), Huber v CH (23.10.1990), Kampanis v GR (13.7.1995), Kurt v TR (25.5.1998), Megyeri v D (12.5.1992), Nikolova v BG (25.3.1999), Petra v RO (23.9.1998), Sanchez-Reisse v CH (21.10.1986), Schiesser v CH (4.12.1979), Silver and Others v UK (25.3.1983).

Cited (A 41): Baranowski v PL (28.3.2000), Brogan and Others v UK (29.11.1988), De Jong, Baljet and Van den Brink v NL (22.5.1984), Hood v UK (18.2.1999), Huber v CH (23.10.1990), Kampanis v GR (13.7.1995), Nikolova v BG (25.3.1999), Pauwels v B (26.5.1998), Toth v A (12.12.1991), Van Droogenbroeck v B (25.4.1983).

Nielsen v Denmark (1989) 11 EHRR 175 88/16

[Application lodged 15.2.1984; Commission report 12.3.1987; Court Judgment 28.11.1988]

Jon Nielsen was born in 1971. His parents lived together from 1968 until 1973. They were not married and, in accordance with Danish law, only the mother had parental rights over the child. After the parents separated in 1973, the applicant remained with the mother and the father had access to him. The father's proceedings for custody to be transferred to him were unsuccessful. In November 1982, after having lived 'underground' for more than 3 years, the applicant's father again instituted proceedings before the City Court of Ballerup in order to have the custody rights transferred to him. Since he was wanted by the police, on suspicion of having kidnapped the applicant, the father did not attend the hearings in person, but only through his lawyer. His application was rejected. He appealed to the Court of Appeal, which on 22 September 1983 upheld the City Court's judgment. Directly after the hearing in the Court of Appeal, at which both the father and the applicant were present, the father was arrested by the police and charged with depriving the mother of the exercise of her parental rights. The applicant was placed in a children's home. The mother, advised by Social Welfare and Professor Tolstrup, Chief Physician at the State Hospital's Child Psychiatric Ward and with the recommendation of her family doctor, requested that the applicant, who was by then 12 years old, be admitted to the State Hospital's Child Psychiatric Ward since it was clear that he did not want to stay with her. On 26 September 1983, the applicant was admitted to the Ward by Professor Tolstrup, who was Chief Physician at the Ward. On 29 September, the Social Welfare Committee recorded its approval that the applicant was to be placed away from home in accordance with his mother's wish. The applicant's challenge, through his father, of the lawfulness of his placement in the Child Psychiatric Ward was rejected. The applicant absconded from 22 February 1984 to 8 March. He was discharged from the hospital on 30 March 1984 and placed in the care of a family not officially known to the father. He complained that his placement at the Child Psychiatric Ward constituted a breach of A 5(1).

Comm found by majority (11–1) V 5, (10–2) V 5(4).

Court unanimously dismissed the Government's preliminary objection, found by majority (9–7) A 5 not applicable.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson (jd), Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti (jd/so), Mr B Walsh, Sir Vincent Evans, Mr C Russo (jd) Mr R Bernhardt, Mr A Spielmann (jd), Mr J De Meyer (jd), Mr JA Carrillo Salcedo (jd/d), Mr N Valticos (jd), Mr B Gomard, ad hoc judge.

The applicant's complaints did not fall clearly outside the provisions of the Convention. The complaints related to the interpretation and application of the Convention and raised questions

going to the merits of the case, which could not be tried merely as preliminary issues. The Government's preliminary objection (that the applicant's complaint was inadmissible under A 27(2) as being incompatible, *ratione personae*, with the provisions of the Convention), was therefore considered with the merits.

A 5 applied to 'everyone', including minors. Family life encompassed a broad range of parental rights and responsibilities in regard to care and custody of minor children. The care and upbringing of children normally and necessarily required that the parents decided where the child had to reside and also imposed, or authorised others to impose, various restrictions on the child's liberty. The question of hospitalisation was taken by the mother in her capacity as holder of parental rights. Neither the Chief Physician's nor the social authorities' involvement in the case altered the mother's position under Danish law as sole person with power to decide on the hospitalisation of the applicant or on his removal from hospital. Seen in relation to the mother's parental powers, the assistance rendered by the authorities was of a limited and subsidiary nature. Accordingly, the applicant's admission to and stay in the Child Psychiatric Ward were decided by the mother in the exercise of her parental rights. A 5 therefore was not applicable in so far as it was concerned with deprivation of liberty by the authorities of the State. When taking her decision on the basis of medical advice from her family doctor and from Professor Tolstrup, she had as her objective the protection of the applicant's health. That was a proper purpose for the exercise of parental rights. The treatment given at the hospital and the conditions under which it was administered were not inappropriate in the circumstances. The applicant needed medical treatment for his nervous condition and the treatment administered to him was curative, aiming at securing his recovery from his neurosis. This treatment did not involve medication, but consisted of regular talks and environmental therapy. The restrictions on the applicant's freedom of movement and contacts with the outside world were not much different from restrictions which might be imposed on a child in an ordinary hospital. The duration of his treatment was five and a half months, which did not exceed the average period of therapy at the ward and, in addition, the restrictions imposed were relaxed as treatment progressed. There was no abuse of psychiatry. The rights of the holder of parental authority could not be unlimited and it was incumbent on the State to provide safeguards against abuse. However, it did not follow that the present case fell within the ambit of A 5. The restrictions imposed on the applicant were not of a nature or degree similar to the cases of deprivation of liberty specified in A 5(1). The applicant was still of an age at which it would be normal for a decision to be made by the parent even against the wishes of the child. There was no evidence of bad faith on the part of the mother. Hospitalisation was decided upon by her in accordance with expert medical advice. The hospitalisation of the applicant did not amount to a deprivation of liberty within the meaning of A 5 but was a responsible exercise by his mother of her custodial rights in the interest of the child. Accordingly, A 5 was not applicable in the case.

Cited: Ashingdane v UK (28.5.1985), Guzzardi v I (6.11.1980), Lutz v D (28.8.1987), R v UK (8.7.1987).

Niemietz v Germany (1993) 16 EHRR 97 92/76

[Application lodged 15.2.1988; Commission report 29.5.1991; Court Judgment 16.12.1992]

Mr Gottfried Niemietz was a lawyer. On 9 December 1985 a letter was sent to Judge Miosga of the Freising District Court relating to criminal proceedings for insulting behaviour pending before that court against Mr J, an employer who refused to deduct from his employees' salaries and pay over to the tax office the Church tax to which they were liable. The letter bore the signature of one Klaus Wegner , followed by the words 'on behalf of the Anti-clerical Working Group of the Freiburg Bunte Liste (multi-coloured group)' and a post-office box number. The applicant had, as a city councillor, been chairman for some years of the Freiburg Bunte Liste, which was a local political party. He had also played a role in its Anti-clerical Working Group, which sought to curtail the influence of the Church. The applicant's colleague had also been active on behalf of the party and had acted for it professionally. Following lack of success in serving a summons on Klaus Wegner and the applicant's colleague refusal to give any information Munich District Court issued, on 8 August 1986, a warrant to search the law office of the applicant and his colleague and the homes of

other persons. Those searching neither found the documents they were seeking nor seized any materials from the law offices. The applicant's appeal against the search warrant was dismissed as inadmissible. His constitutional complaint was rejected by the Federal Constitutional Court. He complained that the search had violated his right to respect for his home and correspondence and had also, by impairing the goodwill of his law office and his reputation as a lawyer, constituted a breach of his rights under P1A1.

Comm found unanimously V 8, no separate issue under P1A1.

Court found unanimously V 8, no separate issue under P1A1.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Sir John Freeland.

It was not possible or necessary to attempt an exhaustive definition of the notion of 'private life'. There was no reason of principle why private life should exclude activities of a professional or business nature. It was not always possible to distinguish clearly which of an individual's activities formed part of his professional or business life and which did not. To deny the protection of A 8 on the ground that the measure complained of related only to professional activities could lead to an inequality of treatment, in that such protection would remain available to a person whose professional and non-professional activities were so intermingled that there was no means of distinguishing between them. To interpret the words 'private life' and 'home' as including certain professional or business activities or premises would be consonant with the essential object and purpose of A 8, namely to protect the individual against arbitrary interference by the public authorities. In addition in the Article, there was no adjective to qualify the word 'correspondence' as there was for the word 'life'. The search of the applicant's office constituted an interference with his rights under A 8. The interference was in accordance with the law, the Code of Criminal Procedure. The interference pursued aims that were legitimate under A 8(2), namely the prevention of crime and the protection of the rights of others, that was the honour of Judge Miosga. The offence in connection with which the search was effected, involving as it did not only an insult to but also an attempt to bring pressure on a judge, could not be classified as no more than minor. On the other hand, the warrant was drawn in broad terms, in that it ordered a search for and seizure of 'documents', without any limitation, revealing the identity of the author of the offensive letter; that point was of special significance where, as in Germany, the search of a lawyer's office was not accompanied by any special procedural safeguards, such as the presence of an independent observer. More importantly, having regard to the materials that were in fact inspected, the search impinged on professional secrecy to an extent that appeared disproportionate in the circumstances; where a lawyer was involved, an encroachment on professional secrecy might have repercussions on the proper administration of justice and hence on the rights guaranteed by A 6. In addition, the attendant publicity must have been capable of affecting adversely the applicant's professional reputation, in the eyes both of his existing clients and of the public at large. Therefore there was a breach of A 8.

Having already taken into consideration, in the context of A 8, the potential effects of the search on the applicant's professional reputation, the Court found that no separate issue arose under P1A1.

Applicant not established that the breach of A 8 caused him pecuniary damage. If it did occasion non-pecuniary damage, the finding of a violation constituted sufficient just satisfaction. No particulars supplied of costs and expenses.

Cited: Campbell v UK (25.3.1992), Chappell v UK (30.3.1989), Huvig v F (24.4.1990), Marckx v B (13.6.1979), Schönenberger and Durmaz v CH (20 June 1988).

Nikolova v Bulgaria 99/14

[Application lodged 6.2.1996; Commission report 20.5.1998; Court Judgment 25.3.1999]

Mrs Ivanka Nikolova used to work as a cashier and accountant in a State-owned enterprise. On 15 March 1995 criminal proceedings were brought against her for misappropriation of funds. On 24

October 1995 she was arrested and charged under the Criminal Code. The investigator heard the applicant in the presence of her lawyer and decided to detain her on remand. On the same day, without having heard the applicant, a prosecutor from the Regional Prosecutor's Office confirmed the decision to detain her. On 6 November 1995 she appealed against her detention to the Chief Public Prosecutor's Office. Her application was dismissed and a further appeal against her detention on remand was dismissed by the Chief Public Prosecutor's Office in January 1996. On 14 November 1995 the applicant appealed to the Plovdiv Regional Court arguing that the decision to detain her on remand had been based solely on the gravity of the charges against her whereas other important factors had not been taken into account, that she had a permanent address where she lived with her husband and two daughters, that she had known about the criminal charges against her for more than six months prior to her arrest but had made no attempt to abscond or obstruct the investigation and that the evidence against her was weak. Her appeal and submissions were lodged through the Regional Prosecutor's Office. On 4 December 1995 the Regional Prosecutor's Office transmitted the appeal together with the investigator's file and a covering letter to the Regional Court. On 11 December 1995 the court examined the case in camera, without the participation of the parties, and dismissed the appeal. On 19 February 1996 the applicant's detention on remand was discontinued in view of her health problems by an order of the Regional Prosecutor's Office. The applicant was put under house arrest. She complained about her arrest and detention on remand and her appeal against detention

Comm found unanimously V 5(3), V 5(4).

Court unanimously dismissed the Government's preliminary objection, found V 5(3), V 5(4).

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr A Pastor Ridruejo, Mr L Ferrari Bravo, Mr G Bonello (pd), Mr J Makarczyk, Mr P Kûris (pd), Mrs V Stráznická, Mr P Lorenzen, Mr M Fischbach (pd), Mr V Butkevych, Mr J Casadevall (pd), Mr B Zupancic, Mrs H S Greve (pd), Mr A B Baka, Mr R Maruste (pd), Mrs S Botoucharova (declaration).

The Government's objection of non-exhaustion was not raised, as it could have been, when the admissibility of the application was being considered by the Commission. There was therefore estoppel.

The role of the officer referred to in A 5(3) was to review the circumstances militating for and against detention and to decide, by reference to legal criteria, whether there were reasons to justify detention and to order release if there were no such reasons. Before an 'officer' could be said to exercise 'judicial power' within the meaning of that provision, he or she had to satisfy certain conditions providing a guarantee to the person detained against any arbitrary or unjustified deprivation of liberty. The officer had to be independent of the executive and of the parties. The officer had to hear the individual brought before him in person and review, by reference to legal criteria, whether or not the detention was justified. If it was not so justified, the officer had to have the power to make a binding order for the detainee's release. Following her arrest on 24 October 1995 the applicant was brought before an investigator who did not have power to make a binding decision as to her detention and was not procedurally independent from the prosecutor. Moreover, there was no legal obstacle to his acting as a prosecutor at the applicant's trial. The investigator could not therefore be regarded as an officer authorised by law to exercise judicial power within the meaning of A 5(3). The applicant was not heard by a prosecutor. In any event the prosecutor, who could act subsequently as a party to the criminal proceedings against the applicant, was not sufficiently independent and impartial for the purposes of A 5(3). Therefore there had been a violation of A 5(3).

Arrested or detained persons were entitled to a review bearing upon the procedural and substantive conditions which were essential for the lawfulness of their deprivation of liberty. According to the Code of Criminal Procedure and the Supreme Court's practice at the relevant time, a person charged with a 'serious wilful crime' was detained on remand unless he or she demonstrated beyond doubt, the burden of proof being borne by him or her, that there did not exist even a hypothetical danger of absconding, re-offending or obstructing justice. The presumption that such danger existed could be overturned only in exceptional circumstances, such

as where the detained person was immobilised by illness. According to the Supreme Court's case-law, it was not for the judge examining an appeal against detention on remand to inquire whether or not the charges are supported by sufficient evidence. That question, and apparently the legal characterisation of the charges, were within the competence of the prosecutor. The task of the Court was not to rule on legislation *in abstracto* and it did not therefore express a view as to the general compatibility of the above provisions and practice with the Convention. The Court had to examine whether the practical implementation of those provisions and case-law in the applicant's case gave rise to a violation of the Convention, as alleged by her. The Plovdiv Regional Court when examining the applicant's appeal against her detention on remand apparently followed the case-law of the Supreme Court at that time and thus limited its consideration of the case to a verification of whether the investigator and the prosecutor had charged the applicant with a 'serious wilful crime' within the meaning of the Criminal Code and whether her medical condition required release. In her appeal of 14 November 1995, however, the applicant had advanced substantial arguments questioning the soundness of the charges against her and the grounds for her detention referring to concrete facts. In its decision of 11 December 1995 the Regional Court devoted no consideration to any of the arguments, apparently treating them as irrelevant to the question of the lawfulness of the applicant's detention on remand. While A 5(4) did not impose an obligation on a judge examining an appeal against detention to address every argument contained in the appellant's submissions, its guarantees would be deprived of their substance if the judge, relying on domestic law and practice, could treat as irrelevant, or disregard, concrete facts invoked by the detainee and capable of putting in doubt the existence of the conditions essential for the lawfulness of the deprivation of liberty. The submissions of the applicant in her appeal of 14 November 1995 contained such concrete facts and did not appear implausible or frivolous. By not taking these submissions into account the Regional Court failed to provide the judicial review of the scope and nature required by A 5(4). The Plovdiv Regional Court gave its ruling after receiving the prosecutor's written comments inviting it to dismiss the appeal. The applicant was not allowed to reply to these comments and apparently was not able to consult any of the documents in the investigation file in order to challenge the reasons for her detention. The proceedings were therefore not truly adversarial and did not ensure equality of arms between the parties. In view of those findings it was not necessary to inquire whether the same deficient judicial review should have been accessible to her periodically. There had therefore been a violation of A 5(4).

A 5(4) of the Convention constituted a *lex specialis* in relation to the more general requirements of A 13. The facts underlying the applicant's complaint under A 13 were the same as those examined under A 5(4). Accordingly it was not necessary to examine the allegation of a violation of A 13 in view of the finding of a violation of A 5(4).

Non-pecuniary damage (by majority (11–6) present judgment constituted sufficient just satisfaction), for costs and expenses (by majority (16–1), BGL 14,000,000 less FF 20,215).

Cited: A v UK (23.9.1998), Brincat v I (26.11.1992), Brogan and Others v UK (29.11.1988, A 50 30.5.1989), Campbell and Fell v UK (28.6.1984), Chahal v UK (15.11.1996), Demir and Others v TR (23.9.1998), De Jong, Baljet and Van den Brink v NL (22.5.1984), Hood v UK (18.2.1999), Huber v CH (23.10.1990), Ireland v UK (18.1.1978), Kampanis v GR (13.7.1995), Lamy v B (30.3.1989), Mats Jacobsson v S (28.6.1990), Pauwels v B (26.5.1988), Sanchez-Reisse v CH (21.10.1986), Schiesser v CH (4.12.1979), Silver and Others v UK (25.3.1983), Toth v A (12.12.1991), Van Droogenbroeck v B (25.4.1983), Zana v TR (25.11.1997).

Nilsen and Johnsen v Norway 99/91

[Application lodged 2.11.1993; Commission report 9.9.1998; Court Judgment 25.11.1999]

The first applicant, Mr Arnold Nilsen, was a police inspector and at the material time was President of the Norwegian Police Association. The second applicant, Mr Jan Gerhard Johnsen, was a police constable and at the relevant time was Chairman of the Bergen Police Association. In 1981 Mr Gunnar Nordhus and Mr Edvard Vogt, published a summary of their research into violence in Bergen, in a book which included a chapter on police brutality. The book gave rise to a

heated public debate. The Ministry of Justice appointed a Committee of Inquiry consisting of a law professor, Anders Bratholm, and a Supreme Court advocate, Hans Stenberg-Nilsen, to verify whether the research provided a basis for making any general observations as to the nature and extent of police brutality in Bergen. In a report published in 1982 they concluded that the nature and extent of police violence in Bergen was more serious than generally assumed. Following an allegation in a newspaper that Mr Nordhus had lied in connection with the collection of material for his research, the latter instituted defamation proceedings against the newspaper which dismissed the action on the grounds that the accusation had been justified. The Prosecutor-General ordered an investigation the results of which were made public in June 1987 and which reached the overall conclusion that the various allegations of police brutality were unfounded. Charges were laid and 10 people were convicted in jury trials before the High Court of having made false charges against the police, the so-called 'boomerang cases'. The applicants made statements publicised in the press in response to the various accusations of police brutality. In May 1989 Professor Bratholm instituted defamation proceedings against the applicants. The Oslo City Court in its judgment of 7 October 1992 found some of the statements had been defamatory and declared them null and void. It ordered the first applicant to pay non-pecuniary damages and both applicants to pay Professor Bratholm's legal costs. The applicants appealed to the Supreme Court which on 5 May 1993 upheld the City Court's judgment. On 16 January 1998 the Supreme Court ordered the reopening of seven of the 'boomerang cases' and on 16 April 1998 the defendants were acquitted. The applicants complained that the City Court's and the Supreme Court's judgments constituted an unjustified interference with their right to freedom of expression under A 10.

Comm found unanimously V 10.

Court found by majority (12–5) V 10.

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr CL Rozakis (d), Sir Nicolas Bratza, Mr M Pellonpää, Mr B Conforti, Mr A Pastor Ridruejo, Mr P Kûris (d), Mr R Türmen (d), Mrs F Tulkens, Mrs V Stráznická (d), Mr C Bîrsan, Mr M Fischbach, Mr J Casadevall, Mrs HS Greve (d), Mr AB Baka, Mr R Maruste.

The impugned measures constituted an interference by a public authority with the applicants' right to freedom of expression. The interference was prescribed by law and pursued a legitimate aim, namely the protection of the reputation or rights of others. Although the applicants argued that the expressions at issue were primarily aimed at Mr Bratholm's informers and were not intended to harm him personally, they were nevertheless capable of adversely affecting Mr Bratholm's reputation. The reasons relied on by the national courts clearly were relevant to the legitimate aim of protecting his reputation. As regards the further question whether the reasons also were sufficient, the impugned statements clearly bore on a matter of serious public concern. There was little scope under A 10(2) for restrictions on political speech or on debate on questions of public interest. Despite the particular role played by the applicants as representatives of professional associations and the privileged protection afforded under the Convention to the kind of speech in issue, the applicants had to act within the bounds set, *inter alia*, in the interest of the protection of the reputation or rights of others. What was in issue was whether the applicants exceeded the limits of permissible criticism. One of the allegations, accusing Mr Bratholm of deliberate lies, exceeded the limits of permissible criticism. It could be regarded as an allegation of fact susceptible of proof, for which there was no factual basis and which could not be warranted by Mr Bratholm's way of expressing himself. Declaring that statement null and void was justifiable in terms of A 10. However, other statements, in so far as they were imputing improper motives or intentions to Mr Bratholm, were intended to convey the applicants' own opinions and were akin to value-judgments. In as far as those statements implied that Mr Bratholm had misinformed about police violence and fabricated allegations of such misconduct, there existed at the material time certain objective factors supporting the applicants' questioning of Mr Bratholm's investigations: the libel action brought by Mr Nordhus and Mr Vogt in respect of allegations of lies in certain newspaper articles had been unsuccessful; the Prosecutor-General's criminal investigations of the Bergen police had reached the overall conclusion that the various allegations of police brutality

were unfounded; in the ensuing 'boomerang cases' a number of informers had been convicted of false accusations against the police. This was not altered by the fact that the Supreme Court subsequently re-opened the 'boomerang cases' and acquitted the defendants. Regard had to be had to the role played by the injured party in the present case, notably the harsh criticism voiced by Mr Bratholm in his book, including the use of a number of derogatory expressions. The applicants were therefore not entirely unjustified in claiming that they were entitled to 'hit back in the same way'. Bearing in mind that the applicants were in their capacity as elected representatives of professional associations responding to criticism of the working methods and ethics within the profession, in weighing the interests of free speech against those of protection of reputation under the necessity test in A 10(2), greater weight should be attached to the plaintiff's own active involvement in a lively public discussion, than was done by the national courts when applying national law. The statements at issue were directly concerned with the plaintiff's contribution to that discussion. A degree of exaggeration should be tolerated in the context of such a heated and continuing public debate of affairs of general concern, where on both sides professional reputations were at stake. Against that background, those other statements did not exceed the limits of permissible criticism for the purposes of A 10. The resultant interference with the applicants' exercise of their freedom of expression was not supported by sufficient reasons in terms of A 10 and was disproportionate to the legitimate aim of protecting the reputation of Mr Bratholm. There had thus been a violation of A 10.

Finding of violation just satisfaction for non-pecuniary damage alleged (13–4). Pecuniary damage (12–5) NOK 375,000), costs and expenses (NOK 465,000), additional interest (NOK 50,000).

Cited: Darby v S (23.10.1990), Oberschlick v A (No 2) (1.7.1997), Observer and Guardian v UK (26.11.1991), Rekvényi v Hungary (20.5.1999), Thorgeir Thorgeirson v ISL (25 June 1992), Tolstoy Miloslavsky v UK (13.7.1995), Bladet Tromsø and Stensaas v N (20.5.1999), United Communist Party of Turkey and Others v TR (30.1.1998), Vogt v D (26.9.1995), Sunday Times v UK (No 1) (26.4.1979), Sürek v TR (No 1) (8.7.1999), Swedish Engine Drivers' Union v S (6.2.1976), Wingrove v UK (25.11.1996), Young, James and Webster v UK (13.8.1981).

Nölkenbockhoff v Germany (1991) 13 EHRR 360 87/20

[Application lodged 7.2.1983; Commission report 9.10.1985; Court Judgment 25.8.1987]

Mrs Martha Nölkenbockhoff was the widow and heir of Mr Theodor Nölkenbockhoff, who died on 13 November 1981. He had been a senior manager in a holding company. On 13 November 1974, he was arrested on suspicion, among other things of bankruptcy offences. On 17 May 1976, a 489 page indictment was served on Mr Nölkenbockhoff and four co-defendants. The trial hearings began on 29 October 1976 in the Essen Regional Court. On 11 July 1980, the Regional Court found Mr Nölkenbockhoff and his co-defendants guilty of charges of breach of trust, criminal bankruptcy and fraud but acquitted him of some of the charges. Mr Nölkenbockhoff entered an appeal on points of law but the Federal Court of Justice had not given a decision by the time he died on 13 November. On 1 December 1981, the applicant, as her deceased husband's sole heir, sought orders that the Treasury should bear the necessary costs and expenses incurred by her late husband in connection with his conviction by the Regional Court and that the estate should be paid compensation for his detention pending trial. On 5 March 1982, the Essen Regional Court found against the applicant on grounds that had he not died her husband would almost certainly have been convicted or his conviction almost certainly have been upheld. She appealed to the Hamm Court of Appeal which dismissed the action on 14 July 1982. Her application to the Federal Constitutional Court was rejected on 30 September 1982. She complained that the presumption of innocence had been disregarded by reason of the grounds on which the Essen Regional Court and the Hamm Court of Appeal had refused to award any compensation for the time spent by her husband in detention on remand and to order the Treasury to bear his necessary costs and expenses.

Comm found unanimously V 6(2).

Court unanimously rejected the Government's preliminary objection, found by a majority (16–1) NV 6(2).

Judges: Mr R Ryssdal, President, Mr J Cremona (d), Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr G Lagergren, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr L-E Pettiti, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr J Gersing, Mr A Spielmann, Mr J De Meyer, Mr N Valticos.

The principle of the presumption of innocence was intended to protect 'everyone charged with a criminal offence' from having a verdict of guilty passed on him without his guilt having been proved according to law. It did not follow that a decision whereby the innocence of a man 'charged with a criminal offence' was put in issue after his death could not be challenged by his widow under A 25: she may be able to show both a legitimate material interest in her capacity as the deceased's heir and a moral interest, on behalf of herself and of the family, in having her late husband exonerated from any finding of guilt. This was the case here, and the applicant could claim to be a 'victim' within the meaning of A 25.

Neither A 6(2) nor any other provision of the Convention gives a person 'charged with a criminal offence' a right to reimbursement of his costs or a right to compensation for lawful detention on remand where proceedings taken against him were discontinued. The double refusal complained of by the applicant accordingly did not in itself offend the presumption of innocence. However, a decision refusing such matters following termination of proceedings may raise an issue under A 6(2) if supporting reasoning which could not be dissociated from the operative provisions amounted in substance to a determination of the accused's guilt without his having previously been proved guilty according to law and, in particular, without his having had an opportunity to exercise the rights of the defence. The Essen Regional Court, the Hamm Court of Appeal and the Constitutional Court based their reasoning on provisions which set out exceptions to the rule under German law that, where criminal proceedings were discontinued, the Treasury must bear the necessary costs and expenses of the defendant and pay him compensation for any detention on remand. Applying the provisions meant that the courts, which decided the matter on an equitable basis and had a degree of discretion, were obligated to take into account the state of the proceedings when brought to a close, the conduct of the defendant and the weight of the suspicion still falling on him. The German courts indicated that there were still strong suspicions concerning the applicant. On the basis of the evidence, the decisions described a 'state of suspicion'. They assessed the prospects of success of Mr Nölkenbockhoff's appeal on points of law having regard to the fate of the appeals entered by his co-defendants. They contained a prediction of the probable outcome of the proceedings had they been continued, but not a finding of guilt. In addition, the refusal to order the Treasury to pay costs, expenses or compensation did not amount to a penalty or a measure that could be equated with a penalty. The applicant did not have to bear the costs of the proceedings, but only the costs and expenses of her late husband, and she was not awarded any compensation in respect of his detention on remand. The competent courts did not impose a sanction, but merely refused to order that the costs, expenses or compensation be paid out of public funds. The Convention did not oblige the Contracting States, where a prosecution has been discontinued, to indemnify a person charged with a criminal offence for any detriment he may have suffered. The decisions did not offend the presumption of innocence guaranteed under A 6(2).

Cited: De Jong, Baljet and van den Brink v NL (22.5.1984), Deweer v B (27.2.1980), Klass and Others v D (6.9.1978), Minelli v CH (25.3.1983).

Nonnis v Italy 91/58

[Application lodged 5.3.1987; Commission report 15.1.1991; Court Judgment 3.12.1991]

Mrs Anna Maria Nonnis was a school attendant. On 20 October 1982 she took proceedings against the Istituto Nazionale della Previdenza Sociale (INPS) before the Rome magistrates' court to establish her entitlement to a disability pension. The investigation began at the hearing of 22 February 1983. The District Court dismissed her appeal on 4 September 1990. That judgment was

filed with the registry on 17 November 1990. The applicant complained about the length of the civil proceedings brought by her.

Comm found unanimously V 6(1).

Court unanimously struck the case from the list.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr SK Martens.

Despite several reminders from the registry, the applicant showed no interest in the proceedings before the Court. Although there had been no formal withdrawal for the purposes of Rule 49, that was an implied withdrawal which constituted a 'fact of a kind to provide a solution of the matter'. In addition there was no reason of public policy for continuing the proceedings. The Court noted a number of previous cases in which it had considered the same issue and noted that there were 410 cases pending before the Commission concerning compliance with the 'reasonable time' requirement in Italy. Accordingly, the case should be struck out of the list.

Cited: Brigandì v I (19.2.1991), Caleffi v I (24.5.1991), Capuano v I (25.6.1987), Owners' Services Ltd v I (28.6.1991), Pretto and Others v I (8.12.1983), Pugliese (No 2) v I (24.5.1991), Santilli v I (19.2.1991), Vocaturo v I (24.5.1991), Zanghì v I (19.2.1991).

Norris v Ireland (1991) 13 EHRR 186 88/14

[Application lodged 5.10.1983; Commission report 12.3.1987; Court Judgment 26.10.1988]

Mr David Norris, the applicant, was an active homosexual and campaigner for homosexual rights in Ireland and a founder member and chairman of the Irish Gay Rights Movement. He complained that Irish laws making certain homosexual practices between consenting adult men criminal offences interfered with his right to respect for private life. He had never been charged with any offence relating to his homosexual activities.

Comm found by majority (6–5) V 8.

Court by majority (8–6) dismissed the Government's preliminary objection, found V 8.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr F Gölcüklü (d), Mr F Matscher (d), Mr L-E Pettiti, Mr B Walsh (d), Sir Vincent Evans, Mr C Russo, Mr R Bernhardt (d), Mr A Spielmann, Mr J De Meyer, Mr JA Carrillo Salcedo (d), Mr N Valticos (d).

A 25 could not be used to found an action in the nature of an *actio popularis*; nor might it form the basis of a claim made *in abstracto* that a law contravened the Convention. The conditions governing individual applications under A 25 were not necessarily the same as national criteria relating to *locus standi.* National rules in that respect might serve purposes different from those contemplated by A 25. A 25 entitled individuals to contend that a law violated their rights by itself, in the absence of an individual measure of implementation, if they run the risk of being directly affected by it. The applicant could claim to be the victim of a violation of the Convention within the meaning of A 25.

The legislation in question interfered with the applicant's right to respect for his private life under A 8. The interference was in accordance with the law as it arose from the impugned legislation and it had a legitimate aim, namely, the protection of morals. In considering whether the legislation was necessary in a democratic society for the mentioned aim, the interference had had to answer a pressing social need and be proportionate to the legitimate aim pursued. National authorities enjoyed a wide margin of appreciation in matters of morals, but that was not unlimited. The present case involved intimate aspects of private life and therefore there had to exist particularly serious reasons before interferences on the part of public authorities could be legitimate under A 8(2). There was better understanding and increased tolerance of homosexual practices. Although some members of the public may be shocked, offended or disturbed by the acts, that could not on its own warrant the application of penal sanctions on consenting adults in private. There was no pressing social need to make such acts criminal offences. Any justification for retention of the law unamended was outweighed by the detrimental effects the provisions could have on homosexual

persons. The interference with the applicant's right to respect for his private life could not be justified. Accordingly there was a breach of A 8.

Legal costs and expenses (IRP 14,962.49 less FF 7,390).

Cited: Belilos v CH (29.4.1988), Dudgeon v UK (22.10.1981), Handyside v UK (7.12.1976), Johnston v IRL (18.12.1986), Klass v D (6.9.1978), Lawless v IRL (1.7.1961), Marckx v B (13.6.1979), Müller v CH (24.5.1988), Olsson v S (24.3.1988).

Nortier v The Netherlands (1994) 17 EHRR 273 93/32

[Application lodged 28.4.1988; Commission report 9.7.1992; Court Judgment 24.8.1993]

Mr Erik Hans Nortier was born on 13 May 1972. On 19 September 1987 he was released from a youth custody centre after serving a custodial sentence for rape. On 30 September 1987, he was again arrested on suspicion of attempted rape, which he admitted. On 2 October 1987 the applicant was brought before Judge Meulenbroek, juvenile judge at the Middelburg Regional Court. The applicant was assisted by his lawyer. The private association which was the applicant's legal guardian was represented by two social workers. The applicant again confessed. The judge ordered the applicant's detention on remand and a preliminary investigation with a view to having a psychiatric report drawn up. Neither the applicant nor his lawyer objected. Juvenile Judge Meulenbroek made an order for the applicant's extended detention on remand on 8 October 1987 and prolonged this order twice on the occasion of periodic reviews. At no time did either the applicant or his lawyer raise any objection. The trial was listed before Juvenile Judge Meulenbroek for 6 January 1988. The applicant's challenge to Juvenile Judge Meulenbroek on the grounds of his impartiality was rejected as ill-founded on 6 January 1988. His appeal to the Middelburg Regional Court against that decision was rejected on 22 January 1988. The applicant was eventually tried, on 25 January 1988, by Juvenile Judge Meulenbroek. He was assisted by his lawyer. One of the social workers representing the private association which was the applicant's legal guardian was also present and allowed to speak. Confirming his earlier statements, the applicant admitted the charge, which was then held to be proved in the light of the evidence. In accordance with the recommendation contained in the psychiatric report he was committed to an institution for the psychiatric treatment of juvenile offenders. He did not file an appeal. He complained that he had not received a hearing before an impartial tribunal because the juvenile judge who tried him had also acted as investigating judge during the preliminary investigation and, moreover, had taken several decisions regarding the prolongation of his detention on remand.

Comm found by majority (12–3) NV 6(1).

Court found unanimously NV 6(1).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr B Walsh (c), Mr J De Meyer, Mr N Valticos, Mr SK Martens, Mr I Foighel, Mr JM Morenilla (c), Sir John Freeland.

What was decisive were not the subjective apprehensions of the suspect, however understandable, but whether, in the particular circumstances of the case, his fears could be held to be objectively justified. The mere fact that Juvenile Judge Meulenbroek also made pre-trial decisions, including decisions relating to detention on remand, could not be taken as in itself justifying fears as to his impartiality; what mattered was the scope and nature of those decisions. Apart from his decisions relating to the applicant's detention on remand, Juvenile Judge Meulenbroek made no other pre-trial decisions than the one allowing the application made by the prosecution for a psychiatric examination of the applicant, which was not contested by the latter. He made no other use of his powers as investigating judge. As for his decisions on the applicant's detention on remand, they could justify fears as to the judge's impartiality only under special circumstances such as those which obtained in the *Hauschildt* case. There was nothing of that nature in the present case. The questions which the judge had to answer when taking those decisions were not the same as those which were decisive for his final judgment. In finding that there were 'serious indications' against the applicant, the judge's task was only to ascertain summarily that the prosecution had *prima facie*

grounds for the charge against the applicant. The charge had, moreover, been admitted by the applicant and had already at that stage been supported by further evidence. The defendant's interests were looked after by a lawyer, who assisted him at all stages of the proceedings. An appeal was available which would have consisted of a complete rehearing before a chamber of three judges of the Court of Appeal. Under those circumstances the applicant's fear that Juvenile Judge Meulenbroek lacked impartiality could not be regarded as objectively justified. There had therefore not been a violation of A 6(1).

Cited: Fey v A (24.2.1993), Hauschildt v DK (24.5.1989), Padovani v I (26.2.1993), Sainte-Marie v F (16.12.1992).

Novotny v Italy 00/191

[Application lodged 25.8.1995; Court Judgment 27.7.2000]

Mrs Eliane Novotny, the applicant, complained about the length of civil proceedings, which had commenced on 25 March 1987 and were still pending.

Court found unanimously V 6(1).

Judges: Mr G Ress, President, Mr B Conforti, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mrs N Vajic, Mr M Pellonpää.

The length of proceedings of 13 years and three months and still continuing could not be regarded as reasonable.

Non-pecuniary damage (ITL 40,000,000), costs and expenses (ITL 2,000,000).

Cited: Bottazzi v I (28.7.1999)

Nsona v The Netherlands 96/57

[Application lodged 25.1.1994; Commission report 2.3.1995; Court Judgment 28.11.1996]

Francine Nsona and Bata Nsona were both Zairean nationals, born on 15 March 1984 and 26 September 1960 respectively. Bata Nsona arrived in The Netherlands in June 1989, claiming status as a refugee. On 17 November 1992 she was issued with a residence permit for 'cogent reasons of a humanitarian nature'. The permit also applied to her son born in 1992. Francine, Bata Nsona and the latter's son arrived at Schiphol Airport on 29 December 1993 on a Swissair flight from Geneva. Bata Nsona's passport, which had been issued in Kinshasa the day before, listed Francine as one of her children. On inspection by the Royal Military Constabulary it was found that the passport had been tampered with. When confronted, Bata Nsona claimed that Francine was her niece, but she proffered no documentary evidence to prove this. Other Zairean nationals arriving on the same flight included a Ms MM, copies of whose documents were found in Bata Nsona's luggage. Bata Nsona and her son were allowed to enter The Netherlands on 30 December 1993 since they held valid residence permits. As Francine did not have a provisional residence visa or even a travel visa, she was refused entry and taken to the airport hotel at Schiphol, where she stayed under the supervision of the Royal Military Constabulary. Bata Nsona was informed by the Royal Military Constabulary that she would have to accompany Francine back to Zaire, which she agreed to do. On 31 December 1993, Bata Nsona filed an application on behalf of Francine for a residence permit as a foster child and for compelling humanitarian reasons. She also applied to the District Court to be appointed as Francine's temporary guardian. On the same day Bata Nsona returned to Schiphol Airport requesting that Francine be allowed to accompany her home, claiming that there was nobody in Zaire who could take care of her and stating that she would not accompany Francine back to Zaire. Also on 31 December 1993, at about 12.30 pm, the applicants' lawyer, intending to seek an injunction against the State prohibiting Francine's removal, applied for a hearing date for summary proceedings before the President of the Regional Court of The Hague. The President set the case down for hearing on 11 January 1994. At about 1 pm this date was communicated by the applicants' lawyer to the Ministry of Justice. The responsible official of the Ministry of Justice decided that Francine would not be allowed to await the outcome of the summary proceedings in

The Netherlands and at about 2.30 pm, the applicants' lawyer was informed by telephone that at that time Francine was boarding a Swissair flight for Zurich. Francine had been entrusted to Ms MM, who was also being removed and had agreed to accompany Francine. They were both booked on a flight from Zurich to Kinshasa on 4 January 1994. The hearing before the President of the Regional Court of The Hague was brought forward to 3 January 1994 and a request was made by the applicants' lawyer to the Swiss authorities whereby they decided to postpone her departure from Zurich. On 4 January 1994, the President of the Regional Court of The Hague gave judgment finding that the applicants had no *locus standi*. Francine being a minor, she had to be represented by a guardian, which Bata Nsona was not. On 6 January 1994, Francine, who until that moment had stayed in a Swissair nursery, left Zurich on a Swissair flight to Kinshasa, where she arrived on 7 January 1994. It appeared that she travelled alone. The Netherlands Embassy at Kinshasa requested the International Committee of the Red Cross to meet her at Kinshasa Airport. This request was later withdrawn when the Netherlands authorities had been informed that arrangements had been made by Swissair of its own motion. On 12 January 1995, Francine returned to The Netherlands. Bata Nsona's application to be appointed as Francine's temporary guardian was granted by the Rotterdam District Court on 27 June 1995. Francine was granted a residence permit on 1 December 1995. The applicants complained that Francine's removal from The Netherlands, and the conditions under which it took place, constituted inhuman treatment and violated their right to respect for family life.

Comm found by majority (20–4) NV 3 as regards first applicant, (22–2) NV 8, unanimously NV 13.

Court found by majority (8–1) NV 3, unanimously dismissed Government's preliminary objection in respect of 8, by majority (8–1) NV 8, unanimously not necessary to examine 13.

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr J De Meyer (d), Mr SK Martens, Mr JM Morenilla, Mr MA Lopes Rocha, Mr J Makarczyk, Mr B Repik, Mr U Lôhmus.

The Court recalled its previous case-law. The entry of Francine as Bata Nsona's child in the latter's passport appeared to be forged. The Netherlands authorities were in principle entitled to refuse Francine access to the country provided that such refusal was not inconsistent with the obligations of the respondent State under the Convention. There was no evidence put forward to support the vague suggestion that Bata Nsona might suffer ill-treatment at the hands of the Zairean authorities for the reason that the entry of Francine in her passport was irregular. In those circumstances the separation of Francine and Bata Nsona could not be imputed to the respondent State. After Bata Nsona had refused to accompany Francine back to Zaïre, the Netherlands authorities asked Ms MM to do so. The authorities could reasonably assume, from the evidence, that there existed a relationship between Ms MM and Bata Nsona sufficient to justify entrusting the escorting of Francine back to Kinshasa to Ms MM. Francine and Ms MM travelled together and Francine was allowed to remain at Zürich Airport until 6 January at the request of the applicants' lawyer. The way in which Francine's removal was effected did not constitute treatment of such a nature as to make it 'inhuman or degrading' as understood in the context of A 3. It was not alleged that Francine had anything to fear from the Zairean authorities, it was alleged that the Government did not take sufficient account of the possibility that Francine might not be taken proper care of upon her return to Zaire. When she arrived at Kinshasa Airport on 7 January 1993, Francine was met by a business relation of Swissair, who turned her over to the Zairean immigration authorities. The following day she was taken to the home of the people with whom she had stayed before travelling to The Netherlands. The Netherlands authorities made unsuccessful attempts to arrange for Francine to be met and for the Red Cross to assume responsibility for Francine. Swissair had made adequate arrangements for Francine to be met, there was insufficient ground for reproaching the Netherlands Government for not having acted with due diligence. The Court noted that the most striking features of the case were the haste with which the Netherlands authorities gave effect to their decision to remove Francine from The Netherlands and their apparent willingness to hand over all responsibility for her welfare as soon as she had left Netherlands territory to others (Ms MM and especially Swissair). In a case involving a nine-year-old girl, such an attitude was open to criticism. Nevertheless, in the circumstances of the case, The Netherlands could not be held

responsible for treating Francine in such a way as to warrant a finding that she has been the victim of 'inhuman or degrading treatment' or for exposing her to the danger thereof. There had accordingly not been a violation of A 3.

The word 'victim' in A 25 denoted the person directly affected by the act or omission in issue, the existence of a violation of the Convention being conceivable even in the absence of prejudice. Consequently, a measure by a public authority reversing or mitigating the effect of the act or omission alleged to be in breach of the Convention in principle deprived such a person of his status as a victim only where the national authorities had acknowledged, either expressly or in substance, and then afforded redress for, such breach. The decisions appointing Bata Nsona temporary guardian and granting a residence permit to Francine put an end to the situation complained of by the applicants. However, it did not appear that those decisions were intended to put an end to, and afford redress for, any violation of the Convention. They did not reverse or compensate for any of the measures which led to the applicants' separation between 31 December 1993 and 12 January 1995. In fact, the Government maintained before the Court that no breach of A 8 had taken place. The preliminary objection that the applicants could not be considered to be victims therefore had to be dismissed.

The applicants resorted to deceit on arrival at Schiphol Airport, presenting an apparently forged passport and only when confronted admitting that Francine was not Bata Nsona's daughter but claiming that she was her niece. The Netherlands authorities could not be blamed, once this was discovered, for refusing to accept allegations unsupported by evidence. In the circumstances of the case, therefore, no interference with the applicants' right to respect for their family life could be imputed to the respondent State. Accordingly, there had been no violation of A 8.

Neither the Commission nor the respondent Government had offered any argument on the question whether there had been a violation of A 13 and the Court saw no need to consider it of its own motion.

Cited: Cruz Varas and Others v S (20.3.1991), Loizidou v TR (23.3.1995, preliminary objections), Lüdi v CH (15.6.1992), Moustaquim v B (18.2.1991), Vilvarajah and Others v UK (30.10.1991).

Nunes Violante v Portugal 99/27

[Application lodged 15.11.1996; Court Judgment 8.6.1999]

Mr António Nunes Violante, the applicant, complained about the length of civil proceedings relating to his claim from a union pension fund in relation to a work injury. The period under consideration began on 14 March 1990 and the proceedings had not yet been completed.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr G Ress, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mr I Cabral Barreto, Mrs N Vajic.

The length of proceedings of nine years and two months and still continuing could not be regarded as reasonable.

Non-pecuniary damage (PTE 800,000), costs and expenses (PTE 200,000).

Cited: Duclos v F (17.12.1996), Nikolova v BG (25.3.1999).

Nuutinen v Finland 00/169

[Application lodged 26.8.1996; Commission report 21.10.1998; Court Judgment 27.6.2000]

Mr Pekka Nuutinen, the applicant, served periods of imprisonment in 1987 and 1990 for offences of violence. On 21 January 1992, the Kuopio City Court convicted him of having threatened and assaulted his then girlfriend H and of having subjected her to coercion. She had been pregnant at the time and their relationship had been ending. The applicant was sentenced to three months' imprisonment. In March 1992 H gave birth to a daughter, I, and they moved from Kuopio to Helsinki. In November 1992 the applicant was released from prison and recognised I as his child.

In the light of H's objections, a judge of the Kuopio City Court refused to confirm the recognition. In an action of 21 September 1993, the applicant requested that his paternity in respect of I be confirmed, that custody of her be shared and that she be granted a right to see him. On 16 December 1994 the Kuopio District Court confirmed the applicant's paternity in respect of I and granted a right of access in respect of the child. H refused to co-operate with access arrangements. The applicant complained that the court proceedings for the determination of his paternity and the custody and access rights in respect of his daughter had been too lengthy; that the access rights had been excessively limited at the outset; that the authorities had kept his daughter's whereabouts secret; and that they had failed to make sufficient efforts to enforce the access orders, with the result that he had never been able to contact his daughter.

Comm found unanimously V 6(1), NV 8.

Court found unanimously V 6(1) on account of the length of the proceedings, by majority (4–3) NV 8 on account of the non-enforcement of the access rights, unanimously not necessary to examine the other complaints under 8.

Judges: Mrs E Palm, President, Mr L Ferrari Bravo, Mr R Türmen (d), Mr B Zupancic (d), Mr T Pantiru (d), Mr Gaukur Jörundsson, Mr R Pekkanen, ad hoc judge.

The scope of the case before the Court was delimited by the Commission's decision on admissibility which dealt only with the applicant's complaints relating to the length of the proceedings, the extent of the access rights granted in respect of his daughter, the non-enforcement of that access and the measures taken by the authorities to keep her whereabouts and other information pertaining to her secret from the applicant. The Court was nonetheless competent, in the interests of economy of proceedings, to take into account facts occurring during the course of the proceedings before it, in so far as they constituted a continuation of the facts underlying the complaints declared admissible.

A 6(1) applied to the proceedings as a whole, including the enforcement stage. The proceedings lasted from September 1993 to February 1999, five years and five months. The reasonableness of the length of proceedings had to be considered in the light of the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and that of the relevant authorities. On the latter point, the importance of what was at stake for the applicant in the litigation had to be taken into account. It was essential that custody cases be dealt with speedily. A delay at some stage might be tolerated if the overall duration of the proceedings could not be deemed excessive. Although not particularly complex at the outset, the present case became increasingly complicated due to the difficulties encountered at the enforcement stage. There were certain delays imputable to the first-instance courts in the two sets of the main proceedings, first in respect of the establishment of the paternity of the child and subsequently as regards the written hearing of the Helsinki Social Welfare Authority on the access question. Notwithstanding the procrastination of H in producing blood samples capable of establishing I's paternity, the responsibility for ensuring compliance with the requirements of A 6 rested ultimately with the courts. In addition, when requesting opinions from other authorities, the courts remained responsible for ensuring that the proceedings were not excessively prolonged. The conduct of the applicant was to blame to some extent in refusing to provide detailed information on his own situation. However, what was at stake for the applicant was his right to obtain a speedy court confirmation of his biological and legal ties with I. Those ties were confirmed in December 1994 and access rights were granted. At the time the applicant had not yet seen his daughter, then almost two years old. She was almost seven years old when the ensuing proceedings eventually ended with the revocation of the access rights without the applicant ever having seen his child. The length of the overall proceedings therefore exceeded a reasonable time.

The essential object of A 8 was to protect the individual against arbitrary interference by the public authorities. There may in addition be positive obligations inherent in effective 'respect' for family life. The obligation of the national authorities to take measures to facilitate meetings between a parent and his or her child was not absolute, especially where the two were still strangers to one another. Such access may not be possible immediately and may require preparatory measures

being taken to this effect. The nature and extent of such preparation would depend on the circumstances of each case. Where contacts with the parent might appear to threaten those interests or interfere with those rights, it was for the national authorities to strike a fair balance between them. What was decisive was whether the national authorities had taken all necessary steps to facilitate access as could reasonably be demanded in the special circumstances of each case. In examining whether the non-enforcement of the access arrangements amounted to a lack of respect for the applicant's family life the Court had to strike a balance between the various interests involved, namely the interests of the applicant's daughter and her de facto family, those of the applicant himself and the general interest in ensuring respect for the rule of law. The access rights were in force for over three years, they were restricted from July 1995 and in April 1998 the access rights were revoked. Although the fetching of I with a view to enforcing her access rights was never recommended or ordered, the Helsinki District Court had found on two occasions that such a drastic measure would not have been in the child's best interests. The fact that the fines imposed on H were, with one exception in 1996, eventually lifted was due to the revocation of the access rights. The ultimate waiver of those fines could not therefore be given any decisive significance in the assessment of whether the authorities could, at the time of imposing those fines, reasonably consider them to be sufficient as a means of enforcement. The applicant himself took sufficient steps before the courts in order to seek implementation of the access arrangements. However, he contributed to the delays at the enforcement stage by not having co-operated sufficiently, in particular with the social authorities in the preparations of their opinions to the Helsinki District Court in the course of the second set of civil proceedings in the middle of 1997. Although he was frustrated following numerous fruitless enforcement attempts, he repeatedly behaved in an inappropriate and even aggressive manner towards the social welfare officials and the conciliators investigating the matter. The Helsinki District Court found in its decision of April 1997 that the fresh evidence regarding the applicant's mental state did not show that enforcement of the access arrangements would be contrary to the child's interests, bearing in mind the limited access and the meeting premises. However, in the continuous re-assessment of the child's best interests the social authorities in Helsinki could, notably in the light of the applicant's more recent unwillingness to co-operate, reasonably formulate a recommendation that the access rights should be revoked until the child had reached a more mature age. Likewise, the Helsinki District Court's decision to revoke the access rights in April 1998 could not be considered unreasonable. In the circumstances and having regard to the margin of appreciation afforded to the State, the national authorities took all necessary steps with a view to enforcing the access rights as could reasonably be demanded in the very difficult conflict at hand. There had therefore been no violation of A 8 on account of the non-enforcement of the access rights.

Other complaints raised before the Commission were not mentioned by the applicant in the proceedings before the Court, which did not consider it necessary to examine them of its own motion.

Non-pecuniary damage (FIM 20,000), legal fees and expenses (FIM 10,000 less FF 5,800).

Cited: Di Pede v I (26.9.1996), Hokkanen v SF (23.9.1994), Martins Moreira v P (26.10.1988), Olsson v S (24.3.1988), Olsson v S (No 2) (27.11.1992), Pretto and Others v I (8.12.1983).

Nyberg v Sweden (1992) 14 EHRR 870 90/19

[Application lodged 9.6.1986; Commission report 15.3.1990; Court Judgment 31.8.1990]

Shortly after his birth in 1981, Birgitt and Lars Erik Nyberg's elder son, Björn, was taken into public care in Stockholm and was later placed in a foster home. They took various steps with a view to reuniting the family. Their first request was unsuccessful, but the second, filed on 19 October 1984, led to the termination of Björn's care on 6 February 1986. However, the Social Council prohibited the applicants, until further notice, from removing the child from the foster home. In March 1987, the case was settled on appeal and the Social Council withdrew both the custody action and the prohibition. They complained about the refusal to allow them to take their son home and about the length and fairness of the proceedings.

Comm found unanimously V 8, NV 3, NV 13 and by majority (11–2) no separate issue under 6(1).

Court noted the friendly settlement and struck the case from the list.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr L-E Pettiti, Mr B Walsh, Mr R Macdonald, Mr SK Martens, Mrs E Palm.

The Court took formal note of the friendly settlement reached by the Government and the applicants. The Court saw no reason of public policy to proceed with the case, having regard to the final reunification of the family and to its case-law on the matter.

FS (SEK 225,000 to the applicants, legal costs of SEK 100,000) therefore SO.

Cited: Eriksson v S (22.6.1989), Olsson v S (24.3.1988).

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O v United Kingdom (1988) 10 EHRR 82 87/12

[Application lodged 15.12.1980; Commission report 3.12.1985; Court Judgment 8.7.1987 (merits), 9.6.1988 (A50)]

The applicant was married in 1967 but was divorced from his wife on 20 October 1981. During their marriage they had seven children, A, B, C, D, E, F and G, born in 1968, 1970, 1971, 1973, 1975, 1977 and 1978 respectively. Following concern as to the children's welfare, brought to a head when the applicant assaulted A, the local authority obtained from the juvenile court on 2 July 1976 care orders in respect of A, B, C, D and E. The children lived at first in a children's home and subsequently with foster parents. Until June or July 1978, the applicant and his wife continued to visit the children. An application by the parents to revoke the care orders was rejected on 13 June 1979 by the juvenile court and further proceedings were unsuccessful. The applicant complained of the fact that he was unable to challenge the substance of the authority's decisions to restrict and then terminate his access to the children.

Comm found by majority (10–2) V 6(1), unanimously NV 8, by majority (10–1 with one abstention) no separate issue under 13.

Court unanimously found V 6(1) by majority (15–2) NV 8 as regards the procedures followed, not necessary to examine under A 8 the complaint concerning an absence of remedies, unanimously not necessary to examine 13.

Judges (merits and A 50 (unanimous)): Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr G Lagergren (jo), Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha (jo), Mr L-E Pettiti (jo), Mr B Walsh, Sir Vincent Evans, Mr R Macdonald (jo), Mr C Russo, Mr R Bernhardt, Mr J Gersing, Mr A Spielmann, Mr J De Meyer (jo), Mr N Valticos (jo).

The present judgment was not concerned with the merits of the judicial or local authority decisions regarding the applicant's children. The scope of the case before the Court was delimited by the Commission's decision on admissibility. The Court was not in the circumstances competent to examine or comment on the justification for such matters as the taking into public care or the adoption of the children or the restriction or termination of the applicant's access to them.

A 6(1) extended only to disputes over civil rights and obligations which could be said, at least on arguable grounds, to be recognised under domestic law; it did not in itself guarantee any particular content for civil rights and obligations in the substantive law of the Contracting States. It could be said, at least on arguable grounds, that even after the making of the care orders the applicant could claim a right in regard to his access to the children. There was a dispute between the applicant and the authority on the question of access. If there was a parental 'right' of access, it was a 'civil' right. A 6(1) was therefore applicable in the present case.

There would be no possibility of a determination in accordance with the requirements of A 6(1) of the parent's right in regard to access, unless he or she could have the local authority's decision reviewed by a tribunal having jurisdiction to examine the merits of the matter. It did not appear from the material supplied by the Government (possibility of challenging the care orders, of applying for judicial review or of instituting wardship proceedings) or otherwise available to the Court that the powers of the English courts were of sufficient scope to satisfy fully this requirement during the currency of each of the care orders. There was accordingly a violation of A 6(1).

With respect to the applicant's complaints regarding the procedures followed by the authority in reaching its decision to terminate his access to his children, the material before the Court, in particular that supplied by the applicant, was not sufficient to establish a violation of A 8 on this point. Having regard to its decision regarding A 6(1), that the applicant should have been able to have the question of his access to his children determined by a tribunal, the Court did not find it necessary to examine under A 8 his complaint concerning an absence of remedies.

Having regard to its decision on A 6(1) the Court considered that it was not necessary to examine the case under A 13 as its requirements were less strict than, and were here absorbed by, those of A 6(1).

Non-pecuniary damage (GBP 5,000). Claim for costs and expenses struck out of list following friendly settlement between Government and applicant (GBP 9,235.25).

Cited: Johnston and Others v IRL (18.12.1986), Lithgow and Others v UK (8.7.1986), Marckx v B (13.6.1979), Sporrong and Lönnroth v S (23.9.1982), W v UK (8.7.1987).

Obermeier v Austria (1991) 13 EHRR 290 90/13

[Application lodged 24.9.1985; Commission report 15.12.1988; Court Judgment 28.6.1990]

Mr Karl Obermeier was formerly employed by a private insurance company as the director of their regional branch office for Upper Austria. In 1974 a dispute arose between the applicant and the company concerning various paid activities which it proposed to withdraw from him. He instituted proceedings in the Vienna Labour Court and was suspended from his duties by his employer. His subsequent appeals concerning his suspension and later dismissal were unsuccessful. He complained that he had been impeded in his access to a court and that a dispute concerning his civil rights had not been determined within a reasonable time. The applicant also relied on his right to an effective remedy before a national authority and claimed to be the victim, as a disabled person, of discrimination.

Comm found unanimously V 6(1), no separate issue under 13, not necessary to examine 14.

Court unanimously dismissed the Government's preliminary objection, found V 6(1), not necessary to examine 13 and 14.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr R Macdonald, Mr R Bernhardt, Mr J De Meyer, Mr SK Martens, Mr I Foighel.

Preliminary objection of non-exhaustion of remedies had been conceded before the Commission and the Government were therefore estopped from raising it before the Court.

The dispute relating to the suspension concerned private law relations between the employer and employee and was therefore a 'civil' dispute under A 6(1). The mere fact that his action for declaration was held inadmissible on the ground that he lacked legal interest did not mean he was denied access to a court. Neither the Disabled Person's Board nor the Provincial Governor who heard appeals against the decisions of the Board could be regarded as independent tribunals. The Provincial Governor's decision could be appealed to the Administrative court which could be considered sufficient under A 6 if the Administrative court could be described as a judicial body that had full jurisdiction. The Administrative Court could only determine whether the discretion enjoyed by the administrative authorities had been used in a manner compatible with the object and purpose of the law. In disputes concerning civil rights, such a limited review could not be considered to be an effective judicial review under A 6(1). There had therefore been a violation of the applicant's right of access to a court.

The applicant had instituted proceedings on 9 March 1981 regarding the lawfulness of his suspension. Nine years later no final judgment had been given. The reasonableness of the length of proceedings had to be determined by reference to the particular circumstances of the case. An employee who considered that he had been wrongly suspended by his employer had an important personal interest in securing a judicial decision on the lawfulness of that measure promptly. The proceedings were of some complexity involving interaction between administrative and judicial proceedings concerning the dismissal of a disabled person and a large number of different sets of proceedings. However, a period of 9 years without reaching a final decision exceeded a reasonable time and accordingly a violation of A 6(1).

Non-pecuniary damage (ATS 100,000), costs and expenses (ATS 100,000).

Cited: Albert and Le Compte v B (10.2.1983), Belilos v CH (29.4.1988), De Wilde, Ooms and Versyp v B (18.6.1971).

Oberschlick v Austria (1995) 19 EHRR 389 91/29

[Application lodged 16.6.1985; Commission report 14.12.1989; Court Judgment 23.5.1991]

Mr Oberschlick was a journalist and editor of the periodical *Forum*. As a result of statements made during the parliamentary election campaign by Mr Walter Grabher-Meyer, then Secretary General of the Austrian Liberal Party, concerning reduction in family allowances for immigrant mothers, on 20 April 1983 the applicant and several other persons laid a criminal information against Mr Grabher-Meyer. However, the Vienna public prosecutor's office decided on 1 June 1983 not to prosecute him. On the day it was laid, the full text of the criminal information was published by the applicant in *Forum*. On 22 April 1983 Mr Grabher-Meyer brought a private prosecution for defamation against the applicant and the other signatories of the criminal information. The Review Chamber of the Vienna Regional Criminal Court decided on the same day to order the discontinuance of the proceedings. On appeal by Mr Grabher-Meyer, the Vienna Court of Appeal quashed the above decision on 31 May 1983. Following the second set of proceedings held on 11 May 1984, the Regional Court convicted the applicant of defamation and sentenced him to a fine or, in default, to imprisonment. The applicant's subsequent request for the trial record to be rectified was rejected. On 17 December 1984 the Vienna Court of Appeal, composed of the same judges, dismissed the applicant's appeal. His appeal to the Attorney General was rejected. He complained that he had not had a fair hearing by an impartial tribunal and of an infringement of his right to freedom of expression as a result of the defamation proceedings instituted against him and his subsequent conviction.

Comm found by majority (19–2) V 10, (20–1) V 6(1) in relation to the proceedings before the Court of Appeal, unanimously NV 6(1) in relation to the proceedings before the Regional Court.

Court unanimously dismissed the Government's preliminary objection, found V 6(1) as regards the impartiality of the Vienna Court of Appeal, NV 6(1) as regards the fairness of the trial before the Vienna Regional Court, by majority (16–3) V 10.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson (pd), Mrs D Bindschedler-Robert (pd), Mr F Gölcüklü, Mr F Matscher (pd), Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer, Mr SK Martens (c), Mrs E Palm, Mr I Foighel, Mr AN Loizou, Mr JM Morenilla (c).

The Court accepted that as regards his main complaints the applicant's application was posted on 16 June 1985 and, accordingly, was introduced within the time-limit prescribed by A 26. National proceedings would be unduly delayed and complicated if applications concerning procedural decisions, such as the present one, concerning rectification of the trial record, had to be filed before the final decision on the merits. Consequently, with regard to such procedural decisions, even if they had become final before the termination of the proceedings, the six-month period mentioned in A 26 ran only as from the same date as that which was relevant with regard to the final decision on the merits. The application thus could not be deemed to be out of time in this respect either. In conclusion, the Government's preliminary objections were rejected.

Waiver of a right guaranteed by the Convention had to be established in an unequivocal manner. The President and the other two members of the Court of Appeal should have withdrawn *ex officio* in accordance with the Code of Criminal Procedure. Neither the applicant nor his counsel were aware until after the hearing of 17 December 1984 that the other two judges had also participated in the decision of 31 May 1983. It was not established that the applicant had waived his right to have his case determined by an 'impartial' tribunal. There had accordingly been a violation of A 6(1).

The applicant's conviction by the Vienna Regional Court on 11 May 1984, upheld by the Vienna Court of Appeal on 17 December 1984, constituted an interference with his right to freedom of expression. That interference was prescribed by law, namely the Criminal Code, and was aimed at protecting the reputation or rights of others within the meaning of A 10(2). The Court recalled its previous case-law. A 10 protected not only the substance of the ideas and information expressed, but also the form in which they were conveyed. Those principles were of particular importance

with regard to the press. Freedom of the press afforded the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. The limits of acceptable criticism were wider with regard to a politician acting in his public capacity than in relation to a private individual. The former inevitably and knowingly laid himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he had to display a greater degree of tolerance, especially when he himself made public statements that were susceptible of criticism. A politician was entitled to have his reputation protected, even when he was not acting in his private capacity, but the requirements of that protection had to be weighed against the interests of open discussion of political issues. The insertion of the text of the criminal information in *Forum* contributed to a public debate on a political question of general importance. The applicant's criticisms sought to draw the public's attention in a provocative manner to a proposal made by a politician which was likely to shock many people. A politician who expressed himself in such terms exposed himself to a strong reaction on the part of journalists and the public. The first part of the information recited factually correct information, the second part in analysing the statements presented a value-judgment, expressing the opinion of the authors. The requirement by the Austrian courts that the applicant prove the truth of his allegations was impossible in the case of value-judgments and amounted to an infringement of freedom of opinion. In view of the importance of the issue at stake, the applicant could not be said to have exceeded the limits of freedom of expression by choosing the particular form of presentation chosen. Therefore, the interference with the applicant's exercise of his freedom of expression was not necessary in a democratic society for the protection of the reputation of others.

Pecuniary damage (ATS 18,123.84), costs and expenses (ATS 85,285).

Cited: Barberà, Messegué and Jabardo v E (6.12.1988), Handyside v UK (7.12.1976), Hauschildt v DK (24.5.1989), Lingens v A (8.7.1986), Sunday Times v UK (26.4.1979).

Oberschlick (No 2) v Austria (1998) 25 EHRR 357 97/41

[Application lodged 15.9.1992; Commission report 29.11.1995; Court Judgment 1.7.1997]

Mr Oberschlick was a journalist and editor of the periodical *Forum*. Following a speech made on 7 October 1990 by Mr Haider, leader of the Austrian Freedom Party and Governor of the Land of Carinthia, glorifying the role of the 'generation of soldiers' who had taken part in the Second World War, the speech was reproduced in full in *Forum* and commented on by the applicant and an Austrian writer who had been disparaged by Mr Haider. The applicant's passage was entitled 'PS: "Trottel" statt "Nazi"' ('PS: "Idiot" instead of "Nazi"'). On 26 April 1991 Mr Haider brought an action for defamation and insult against the applicant in the Vienna Regional Criminal Court. On 23 May 1991 the court found the applicant guilty of having insulted Mr Haider and sentenced him to a fine or imprisonment in default. The applicant complained that his conviction had been contrary to A 10.

Comm found by majority (14–1) V 10.

Court found by majority (7–2) V 10.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson (d), Mr F Matscher (d), Mr C Russo, Mr A Spielmann, Mr R Pekkanen, Mr JM Morenilla, Mr MA Lopes Rocha, Mr P Kûris.

The applicant's conviction by the Vienna Regional Court on 23 May 1991 upheld by the Vienna Court of Appeal on 25 March 1992 amounted to an interference with the exercise of freedom of expression. That interference was prescribed by law, namely the Criminal Code, its purpose was to protect the reputation or rights of others, within the meaning of A 10(2). Subject to A 10(2), freedom of expression was applicable not only to 'information' and 'ideas' that were favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offended, shocked or disturbed. Those principles were of particular importance with regard to the press. While it must not overstep the bounds set, *inter alia*, for 'the protection of the reputation of others', its task was nevertheless to impart information and ideas on political issues and on other matters of general interest. The limits of acceptable criticism were wider with regard to a politician acting in his

public capacity than in relation to a private individual. The former inevitably and knowingly laid himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he had to display a greater degree of tolerance, especially when he himself made public statements that were susceptible of criticism. A politician was entitled to have his reputation protected, even when he is not acting in his private capacity, but the requirements of that protection had to be weighed against the interests of open discussion of political issues. The judicial decisions challenged had to be considered in the light of the case as a whole, including the applicant's article and the circumstances in which it was written. Mr Haider's speech was clearly intended to be provocative and consequently to arouse strong reactions. The article was published together with the speech in question and an article by a writer who was also reacting to what Mr Haider had said. The applicant's article, and in particular the word Trottel (idiot) might be considered polemical, but they did not on that account constitute a gratuitous personal attack as the author provided an objectively understandable explanation for them derived from Mr Haider's speech, which was itself provocative. They were part of the political discussion provoked by Mr Haider's speech and amounted to an opinion, whose truth was not susceptible of proof. Such an opinion may, however, be excessive, in particular in the absence of any factual basis, but in the light of the above considerations that was not so in the instant case. Calling a politician a 'Trottel' in public may offend him. In the instant case, however, the word did not seem disproportionate to the indignation knowingly aroused by Mr Haider. As to the polemical tone of the article, which the Court should not be taken to approve, it had to be remembered that A 10 protected not only the substance of the ideas and information expressed but also the form in which they are conveyed. The necessity of the interference with the exercise of the applicant's freedom of expression had not been shown. There had therefore been a breach of A 10.

Pecuniary damage (ATS 23,394.80), costs and expenses (ATS 150,000).

Cited: De Haes and Gijsels v B (24.2.1997), Oberschlick v A (No 1) (23.5.1991), Vereinigung demokratischer Soldaten Österreichs and Gubi v A (19.12.1994).

The Observer and The Guardian v UK (1992) 14 EHRR 153 91/47

[Application lodged 27.1.1988; Commission report 12.7.1990; Court Judgment 26.11.1991]

The applicants were 2 British newspapers who had published some details of a book, *Spycatcher*, by Mr Peter Wright. The book concerned the memoirs of the author, a former MI5 (security service) member. Injunctions were granted on 27 June 1986 *ex parte* and on 11 July 1986 *inter partes*, to prevent further publication. On 27 April 1987 The Independent newspaper published a summary of the *Spycatcher* allegations. The Court of Appeal considered the injunction binding on all British media. On 12 July 1987 The *Sunday Times* began serialisation of the book. On 30 July 1987 the House of Lords held the injunctions should continue. The book was published in the US in July 1987 and subsequently in Australia in October 1987 following unsuccessful proceedings by the Attorney General. The applicants complained that the interlocutory injunctions in question constituted an unjustified interference with their freedom of expression, that they had no effective remedy before a national authority for their A 10 complaint and that they were victims of discrimination.

Comm found by majority (6–5) V 10 in respect of temporary injunctions for the period from 11 July 1986 to 30 July 1987, unanimously V 10 in respect of temporary injunctions for the period from 30 July 1987 to 13 October 1988, unanimously NV 13 or 14.

Court found by majority (14–10) NV 10 during the period from 11 July 1986 to 30 July 1987, unanimously V 10 during the period from 30 July 1987 to 13 October 1988, NV 13 or 14+10.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha (pd), Mr L-E Pettiti (pd/so), Mr B Walsh (pd), Sir Vincent Evans, Mr R Macdonald, Mr C Russo (pd), Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer (pd/so), Mr N Valticos (so), Mr SK Martens (pd), Mrs E Palm, Mr I Foighel (pd), Mr R Pekkanen (pd), Mr AN Loizou, Mr JM Morenilla (pd), Mr F Bigi (pd), Mr A Baka.

The restrictions complained of were an interference with the applicants' exercise of their freedom of expression. The interference was prescribed by law; the guidelines in the case-law were sufficiently precise and clear to enable the applicants to foresee that an injunction would be imposed. The interference had legitimate aims under A 10(2) as they had the direct or primary aim of maintaining the authority of the judiciary, including protecting the rights of litigants until trial and of protecting national security. Regarding the period 11 July 1986 to 30 July 1987, the interference was necessary in a democratic society because of the need to preserve the Attorney General's case at trial and protect national security. Regard was had to the national court's margin of appreciation. The injunctions were proportionate to their legitimate aims, they did not require a blanket prohibition. Although they were intended to be temporary, they lasted a year, which was a long time where a perishable commodity such as news was concerned. Regarding the period 30 July 1987 to 13 October 1988, the book had been published in the US and the material was no longer secret. The further aim of preserving confidence in the Security Service was not sufficient to justify continued interference or legitimately used to punish Mr Wright and set an example to others. The continuation of the interference prevented newspapers exercising their right and duty to provide information of legitimate public concern which was already available and there had been a violation of A 10 during that period.

Regarding discrimination, foreign newspapers were subject to the same restrictions as the *Observer* and *Guardian* and so there was no difference in treatment.

Regarding A 13, the effectiveness of a remedy did not depend on the certainty of the outcome. There was no obligation to incorporate the Convention into domestic law. A 13 did not guarantee a remedy allowing the State's law to be challenged before national authorities on the grounds of being contrary to the Convention.

Costs and expenses (GBP 100,000 to applicants jointly).

Cited: Fredin v S (18.2.1991), Granger v UK (28.3.1990), Handyside v UK (7.12.1976), James v UK (21.2.1986), Lingens v A (8.7.1986), Markt Intern v D (20.11.1989), Oberschlik v A (23.5.1991), Soering v UK (7.7.1989), Sunday Times v UK (26.4.1979), Weber v CH (22.5.1990).

Oerlemans v The Netherlands 91/50

[Application lodged 24.11.1986; Commission report 3.4.1990; Court Judgment 27.11.1991]

Mr Johannes Oerlemans was involved in cattle farming. The Minister of Culture, Recreation and Public Works designated an area including the applicant's land as a 'protected natural site' by an order of 20 September 1982. On 30 October 1982 the applicant appealed against the designation order to the Crown. The appeal was heard before the Administrative Disputes Division of the Council of State on 8 November 1985 and subsequently dismissed. The applicant's subsequent appeals were also dismissed. He complained that he was unable under Netherlands law to challenge the designation order affecting his property before a court.

Comm found by majority (15–2) V 6(1).

Court found unanimously NV 6(1).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr L-E Pettiti, Mr R Macdonald, Mr A Spielmann, Mr J De Meyer, Mr SK Martens, Mr I Foighel, Mr JM Morenilla.

There existed a dispute concerning the lawfulness of the designation order. The legal consequences of the designation order were that the applicant was no longer free to cultivate his land as he saw fit and was required to seek an authorisation from the Minister for various purposes. The extent to which he was restricted in his use of the land could be seen from the subsequent disputes that he had with the Minister concerning work that he had carried out or proposed to carry out. There was therefore a serious dispute in the case concerning the resultant restrictions on the applicant's use of his property. It made no difference to the conclusion that the potential of the land was enhanced by the completion of the dyke in 1983. The property right in question was 'civil' in nature within the meaning of A 6(1). Accordingly, A 6(1) applied to the case.

Under Netherlands law, where an administrative appeal to a higher authority was not considered to offer sufficient guarantees as to a fair procedure, it was possible to have recourse to the civil courts for a full review of the lawfulness of the administrative decision. The fact that the dispute was of a public law nature was irrelevant in that context. Under Netherlands law, a civil court could carry out a full examination of all acts of the administration in the light, *inter alia*, of principles of administrative law, could award damages for torts committed and could grant injunctions against the administration. The applicant could have submitted his dispute to the civil courts for examination. Accordingly, there had been no violation of A 6(1).

Cited: Benthem v NL (23.10.1985), Fredin v S (18.2.1991), Skärby v S (28.6.1990).

Ogur v Turkey 99/25

[Application lodged 16.3.1993; Commission report 30.10.1997; Court Judgment 20.5.1999]

Mrs Sariye Ogur lived in an area where a state of emergency was in force. Her son Musa, who worked as a night watchman at a mining site, was killed at about 6.30 am on 24 December 1990 as he was about to come off duty. On 26 December 1990 the public prosecutor's office declared that it had no jurisdiction to institute proceedings against civil servants and forwarded the file to the Administrative Council of the province. On 15 August 1991 the Administrative Council delivered its decision that no proceedings should be brought in the criminal courts against the civil servants of the security forces which had taken part in the operation on 24 December 1990. In its view, the victim, who was regarded as a suspect, had died after warning shots had been fired during the operation in question. Neither the evidence in the file nor taking statements from witnesses would make it possible, however, to identify with any certainty the person who had fired. On 19 September 1991 the Supreme Administrative Court, to which the case had automatically been referred by the operation of law, upheld that decision. The applicant complained of a violation of the right to life under A 2.

Comm found by majority (32–1) V 2.

Court dismissed unanimously the Government's preliminary objections, found by majority (16–1) V 2.

Judges: Mr L Wildhaber, President, Mr A Pastor Ridruejo, Mr G Bonello (pd), Mr J Makarczyk, Mr P Kûris, Mr J-P Costa, Mrs F Tulkens, Mrs V Stráznická, Mr M Fischbach, Mr V Butkevych, Mr J Cassadevall, Mrs N Vajic, Mrs HS Greve, Mr A Baka, Mr R Maruste, Mrs S Botoucharova, Mr F Gölcüklü (pd), ad hoc judge.

The applicant was not required to bring the same civil and administrative proceedings as those relied on by the Government in the present case. As to the fact that the criminal proceedings were instituted not by the applicant herself but by the victim's employer, the purpose of the rule that domestic remedies had to be exhausted was to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those violations were submitted to the Court. In the instant case that requirement was satisfied as the complaint lodged by the victim's employer had the same effect as one that could have been lodged by the applicant, namely that a criminal investigation was opened. The objection of failure to exhaust domestic remedies was therefore rejected. In principle, the fact that an applicant had not appeared personally before the Convention institutions did not affect the validity of complaints he had raised before them in good time, provided that he maintained his application, as the applicant manifestly did in the instant case. The Government's preliminary objection regarding estoppel also had to be dismissed.

The death of the applicant's son: the establishment and verification of the facts was primarily a matter for the Commission. Only in exceptional circumstances would the Court exercise its own powers in this area. It was not disputed that the victim had been killed by a bullet fired by the security forces. He had been shot in the nape of the neck. The disagreement related solely to whether that bullet came from a warning shot or from a shot fired at the victim, and on the circumstances in which the shot was fired. There was not sufficient evidence before the Court to establish that the security forces gave the warnings usual in such cases. By definition, warning shots were fired into the air, with the gun almost vertical, so as to ensure that the suspect was not

hit. That was all the more essential in the instant case, as visibility was very poor. It was accordingly difficult to imagine that a genuine warning shot could have struck the victim in the neck. Even supposing that Musa Ogur was killed by a bullet fired as a warning, the firing of that shot was badly executed, to the point of constituting gross negligence, whether the victim was running away or not. In sum, all the deficiencies so far noted in the planning and execution of the operation in issue sufficed for it to be concluded that the use of force against Musa Ogur was neither proportionate nor, accordingly, absolutely necessary in defence of any person from unlawful violence or to arrest the victim. There had therefore been a violation of A 2 on that account.

The investigations by the national authorities: the inspection of the scene of the incident by the public prosecutor had been restricted and had not been thorough. Witnesses questioned at the scene by the prosecutor were all members of the night watchmen's team; no member of the security forces that took part in the operation was interviewed on that occasion. The expert report prepared at the prosecutor's request contained information that was very imprecise and findings mostly unsupported by any established facts. The subsequent investigation carried out by the administrative investigation authorities scarcely remedied the deficiencies. Serious doubts arose as to the ability of the administrative authorities concerned to carry out an independent investigation, as required by A 2. During the administrative investigation the case file was inaccessible to the victim's close relatives. The Supreme Administrative Court ruled on the decision of 15 August 1991 on the sole basis of the papers in the case and this part of the proceedings was likewise inaccessible to the victim's relatives. Nor was the decision served on the applicant's lawyer, with the result that the applicant was deprived of the possibility of herself appealing to the Supreme Administrative Court. The investigations in the case could not be regarded as effective investigations capable of leading to the identification and punishment of those responsible for the events in question. There had therefore been a violation of A 2 on this count also.

Non-pecuniary damage (FF 100,000), costs and expenses (FF 30,000 less FF 18,830).

Cited: Assenov v BG (28.10.1998), De Wilde, Ooms and Versyp v B (10.3.1972, A 50), Fressoz and Roire v F (21.1.1999), McCann and Others v UK (27.9.1995), Yasa v TR (2.9.1998).

Okçuoglu v Turkey 99/36

[Application lodged 15.3.1994; Commission report 11.12.1997; Court Judgment 8.7.1999]

Mr Ahmet Zeki Okçuoglu was a lawyer. In May 1991, a magazine, '*Demokrat*', published in its issue No 12 an article on a round-table debate it had organised in which the applicant had taken part. The applicant's comments were recorded in the article, entitled 'The past and present of the Kurdish problem'. On 10 June 1991 the Public Prosecutor of the Istanbul National Security Court No 2 accused the applicant of disseminating propaganda against the indivisibility of the State. On 11 March 1993 the National Security Court, composed of three judges, including a military judge, found the applicant guilty of the offence charged and sentenced him to one year, eight months' imprisonment and a fine of TRL 41,666,666. The Court of Cassation dismissed his appeal. After Law No 4126 of 27 October 1995 came into force, the National Security Court reviewed the applicant's case on the merits. In its judgment of 8 March 1996 it reduced his prison sentence to one year, one month and ten days but increased the fine to TRL 111,111,110. He complained, *inter alia*, that he had been denied a fair trial and that his right to freedom of expression had been violated.

Comm found by majority (31–1) V 6(1), V 10, V 9, no separate issue under 14.

Court found unanimously V 10, by majority (16–1) V 6(1), unanimously no separate issue under 14+10.

Judges: Mr Wildhaber, President (delcaration), Mrs E Palm (jc), Mr A Pastor Ridruejo, Mr G Bonello, Mr J Makarczyk, Mr P Kûris, Mr J-P Costa, Mrs F Tulkens (jc), Mrs V Stráznická, Mr M Fischbach (jc), Mr V Butkevych, Mr J Casadevall (jc), Mrs HS Greve (jc), Mr AB Baka, Mr K Traja, Mr Gölcüklü (pd).

The applicant did not raise the complaint under A 7 at the admissibility stage of the procedure before the Commission and the Court had no jurisdiction to examine it.

The Court recalled its case-law. The applicant's conviction following publication of his comments amounted to an interference with the exercise of his right to freedom of expression. The conviction was based on the Prevention of Terrorism Act and the resultant interference could be regarded as prescribed by law. Having regard to the sensitivity of the security situation in south-east Turkey and to the need for the authorities to be alert to acts capable of fuelling additional violence, the measures taken against the applicant could be said to have been in furtherance of the protection of national security and territorial integrity and the prevention of disorder and crime. The Court had regard to the background to the case, particularly problems linked to the prevention of terrorism, and noted the Turkish authorities' concern about the dissemination of views which they considered might exacerbate the serious disturbances that had been going on in Turkey for some 15 years. The applicant's comments, made during a round-table debate, were published in a periodical whose circulation was low, thereby significantly reducing their potential impact on national security, public order or territorial integrity. Although some of his remarks painted a negative picture of the population of Turkish origin and made his comments hostile in tone, they nevertheless did not amount to incitement to engage in violence, armed resistance, or an uprising. The penalty imposed on the applicant was severe and the prosecution had been persistent in its efforts to secure his conviction. His conviction was therefore disproportionate to the aims pursued and accordingly not necessary in a democratic society. There had therefore been a violation of A 10 of the Convention.

The Court recalled its previous case-law. It was understandable that the applicant, prosecuted in a National Security Court for disseminating propaganda aimed at undermining the territorial integrity of the State and national unity, should have been apprehensive about being tried by a bench which included a regular army officer, who was a member of the Military Legal Service. On that account he could legitimately fear that the Istanbul National Security Court might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. In other words, the applicant's fears as to that court's lack of independence and impartiality could be regarded as objectively justified. The proceedings in the Court of Cassation were not able to dispel those fears since that court did not have full jurisdiction. There had been a breach of A 6(1)

Having regard to the conclusion that there had been a violation of A 10 taken separately it was not necessary to examine the complaint under A 14.

Non-pecuniary damages (FF 40,000), costs and expenses (FF 20,000).

Cited: Çiraklar v TR (28.10.1998), Findlay v UK (25.2.1997), Fressoz and Roire v F (21.1.1999), Incal v TR (9.6.1998), Lingens v A (8.7.1986), Wingrove v UK (25.11.1996), Zana v TR (25.11.1997).

Oliveira v Switzerland (1999) 28 EHRR 289 98/59

[Application lodged 22 October 1994; Commission report 1 July 1997; Court Judgment 30.7.1998]

Mrs Maria Celeste Vieira Veloso de Oliveira was a Portuguese citizen living in Zurich. On 15 December 1990, while she was driving on a road covered with ice and snow in Zurich, her car veered onto the other side of the road hitting one car and then colliding with a second driven by M, who sustained serious injuries. On 13 August 1991 she was convicted under the Federal Road Traffic Act of failing to control her vehicle, as she had not adapted her speed to the road conditions and sentenced to a fine of CHF 200. On 25 January 1993 the district attorney's office issued a penal order fining her CHF 2,000 for negligently causing physical injury contrary to the Swiss Criminal Code in respect of the injuries sustained by M. The applicant challenged that order in the Zurich District Court, which on 11 March 1993 reduced the fine to CHF 1,500 and quashed the CHF 200 fine imposed on 13 August 1991 and said that any part of that fine that had already been paid was to be deducted from the fine it was imposing, the latter fine thus being reduced to CHF 1,300. She appealed to the Zurich Court of Appeal, which on 7 October 1993

dismissed the appeal. She appealed against that decision on grounds of nullity to the Court of Cassation of the Canton of Zurich and to the Federal Court. On 27 April 1994 the Court of Cassation declined to consider her appeal. The applicant then filed a public-law appeal with the Federal Court against that decision. On 17 August 1994, the Federal Court dismissed both the applicant's public-law appeal and her appeal on grounds of nullity. She complained of a breach of P7A4.

Comm found by majority (24–8) V P7A4.

Court found by majority (8–1) NV P7A4.

Judges: Mr R Bernhardt, President, Mr F Gölcüklü, Mr A N Loizou, Mr L Wildhaber, Mr B Repik (d), Mr P Kûris, Mr E Levits, Mr P Van Dijk, Mr M Voicu.

The convictions in issue concerned an accident caused by the applicant on 15 December 1990: She was firstly ordered to pay a fine by the police magistrate for failing to control her vehicle as she had not adapted her speed to the road conditions and subsequently, the Zurich District Court and then the Zurich Court of Appeal imposed a fine (from which, however, was deducted the amount of the initial fine) for negligently causing physical injury. That was a typical example of a single act constituting various offences. The characteristic feature of that notion was that a single criminal act was split up into two separate offences, in this case the failure to control the vehicle and the negligent causing of physical injury. In such cases, the greater penalty would usually absorb the lesser one. There was nothing in that situation which infringed P7A4 since that provision prohibited people being tried twice for the same offence whereas in cases concerning a single act constituting various offences one criminal act constituted two separate offences. It would admittedly have been more consistent with the principles governing the proper administration of justice for sentence in respect of both offences, which resulted from the same criminal act, to have been passed by the same court in a single set of proceedings. Indeed, it appeared that that is what ought to have occurred in the instant case as the police magistrate should, in view of the fact that the serious injuries sustained by the injured party were outside his jurisdiction, have sent the case file to the district attorney for him to rule on both offences together. The fact that that procedure was not followed in the applicant's case was, however, irrelevant as regards compliance with P7A4 since that provision did not preclude separate offences, even if they were all part of a single criminal act, being tried by different courts, especially where, as in the present case, the penalties were not cumulative, the lesser being absorbed by the greater. The instant case was therefore distinguishable from the case of Gradinger, in which two different courts came to inconsistent findings on the applicant's blood alcohol level. Therefore there had been no violation of P7A4.

Cited: Gradinger v A (23.10.1995).

Oliveira Modesto and Others v Portugal 00/160

[Application lodged 11.9.1996; Court Judgment 8.6.2000]

Mrs Maria de Lurdes Ferreira Matos Oliveira Modesto and 121 other persons, the applicants, were employed by a limited company, F-CME SA, which from 1985 was unable to pay its staff their wages. In October 1986 the company applied to the courts to be placed in judicial administration. In February 1988 the applicants' claims were recognised by the other creditors. The company was finally declared insolvent in October 1994. In May 1995 an order was made for seizure of the company's assets and the creditors were called on to prove their claims. In March 2000 the judge delivered a decision determining the rank of several creditors, he declared admissible the appeals against that decision lodged by three of the creditors. The proceedings were still pending; the applicants complained of their length.

Judges: Mr G Ress, President, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mr I Cabral Barreto, Mrs N Vajic, Mr V Butkevych.

Civil rights, in particular the right to remuneration, were at stake, at least from February 1988, the date on which all the creditors approved the applicant's claims. There were delays on the part of the authorities. The length of proceedings was not reasonable.

Non-pecuniary damage (PTE 900,000 to each applicant), costs and expenses (PTE 313,840 to the first applicant).

Cited: Golder v UK (21.2.1975), Ruotolo v I (27.2.1992), Silva Pontes v P (23.3.1994).

Oliveira Neves v Portugal (1991) 13 EHRR 576 89/8

[Application lodged 11.6.1985; Commission report 15.12.1988; Court Judgment 25.5.1989]

Mrs Maria de Conceiçao Oliveira Neves was a poultry dealer. On 13 March 1979 she dismissed an employee whom she had engaged in October 1976. On 25 March 1980 her former employee instituted proceedings against her in the Oporto Labour Court. The hearing took place on 11 April 1985. On that date the judge gave his decision, finding for the employee and ruling that certain of the sums awarded should be calculated in subsequent proceedings. The applicant complained of the length of the proceedings instituted against her.

Comm found unanimously V 6(1).

Court struck the case from list.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr J Pinheiro Farinha, Mr A Spielmann, Mr SK Martens.

The Court took formal note of the friendly settlement reached by the Government and the applicant. There was no reason of public policy to continue the examination of the case. The Court recalled other cases in which it had dealt with the question of the reasonableness of the length of civil proceedings, in Portugal and other countries.

FS (PTE 1,300,000 to the applicant as compensation from the Portuguese Government for all the material and non-material damage, lawyers' fees and other costs incurred), therefore SO.

Cited: Baraona v P (8.7.1987), Bock v D (29.3.1989), Buchholz v D (6 May 1981), Capuano v I (25.6.1987), Deumeland v D (29.5.1986), Erkner and Hofauer v A (23.4.1987), Guincho v P (10.7.1984), H v UK (8.7.1987), König v D (28.6.1978), Lechner and Hess v A (23.4.1987), Martins Moreira v P (26.10.1988), Neves e Silva v P (27.4.1989), Poiss v A (23.4.1987), Pretto and Others v I (8.12.1983), Zimmermann and Steiner v CH (13.7.1983).

Olsson v Sweden (1989) 11 EHRR 259 88/2

[Application lodged 10.6.1983; Commission report 2.12.1986; Court Judgment 24.3.1988]

The applicants, Mr Stig and Mrs Gun Olsson, were husband and wife. They had three children of the marriage, Stefan, born in June 1971, Helena, born in December 1976, and Thomas, born in January 1979. The applicants and the children belonged to the Church of Sweden; the applicants' membership was purely nominal, as they described themselves as atheists. On 22 January 1980, Social District decided that the children should be placed under supervision in view of their parents' inability to satisfy their need for care and supervision. Further case conferences, at which the applicants were present, were held in 1980. On 16 September 1980, the Council decided, at a meeting at which the applicants were present and had an opportunity to submit their views, that the children should be taken into care. Reports were considered including a medical report by a doctor and psychologist who were both members of the team that was in contact with the family. The County Administrative Court at Gothenburg, by a judgment of 30 December 1980, confirmed the Council's decision. The applicants appealed to the Administrative Court of Appeal which, after a hearing on 8 July 1981, confirmed the judgment of the County Administrative Court. The applicants were refused leave to appeal to the Supreme Administrative Court. The applicants complained that the care decision and the subsequent placement of the children constituted a breach of A 8 and they also invoked other articles under the Convention.

Comm found by majority (8–5) V 8 with regard to the care decisions concerning the applicants' children in combination with their placement in separate foster homes and far away from the applicants, unanimously NV 3, 6, 13, 14, P1A2.

Court unanimously dismissed the Government's preliminary objection, found by majority (10–5) NV 8 with regard to the decision to take the children into care and its maintenance in force, (12–3) V8 with regard to the manner in which the said decision was implemented, unanimously NV 6, NV 3, NV 14+8, NV P1A2, NV 13+P1A2.

Judges: Mr R Ryssdal (jpd), President, Mr J Cremona, Mr Thór Vilhjálmsson (jpd), Mr G Lagergren, Mr F Gölcüklü (jpd), Mr F Matscher, Mr J Pinheiro Farinha (so), Mr L-E Pettiti (so), Mr B Walsh (so), Sir Vincent Evans, Mr R Macdonald, Mr C Russo (so), Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer (so).

The Court had to confine itself, as far as possible, to an examination of the concrete case before it. Its task was not to review the law and practice *in abstracto*, but to determine whether the manner in which they were applied to or affected the applicants gave rise to a violation of the Convention. The Government's preliminary objection was out of time. While the Court's jurisdiction in contentious matters was determined by the Commission's decision declaring the originating application admissible, it was competent, in the interests of the economy of the procedure, to take into account facts occurring during the course of the proceedings in so far as they constituted a continuation of the facts underlying the complaints declared admissible. The decisions in question complained about by the Government could be regarded as falling into that category and the Commission acted properly in taking them into account. Subsequent decisions which were the subject of a further application raising new questions could not be settled by the Court in the present judgment.

A 8: the mutual enjoyment by parent and child of each other's company constituted a fundamental element of family life; the natural family relationship was not terminated by reason of the fact that the child was taken into public care. The measures at issue amounted to interferences with the applicants' right to respect for their family life. Such an interference entailed a violation of A 8 unless it was in accordance with the law, had an aim or aims that was or were legitimate under A 8(2) and was necessary in a democratic society for the aforesaid aim or aims. A norm could not be regarded as a 'law' unless it was formulated with sufficient precision to enable the citizen, if need be, with appropriate advice, to foresee, to a degree that was reasonable in the circumstances, the consequences which a given action might entail. Experience showed that absolute precision was unattainable and the need to avoid excessive rigidity and to keep pace with changing circumstances meant that many laws were inevitably couched in terms which, to a greater or lesser extent, were vague. The phrase 'in accordance with the law' did not merely refer to domestic law but also related to the quality of the law, requiring it to be compatible with the rule of law. A law which conferred a discretion was not in itself inconsistent with the requirement of foreseeability, provided that the scope of the discretion and the manner of its exercise were indicated with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference. The Swedish legislation applied in the present case was rather general in terms and conferred a wide measure of discretion, especially as regards the implementation of care decisions. However the circumstances in which it may be necessary to take a child into public care and in which a care decision might fall to be implemented were so variable that it would scarcely be possible to formulate a law to cover every eventuality. In interpreting and applying the legislation, the relevant preparatory work provided guidance as to the exercise of the discretion it confers. Safeguards against arbitrary interference were provided and taking those into account, the scope of the discretion conferred on the authorities by the laws in question appeared reasonable and acceptable for the purposes of A 8. The interferences in question were therefore in accordance with the law. The decisions concerning the care and the placement of the children were taken in their interests and had the legitimate aims of protecting health or morals and protecting the rights and freedoms of others. The notion of necessity implied that the interference corresponded to a pressing social need and, in particular, that it was proportionate to the legitimate aim pursued, a margin of appreciation was left to the Contracting

States. The reasons given by the County Administrative Court for confirming the Council's decision of 16 September 1980 to take the children into care (unsatisfactory home environment, retardation in the children's development, risk that Helena would develop negatively, lack of success in preventive measures, jeopardising of the health and development of the children) were relevant and the impugned decision was supported by sufficient reasons (a number of different social authorities had been individually involved with the Olsson family, the Council's decision was based on a substantial report, supported by a number of statements from persons well acquainted with the case, including a medical report, and there had been a hearing before the Court) that, having regard to their margin of appreciation, the Swedish authorities were reasonably entitled to think that it was necessary to take the children into care, especially since preventive measures had proved unsuccessful. The reasons given by the County Administrative Court in its judgment of 17 November 1982 were also relevant and sufficient reasons for thinking that it was necessary for the care decision to remain in force. It was not established that the quality of the care given to the children in the homes where they were placed was not satisfactory. The applicants' complaint on this score therefore had to be rejected. There was nothing to suggest that the Swedish authorities did not act in good faith in implementing the care decision. However, that did not suffice to render a measure necessary in Convention terms. An objective standard had to be applied. Examination of the Government's arguments suggested that it was partly administrative difficulties that prompted the authorities' decisions, yet, in so fundamental an area as respect for family life, such considerations could not be allowed to play more than a secondary role. Despite the applicants' unco-operative attitude, the measures taken in implementation of the care decision were not supported by sufficient reasons justifying them as proportionate to the legitimate aim pursued. They were therefore, notwithstanding the domestic authorities' margin of appreciation, not necessary in a democratic society. Therefore the implementation of the care decision, but not that decision itself or its maintenance in force, gave rise to a breach of A 8.

A 3: the allegation of ill-treatment of Stefan was not substantiated. The applicants' other complaints (the frequent moving of Stefan from one home to another, his ill-treatment at the hands of a family with whom he was placed and his placement in an institution run by the Board for the Retarded, the manner in which, on one occasion, Stefan and Thomas had been removed, with police assistance, from the applicants' home), did not constitute inhuman treatment. There had therefore been no breach of A 3.

A 6: Dr Bosaeus was heard as an expert in the 1980 proceedings and in the 1982 proceedings as a witness called at the request of the applicants' lawyer. It was reasonable, in view of her extensive knowledge of the background, that she should have been heard as an expert in 1980, the applicants had not been prevented from cross-examining her or calling a counter-expert to rebut her testimony. The presence of Dr Bosaeus in the court-room before she gave evidence and the County Administrative Court's alleged failure both to remind her of her obligation to tell the truth and to insist that she answered certain questions, were not sufficient to show that the proceedings were not fair. As for the applicants' more general allegation, they were at all times represented by a lawyer and were able to submit such material and arguments as they saw fit. Although the Administrative Court of Appeal refused to hear Dr Bosaeus as a witness at its hearing in 1982, she had already been heard in the County Administrative Court. There was no evidence to support a conclusion that the proceedings as a whole were not fair or that the Swedish courts failed to make due and proper inquiries.

A 14+8: there was nothing to substantiate the applicants' claim under A 14+8 that the interference with their rights had not been based on objective grounds but on their social origin.

P1A2: the fact that the children were taken into public care did not cause the applicants to lose all their rights under P1A2. Although they described themselves as atheists, the applicants had not left the Church and there was no serious indication of their being particularly concerned, except at a late stage, with giving the children a non-religious upbringing. Neither had they shown that in practice the general education of the children whilst in public care diverged from what they would have wished. In those circumstances, no violation of P1A2 had been established.

A 13+P1A2: leaving aside the possibility of seeking redress before the County Administrative Board, a parent could, after the entry into force of the 1980 Act, appeal to the County Administrative Court against a placement decision taken by a Social Council. Both before and after that time, the question of a child's religious upbringing could have been raised and examined in a request for termination of care. There was nothing to suggest that those remedies, which were apparently not utilised by the applicants as regards Thomas' upbringing, would not have been effective, within the meaning of A 13.

Non-pecuniary damage (SEK 200,000), legal fees and expenses (SEK 150,000).

Cited: Bozano v F (18.12.1986), F v CH (18.12.1987), Gillow v UK (24.11.1986), Lingens v A (8.7.1986), Malone v UK (2.8.1984), Sunday Times v UK (26.4.1979), Swedish Engine Drivers' Union v S (6.2.1976), W v UK (8.7.1987), Weeks v UK (2.3.1987).

A 50: Feldbrugge v D (27.7.1987), Inze v A (28.10.1987), Johnston and Others v UK (18.12.1986).

Olsson (No 2) v Sweden (1994) 17 EHRR 134 92/73

[Application lodged 23.10.1987; Commission report 17.4.1991; Court Judgment 27.11.1992]

The applicants, Mr Stig and Mrs Gun Olsson, were husband and wife. They had three children of the marriage, namely Stefan, Helena and Thomas, born in June 1971, December 1976 and January 1979, respectively. The background to the case is set out at *Olsson v S*, the present proceedings are a sequel to that case. The applicants made several requests for the termination of the public care order in respect of the children. Eventually, in a judgment of 18 June 1987, the Supreme Administrative Court directed that the public care of the two younger children should terminate. Despite the judgment, on 23 June 1987 the Social Council prohibited the applicants from removing the children from their respective foster homes. The applicants brought proceedings to challenge the prohibition on removal. On 30 May 1988 the Supreme Administrative Court dismissed their claim for revocation of the prohibition on removal but accepted that the measure should be limited in time and did so to 30 June 1989. On 27 June 1989 the Social Council renewed the prohibition order until further notice and refused a further visiting request by the applicants. The applicants' further appeals to challenge the order, gain access and challenge the transfer of the custody of the children to the foster parents were unsuccessful.

Comm found unanimously V 8 on the ground that the restrictions on access were not in accordance with the law, by majority (17–3) V 8 with regard to the prohibition on removal, unanimously V 6(1) on the ground that the applicants did not have access to court to challenge the restrictions on access to the children, by majority (14–6) NV 6(1) with regard to length of proceedings concerning the termination of the public care of the three children, (19–1) NV 6(1) with regard to the length of the proceedings under the Parental Code, (19–1) NV 6(1) on the ground that the Supreme Administrative Court did not hold a hearing on the prohibition on removal appeal, unanimously NV 6(1) in relation to the first appointment of a guardian ad litem, unanimously, NV 6(1) regarding length of proceedings relating to the second appointment of a guardian ad litem, unanimously not necessary to examine 13 in respect of the restrictions on access, unanimously NV 13 in respect of the first appointment of a guardian ad litem.

Court found by majority (6–3) NV 8 in respect of the prohibition on removal, unanimously V 8 on account of the restrictions on access imposed between 23 June 1987 and 1 July 1990, by majority (6–3) NV 8 on access imposed after 1 July 1990, unanimously V 6(1) in that no court remedy was available to challenge the restrictions on access imposed between 23 June 1987 and 1 July 1990, unanimously NV 6(1) as regards any of the other points raised by the applicants before the Commission and the Court, by majority (7–2) no separate issue under 53, unanimously not necessary to examine other complaints under 6(1) and 13.

Judges: Mr R Ryssdal, President, Mr F Matscher (pd), Mr L-E Pettiti (pd), Mr B Walsh, Mr C Russo (pd), Mr SK Martens, Mrs E Palm, Mr AN Loizou, Mr AB Baka.

New complaints raised by the applicants were not covered by the Commission's decision on admissibility and did not meet the conditions in the Court's case-law, the Court therefore had no jurisdiction to entertain them.

A 8: The prohibition on removal and its maintenance in force, as well as the restrictions on access, constituted interferences with the applicants' right to respect for family life. The prohibition on removal and its maintenance in force were in accordance with the law. The restrictions on access from 23 June 1987 to 1 July 1990 were not in accordance with the law and therefore there had been a violation of A 8 in so far as concerned the restrictions on access between 23 June 1987 and 1 July 1990. There was no evidence that the purpose of the prohibition on removal and its maintenance in force was to hinder reunion. The measure was aimed at protecting the children's health and rights and freedoms, a legitimate aim. The reasons for ordering the prohibition on removal were both relevant and sufficient. There was a serious risk that separating the children from their foster homes would harm them. Having regard to the margin of appreciation to be left to the national authorities, it had not been established that the social welfare authorities failed to fulfil their obligation to take measures with a view to the applicants being reunited with the children. Accordingly, the maintenance in force of the prohibition on removal and the restrictions on access were based on reasons that were relevant and sufficient and therefore necessary. Consequently, the complaint under A 8 failed on this point.

A 53: The facts and circumstances underlying the applicants' complaint under A 53 (undertaking to abide by decision of Court) raised a new issue which was not determined by the *Olsson (No 1)* judgment and were essentially the same as those which were considered under A 8 above, in respect of which no violation was found. No separate issue therefore arose under A 53.

A 6: The Government accepted the applicants' contention that there had been a violation of A 6(1) on the ground that it was not possible for them, until the entry into force of the 1990 Act on 1 July 1990, to have the restrictions on their access to the two younger children reviewed by a court. Accordingly, there had been a violation of A 6(1) on this point. The proceedings relating to one of the requests made by the applicants for termination of the public care had started on 16 August 1984, when the applicants submitted their request to the Social Council. The periods had lasted approximately two years and six months in the case of the eldest child and two years and ten months in the case of the younger two children. Having regard to the complexity of the case, the delay was not so long as to warrant the conclusion that the total duration of the proceedings was excessive. The proceedings relating to the applicants' request to have the two younger children returned to them under the Parental Code had lasted for a period of 13 and a half months and comprised three levels of jurisdiction. This was not excessive for the purposes of A 6(1). The proceedings relating to the second appointment of a guardian ad litem lasted a little more than a year and included three levels of jurisdiction. They were concluded within a reasonable time. There had accordingly been no breach of A 6(1).

The miscellaneous allegations of violations of A 6(1) and 13 raised before the Commission were not mentioned by the applicants before the Court, which did not consider it necessary to examine them of its own motion.

Non-pecuniary damage (SEK 50,000), legal fees and expenses, (SEK 55,000 less FF 6,900).

Cited: Margareta and Roger Andersson v S (25.2.1992), Eriksson v S (22.6.1989), Olsson (No 1) v S (24.3.1988), Powell and Rayner v UK (21.2.1990), Rieme v S (22.4.1992), Skärby v S (28.6.1990), X v F (31.3.1992).

Omar v France (2000) 29 EHRR 210 98/54

[Application lodged 27.7.1994; Commission report 6.3.1997; Court Judgment 29.7.1998]

The applicants were Mr Cheniti Omar, an Algerian national who was retired, and his two sons, Hassane and Kamal Omar, also Algerian nationals, born in 1959 and 1962 respectively, who were building workers at the material time. The three applicants were charged in October 1989 with aiding and abetting the investment, concealment or conversion of funds derived from drug trafficking. Cheniti Omar was detained on remand from 13 October to 3 November 1989 and Kamal and Hassane Omar from 13 October to 8 December 1989. On release, they were placed under judicial supervision. Following trial, the Lyons Criminal Court, in a judgment of 19

November 1991, sentenced the applicants to imprisonment and issued warrants for their arrest. They appealed against the above judgment and requested a second expert opinion on their financial accounts. On 1 October 1992 the case was heard at an adversarial hearing attended by the accused. In a judgment of 16 February 1993, the Lyons Court of Appeal fully upheld the impugned judgment with regard to the five-year prison sentences imposed on Kamal and Hassane Omar and raised Cheniti Omar's sentence to five years. It also issued warrants for the arrest of each of the three applicants, who were not in court. The applicants lodged an appeal on points of law within the time-limit of five clear days laid down by of the Code of Criminal Procedure. None of the applicants complied with the arrest warrants issued, but Cheniti Omar was arrested by the police at his place of work on 27 May 1993 and committed to prison pursuant to the warrant for his arrest. On 7 February 1994 the Court of Cassation declared the appeal inadmissible on the ground that a convicted person who has not complied with a warrant for his arrest was not entitled to act through a representative in order to lodge an appeal on points of law. In April and September 1994 Kamal and Hassane Omar were arrested and committed to prison pursuant to the warrants for their arrest. On 15 and 17 May 1995 the prefect of the Rhône département issued deportation orders against them. They complained that the decision to rule their appeal on points of law inadmissible had infringed their right to a court.

Comm found by majority (23–8) V 6(1).

Court found by majority (18–3) V 6(1).

Judges: Mr R Bernhardt, President, Mr L-E Pettiti (d), Mr A Spielmann, Mr J De Meyer, Mrs E Palm, Mr I Foighel, Mr AN Loizou, Sir John Freeland, Mr AB Baka (d), Mr MA Lopes Rocha, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr P Jambrek (d), Mr K Jungwiert, Mr P Kûris, Mr E Levits, Mr J Casadevall, Mr P van Dijk, Mr M Voicu, Mr V Butkevych.

The right to a court, of which the right of access was one aspect, was not absolute; it may be subject to limitations permitted by implication, particularly regarding the conditions of admissibility of an appeal. However, these limitations must not restrict exercise of the right in such a way or to such an extent that the very essence of the right is impaired. They had to pursue a legitimate aim and there had to be a reasonable proportionality between the means employed and the aim sought to be achieved. Where an appeal on points of law was declared inadmissible solely because, as in the present case, the appellant had not surrendered to custody pursuant to the judicial decision challenged in the appeal, that ruling compelled the appellant to subject himself in advance to the deprivation of liberty resulting from the impugned decision, although that decision could not be considered final until the appeal had been decided or the time-limit for lodging an appeal had expired. That impaired the very essence of the right of appeal, by imposing a disproportionate burden on the appellant, thus upsetting the fair balance that had to be struck between the legitimate concern to ensure that judicial decisions were enforced, on the one hand, and the right of access to the Court of Cassation and exercise of the rights of the defence on the other. The proceedings in cassation formed a special stage of the criminal proceedings whose consequences could prove decisive for the accused. A 6(1) did not compel the Contracting States to set up courts of appeal or of cassation. Nevertheless, a State which did institute such courts was required to ensure that persons amenable to the law should enjoy before those courts the fundamental guarantees contained in A 6. In its *Poitrimol* judgment, the Court held that 'the inadmissibility of the appeal on points of law, on grounds connected with the applicant's having absconded … amounted to a disproportionate sanction, having regard to the signal importance of the rights of the defence and of the principle of the rule of law in a democratic society'. That finding was even more valid in the present case where the applicants had not attempted to evade enforcement of the arrest warrants. They did not leave their work or their place of residence. They attended the hearings in the Court of Appeal. They were not in court for the delivery of the judgment, but no statutory provision obliged them to attend, since in French law such attendance was a right, not an obligation. The police could have apprehended them at any time, and indeed did apprehend Mr Cheniti Omar, who was arrested at his place of work on 27 May 1993. Having regard to all the

circumstances of the case, the applicants suffered an excessive restriction of their right of access to a court, and therefore of their right to a fair trial.

Costs and expenses (by majority (19–2) FF 60,000).

Cited: Ashingdane v UK (28.5.1985), Bellet v F (4.12.1995), Delcourt v B (17.1.1970), Fayed v UK (21.9.1994), Golder v UK (21.2.1975), Levages Prestations Services v F (23.10.1996), Poitrimol v F (23.11.1993), Tolstoy Miloslavsky v UK (13.7.1995),

Open Door and Dublin Well Woman v Ireland (1993) 15 EHRR 244 92/67

[Applications lodged 19.8.1988, 22.9.1988; Commission report 7.3.1991; Court Judgment 29.10.1992]

The applicants in this case were (a) Open Door Counselling Ltd, a company which was engaged, *inter alia*, in counselling pregnant women in Dublin and other parts of Ireland; and (b) Dublin Well Woman Centre Ltd, a company which provided similar services at two clinics in Dublin; (c) Bonnie Maher and Ann Downes, who worked as trained counsellors for Dublin Well Woman providing non-directive counselling; (d) Mrs X, born in 1950 and Ms Maeve Geraghty, born in 1970, who joined in the Dublin Well Woman application as women of child-bearing age. The applicant companies were the defendants in proceedings before the High Court which were commenced on 28 June 1985 as a private action brought by the Society for the Protection of Unborn Children (Ireland) Ltd (SPUC), which was converted into a relator action brought at the suit of the Attorney General by order of the High Court of 24 September 1986. SPUC sought a declaration that the activities of the applicant companies in counselling pregnant women within the jurisdiction of the court to travel abroad to obtain an abortion were unlawful having regard to Article 40.3.3 of the Constitution which protects the right to life of the unborn and also sought an order restraining the defendants from such counselling or assistance. On 19 December 1986 the President of the High Court found that the activities of Open Door and Dublin Well Woman were unlawful having regard to the provisions of Article 40.3.3 of the Constitution of Ireland. Open Door and Dublin Well Woman appealed against this decision to the Supreme Court, which rejected the appeal. The costs of the Supreme Court appeal were awarded against the applicant companies on 3 May 1988. Following the judgment of the Supreme Court, Open Door, having no assets, ceased its activities. The applicants complained that the injunction imposed by the Irish courts on Open Door and Dublin Well Woman to restrain them from providing certain information to pregnant women concerning abortion facilities outside the jurisdiction of Ireland by way of non-directive counselling constituted an unjustified interference with their right to impart or receive information contrary to A 10. Open Door, Mrs X and Ms Geraghty further claimed that the restrictions amounted to an interference with their right to respect for private life in breach of A 8 and, in the case of Open Door, discrimination contrary to A 14 in conjunction with A 8 and 10.

Comm found by majority (8–5) V 10 in respect of the Supreme Court injunction as it affected the applicant companies and counsellors, (7–6) V 10 in respect of the Supreme Court injunction as it affected Mrs X and Ms Geraghty, (7–2 with four abstentions), that it was not necessary to examine further the complaints of Mrs X and Ms Geraghty under 8, unanimously, NV 8, NV 14 in respect of Open Door.

Court dismissed by majority (15–8) Government's preliminary objection regarding Mrs X and Ms Geraghty's claim to be victims, unanimously dismissed remainder of the Government's preliminary objections, found by majority (15–8) V 10, unanimously not necessary to examine remaining complaints.

Judges: Mr R Ryssdal, President, Mr J Cremona (d), Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr F Matscher (pd), Mr L-E Pettiti (d), Mr R Macdonald, Mr C Russo (d), Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer (so), Mr N Valticos, Mr SK Martens, Mrs E Palm, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla (c), Mr F Bigi (d), Sir John Freeland, Mr AB Baka (pd), Mr MA Lopes Rocha (d), Mr J Blayney (d), ad hoc judge.

The scope of the Court's jurisdiction was determined by the Commission's decision on admissibility. The Court had no jurisdiction to entertain new and separate issues.

Ms Maher and Ms Downes could claim to be victims of an interference with their rights since they were directly affected by the Supreme Court injunction. In addition, the Government were precluded from making submissions as regards preliminary exceptions which were inconsistent with concessions previously made in their pleadings before the Commission. A 25 entitled

individuals to contend that a law violated their rights by itself, in the absence of an individual measure of implementation, if they run the risk of being directly affected by it. Mrs X and Ms Geraghty belonged to a class of women of child-bearing age which may be adversely affected by the restrictions imposed by the injunction. They were not seeking to challenge *in abstracto* the compatibility of Irish law with the Convention since they run a risk of being directly prejudiced by the measure complained of. They could claim to be victims. Although the plea regarding failure to comply with the six-month rule was raised before the Commission, it was not reiterated in the Government's memorial to the Court and was raised solely at the oral hearing. The Government had therefore failed under Rule 48 to file it before the expiry of the time-limit and the objection therefore had to be rejected as being out of time. Having regard to the reasoning of the Supreme Court on the issue, Open Door would have had no prospect of success in asserting its complaints under A 8 and 14. Open Door and Dublin Well Woman were not introducing a fresh complaint, but developing their submissions in respect of complaints already examined by the Irish courts. It emerged from the judgments of the Supreme Court that any action brought by the four individual applicants would have had no prospects of success. Accordingly, the Government's objection based on non-exhaustion of domestic remedies failed.

The injunction interfered with the freedom of the corporate applicants to impart information. Having regard to the scope of the injunction which also restrained the 'servants or agents' of the corporate applicants from assisting 'pregnant women', there could be no doubt that there was also an interference with the rights of the applicant counsellors to impart information and with the rights of Mrs X and Ms Geraghty to receive information in the event of being pregnant. Taking into consideration the high threshold of protection of the unborn provided under Irish law generally and the manner in which the courts have interpreted their role as the guarantors of constitutional rights, the possibility that action might be taken against the corporate applicants must have been, with appropriate legal advice, reasonably foreseeable. That conclusion was reinforced by the legal advice that was actually given to Dublin Well Woman that, in the light of Article 40.3.3 of the Irish Constitution, an injunction could be sought against its counselling activities. The restriction was accordingly prescribed by law. The protection afforded under Irish law to the right to life of the unborn was based on profound moral values concerning the nature of life which were reflected in the stance of the majority of the Irish people against abortion. The restriction thus pursued the legitimate aim of the protection of morals of which the protection in Ireland of the right to life of the unborn was one aspect. The State's discretion in the field of the protection of morals was not unfettered and unreviewable. National authorities enjoyed a wide margin of appreciation in matters of morals, particularly in areas touching on matters of belief concerning the nature of human life. However, that power of appreciation was not unlimited. The Supreme Court injunction was absolute in nature, imposing a 'perpetual' restraint on the provision of information to pregnant women concerning abortion facilities abroad, regardless of age or state of health or their reasons for seeking counselling on the termination of pregnancy. On that ground alone, the restriction appeared over broad and disproportionate. Moreover, the counsellors neither advocated nor encouraged abortion, but confined themselves to an explanation of the available options. The decision as to whether or not to act on the information provided was that of the woman concerned. Such counselling had been tolerated by the State authorities until the Supreme Court's judgment in the present case. The information that was provided by the relevant applicants concerning abortion facilities abroad was not made available to the public at large. The information concerning abortion facilities abroad could be obtained from other sources in Ireland such as magazines and telephone directories. Furthermore, the injunction appeared to have been largely ineffective in protecting the right to life of the unborn since it did not prevent large numbers of Irish women from continuing to obtain abortions in Great Britain. In addition, evidence suggested that the injunction had created a risk to the health of those women who were then seeking abortions at a later stage in their pregnancy, due to lack of proper counselling and having an adverse effect on women who were not sufficiently resourceful or educated to have access to alternative sources of information. In conclusion, the restraint imposed on the applicants from

receiving or imparting information was disproportionate to the aims pursued. Accordingly, there has been a breach of A 10.

The complaints of discrimination made by the applicants in Dublin Well Woman were made for the first time in the proceedings before the Court; there was therefore no jurisdiction to examine them. However, having regard to the finding of a breach of A 10, it was not necessary to examine either those complaints or those made by the other applicants.

Cited: Brogan and Others v UK (29.11.1988), Handyside v UK (7.12.1976), Johnston and Others v IRL (18.12.1986), Kolompar v B (24.9.1992), Müller and Others v CH (24.5.1988), Norris v IRL (26.10.1988), Observer and Guardian v UK (26.11.1991), Olsson v S (24.3.1988), Pine Valley Developments Ltd and Others v IRL (29.11.1991), Sunday Times v UK (26.4.1979).

Orlandini v Italy 97/58

[Application lodged 4.11.1993; Commission report 28.11.1995; Court Judgment 2.9.1997]

Mr Rino Orlandini was a district council employee. On 18 July 1985 the District Council promoted him with effect from 28 July 1980, but postponed the corresponding pecuniary advantages until 14 December 1985. On 17 January 1987 he applied to the Tuscany Regional Administrative Court seeking the backdating of his promotion as regards the pecuniary advantages, also payment of the difference in salary and annulment of the decision in issue. In a judgment of 9 April 1993, the text of which was deposited with the registry on 11 August 1993, the court gave judgment against the applicant. It held that his claim was ill-founded, as throughout the period in question his work had consisted of the duties associated with the post he had held prior to being promoted. He complained of the length of the proceedings.

Comm found by majority (24–5) V 6.

Court found by majority (8–1) A 6 not applicable.

Judges: Mr R Bernhardt, President, Mr C Russo, Mr N Valticos, Mr R Pekkanen (d), Mr AB Baka, Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr P Kûris, Mr E Levits.

Disputes relating to the recruitment, careers and termination of service of civil servants were as a general rule outside the scope of A 6(1). In the instant case the applicant was seeking the backdating of the pecuniary advantages of his promotion, payment of the difference in salary and annulment of the decision of 18 July 1985. Although the dispute did have an economic aspect, that aspect could not in the present case be decisive for the purpose of determining whether A 6 was applicable. The applicant's application was a direct challenge to the administrative authorities' 'discretionary powers', since they had specifically stated in the decision in issue that he would become entitled to payment of his new salary only when, five years after the date on which the decision was to take effect, he began his new duties. The dispute raised did not, therefore, concern a 'civil' right within the meaning of A 6(1). Accordingly, that provision was not applicable in the case.

Cited: Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993), Neigel v F (17.3.97).

Ortenberg v Austria (1995) 19 EHRR 524 94/41

[Application lodged 10.9.1986; Commission report 14.5.1993; Court Judgment 25.11.1994]

Mrs Margarete Ortenberg was a house-owner. On 12 September 1980 the District Council adopted a land-use plan which designated as building land an area adjoining the applicant's property. On 30 January 1981 the council voted for a development plan authorising the construction of terrace houses on the land. Building permits were subsequently issued. Mrs Ortenberg lodged an appeal with the district council against all these decisions, challenging in particular the lawfulness of the land-use and development plans and complaining of the substantial nuisance that would be caused to her by the proposed buildings. The council dismissed the appeal. Her appeals to the Constitutional Court and the Administrative Court were dismissed. She complained that she had not had access to a court with full jurisdiction or had a fair hearing

Comm found by majority (15–1) NV 6(1) as regards access to a court, unanimously NV 6(1) as regards fairness of the proceedings.

Court found unanimously NV 6(1) as regards access to a court and fairness of the proceedings, no jurisdiction to consider the complaint based on the lack of a hearing in the Administrative Court, no jurisdiction to consider P1A1.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Mr R Macdonald, Mr C Russo, Mr A Spielmann, Mr R Pekkanen, Mr AN Loizou, Sir John Freeland.

A 6(1) applied where the subject-matter of an action was pecuniary in nature and was founded on an alleged infringement of rights which were likewise pecuniary or where its outcome was 'decisive for private rights and obligations'. Having regard to the close link between the proceedings brought by the applicant and the consequences of their outcome for her property, the right in question was a 'civil' one. Accordingly, A 6(1) applied.

Under A 6(1) it was necessary that decisions of administrative authorities which did not themselves satisfy the requirements of that article should be subject to subsequent control by a judicial body that had full jurisdiction. The Constitutional Court was not such a body. In this instance, it could only review the lawfulness of the land-use and development plans, and, that did not enable it to consider all the facts of the case. It therefore did not have the competence required by A 6(1). The Administrative Court had thoroughly examined the applicant's complaints point by point, without ever having to decline jurisdiction in replying to them. Regard being had to the fact that this was a decision taken by an administrative authority on grounds of expediency and to the nature of the applicant's complaints, the review by the Administrative Court fulfilled the requirements of A 6(1) in this instance. The applicant further complained that she had not had a fair hearing. The Constitutional Court was not in issue, as it was not a 'tribunal' within the meaning of A 6(1) for the purposes of this case. The same was not true of the Administrative Court. However, the applicant did not point to any feature that might cast doubt on the fairness of the proceedings in the case in that court. The complaint that the Administrative Court had not held a hearing was not raised before the Commission and accordingly the Court had no jurisdiction to consider it. In sum, there had been no breach of A 6.

The complaint under P1A1, having been declared inadmissible by the Commission on 29 June 1992 as being out of time, lay outside the scope of the case referred to the Court and the Court had no jurisdiction to entertain it.

Cited: Albert and Le Compte v B (10.2.1983), Editions Périscope v F (26.3.1992), H v F (24.10.1989), Obermeier v A (28.6.1990), Zumtobel v A (21.9.1993).

Osman v United Kingdom (2000) 29 EHRR 245 98/91

[Application lodged 10.11.1993; Commission report 1.7.1997; Court Judgment 28.10.1999]

The first applicant, Mrs Mulkiye Osman, was the widow of Mr Ali Osman, who was shot dead by Mr Paul Paget-Lewis on 7 March 1988. The second applicant, Ahmet Osman, was her son, born in England in 1972. He was a former pupil of Paul Paget-Lewis at Homerton House School. Ahmet Osman was wounded in the shooting incident which led to the death of his father. The applicant's complaints are directed at the failure of the authorities to appreciate and act on what they claimed was a series of clear warning signs that Paul Paget-Lewis represented a serious threat to the physical safety of Ahmet Osman and his family. In 1986, Paul Paget-Lewis, had developed an attachment to Ahmet Osman, taking photographs of him and giving him money. By March 1987 graffiti had appeared at six locations around the school of a sexual nature, referring to Ahmet. Files relating to Ahmet and the file relating to staff disciplinary matters were stolen from the school. On 14 April 1987, Paget-Lewis changed his name by deed poll to Paul Ahmet Yildirim Osman. There were discussions between the police, the school and the Ahmets. A police officer visited the school but no immediate action was taken. The headteacher met with the Osman family to discuss the situation. Paget-Lewis was examined by a psychiatrist who concluded that he was not mentally ill but should be receiving some form of therapy. In May and June 1987, there were attacks on the

applicant's property, a brick was thrown through a window of the house and on two occasions the tyres of Ali Osman's car were deliberately burst. Paget-Lewis was suspended from the school pending an investigation for 'unprofessional behaviour' towards Ahmet Osman. The incidents continued with attacks on the Osman's property. In December 1987 the police visited the Osman family and discussed the criminal damage and Paget-Lewis' relationship with Ahmet. Paget-Lewis was also interviewed by officers of the education authority and admitting feeling totally self-destructive. Between January and March 1988 Paget-Lewis travelled around England hiring cars in his adopted name of Osman and was involved in a number of accidents. At the beginning of March 1988 Paget-Lewis was seen near the applicants' home. On 7 March at about 11 pm Paget-Lewis shot and killed Ali Osman and seriously wounded Ahmet. He then drove to the home of the headteacher where he shot and wounded him and killed his son. Early the next morning Paget-Lewis was arrested. On being arrested he stated 'why didn't you stop me before I did it, I gave you all the warning signs?' On 28 October 1988 Paget-Lewis was convicted of two charges of manslaughter having pleaded guilty on grounds of diminished responsibility. He was sentenced to be detained in a secure mental hospital without limit of time. On 28 September 1989 the applicants commenced proceedings against, *inter alios*, the Commissioner of Police of the Metropolis alleging negligence in that although the police were aware of Paget-Lewis' activities since May 1987, they failed to apprehend or interview him, search his home or charge him with an offence before March 1988. On 19 August 1991 the Metropolitan Police Commissioner issued an application to strike out the statement of claim on the ground that it disclosed no reasonable cause of action. The High Court judge dismissed the application. On 7 October 1992 the Court of Appeal upheld the appeal by the Commissioner. In its judgment, the court held that in light of previous case-law no action could lie against the police in negligence in the investigation and suppression of crime on the grounds that public policy required an immunity from suit. Leave to appeal to the House of Lords was refused. The applicants complained that there had been a failure to protect the lives of Ali and Ahmet Osman and to prevent the harassment of their family, and that they had no access to court or effective remedy in respect of that failure.

Comm found by majority (10–7) NV 2, NV 8, (12–5) V 6(1), (12–5) no separate issue under 13.

Court found by majority (17–3) NV 2, NV 8, unanimously V 6(1), by majority (19–1) not necessary to examine 13.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr J De Meyer (pd/pc), Mr I Foighe (c), Mr R Pekkanen, Mr JM Morenilla, Sir John Freeland (c), Mr AB Baka, Mr MA Lopes Rocha (pd/pc), Mr L Wildhaber, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr D Gotchev, Mr P Jambrek (c), Mr K Jungwiert, Mr P Kûris, Mr U Lôhmus, Mr J Casadevall (pd/pc), Mr T Pantiru, Mr V Toumanov.

A 2(1) enjoined the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. A 2 could also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life was at risk from the criminal acts of another individual. Bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which had to be made in terms of priorities and resources, such an obligation had to be interpreted in a way which did not impose an impossible or disproportionate burden on the authorities. There was also the need to ensure that the police exercised their powers to control and prevent crime in a manner which fully respected the due process and other guarantees which legitimately placed restraints on the scope of their action to investigate crime and bring offenders to justice. Where there was an allegation that the authorities had violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person, it had to be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. The applicants had failed to point to any

decisive stage in the sequence of the events leading up to the shooting when it could be said that the police knew or ought to have known that the lives of the Osman family were at real and immediate risk from Paget-Lewis. While the applicants had pointed to a series of missed opportunities, it could not be said that those opportunities, judged reasonably, would have resulted in the police neutralising the threat or a domestic court convicting him or ordering his detention in a psychiatric hospital. The police could not be criticised for attaching weight to the presumption of innocence or failing to use powers of arrest, search and seizure having regard to their reasonably held view that they lacked at relevant times the required standard of suspicion to use those powers or that any action taken would in fact have produced concrete results. There had therefore been no violation of A 2.

A 8: it had not been established that the police knew or ought to have known at the time that Paget-Lewis represented a real and immediate risk to the life of Ahmet Osman and that their response to the events as they unfolded was reasonable in the circumstances and not incompatible with the authorities' duty under A 2 of the Convention to safeguard the right to life. That conclusion equally supported a finding that there had been no breach of any positive obligation implied by A 8 of the Convention to safeguard the second applicant's physical integrity. The facts of the case did not disclose a breach by the authorities of any positive obligation under A 8.

The applicants had a right, derived from the law of negligence, to seek an adjudication on the admissibility and merits of an arguable claim that they were in a relationship of proximity to the police, that the harm caused was foreseeable and that in the circumstances it was fair, just and reasonable not to apply the exclusionary rule outlined by the domestic case-law. The assertion of that right by the applicants was in itself sufficient to ensure the applicability of A 6(1).

A 6(1) embodied the right to a court of which the right of access, that is, the right to institute proceedings before a court in civil matters, constituted one aspect. However, that right was not absolute, but might be subject to limitations. The reasons which led the House of Lords to lay down an exclusionary rule to protect the police from negligence actions were based on the legitimate aim in maintaining the effectiveness of the police service and hence to the prevention of disorder or crime. However, the application of the exclusionary rule in the manner in the case, without further inquiry into the existence of competing public-interest considerations only served to confer a blanket immunity on the police for their acts and omissions during the investigation and suppression of crime and amounted to an unjustifiable restriction on an applicant's right to have a determination on the merits of his or her claim against the police in deserving cases. Those other considerations had to be examined on the merits and not automatically excluded by the application of a rule which amounted to the grant of an immunity to the police. The application of the exclusionary rule in the instant case constituted a disproportionate restriction on the applicants' right of access to a court. There had accordingly been a violation of A 6(1) of the Convention.

Having regard to the conclusion that the applicants' rights under A 6(1) had been violated and recalling that the requirements of A 13 were less strict than, and were here absorbed by, those of A 6, it was not necessary to examine A 13.

Loss of opportunity (GBP 10,000 to each applicant), costs and expenses (GBP 30,000 less FF 28,514).

Cited: Golder v UK (21.2.1975), Ireland v UK (18.1.1978), LCB v UK (9.6.1998), McCann and Others v UK (27.9.1995), Tinnelly and Sons Ltd and Others and McElduff and Others v UK (10.7.1998).

Otto-Preminger-Institut v Austria (1995) 19 EHRR 34 94/25

[Application lodged 6.10.1987; Commission report 14.1.1993; Court Judgment 20.9.1994]

The applicant, Otto-Preminger-Institut für audiovisuelle Mediengestaltung (OPI) was a private non-profit-making association under Austrian law whose general aim was to promote creativity, communication and entertainment through the audiovisual media. Its activities included operating a cinema in Innsbruck. The applicant association announced a series of six showings, which would be accessible to the general public except those under 17 years of age, of the film *Das*

Liebeskonzil ('Council in Heaven') by Werner Schroeter. The announcement was made in an information bulletin distributed by OPI to its members and in various display windows in Innsbruck including that of the cinema itself. At the request of the Innsbruck diocese of the Roman Catholic Church, the public prosecutor instituted criminal proceedings against OPI's manager, Mr Dietmar Zingl, on 10 May 1985 on a charge of 'disparaging religious doctrines' contrary to the Penal Code. On 12 May 1985, after the film had been shown at a private session in the presence of a duty judge, an application by the public prosecutor for its seizure was granted by the Innsbruck Regional Court. As a result, the public showings announced by OPI could not take place. An appeal by Mr Zingl against the seizure order, filed with the Innsbruck Court of Appeal, was dismissed on 30 July 1985. On 24 October 1985 the criminal prosecution against Mr Zingl was discontinued and the case was pursued in the form of 'objective proceedings' under the Media Act aimed at suppression of the film. In its judgment the Regional Court ordered the forfeiture of the film. Mr Zingl's appeal to the Innsbruck Court of Appeal was declared inadmissible on 25 March 1987. The applicant association complained of violation of A 10.

Comm found by majority (9–5) V 10 as regards the seizure of the film, (13–1) V 10 as regards the forfeiture of the film.

Court unanimously dismissed the Government's primary preliminary objections, found by majority (6–3) NV 10 as regards seizure and forfeiture.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr F Matscher, Mr B Walsh, Mr R Macdonald, Mrs E Palm (jd), Mr R Pekkanen (jd), Mr J Makarczyk (jd), Mr D Gotchev.

The Government had not raised their alternative argument regarding the six month rule before the Commission and were estopped from doing so before the Court. Although the applicant association was not the owner of either the copyright or the forfeited copy of the film, it was directly affected by the decision on forfeiture, which had the effect of making it impossible for it ever to show the film in its cinema in Innsbruck or anywhere in Austria. In addition, the seizure was a provisional measure, the legality of which was confirmed by the decision on forfeiture. The applicant association could therefore validly claim to be a 'victim' of the forfeiture of the film as well as its seizure. The 'final decision' for the purpose of A 26 was the judgment of the Innsbruck Court of Appeal on 25 March 1987 and notified to OPI on 7. In accordance with its usual practice, the Commission decided that the application, which had been lodged within six months of the latter date, had been filed within the requisite time-limit. The Government's preliminary objection was therefore rejected.

Both the seizure and the forfeiture constituted interference with the applicant association's right to freedom of expression. The interferences were prescribed by law, the Austrian Penal Code and pursued the legitimate aim of the protection of the rights of others. Although access to the cinema to see the film was subject to payment of an admission fee and an age-limit, the film was widely advertised. There was sufficient information of its nature and the proposed screening was an expression sufficiently public to cause offence. The conflicting interests had to be weighed up and regard had to be had to the margin of appreciation left to the national authorities, whose duty it was in a democratic society also to consider, within the limits of their jurisdiction, the interests of society as a whole. The Austrian courts, ordering the seizure and forfeiture of the film, held it to be an abusive attack on the Roman Catholic religion. They had due regard to the freedom of artistic expression. They did not consider that its merit as a work of art or as a contribution to public debate in Austrian society outweighed those features which made it essentially offensive to the general public within their jurisdiction. The content of the film could not be said to be incapable of grounding the conclusions arrived at by the Austrian courts. The Roman Catholic religion was the religion of the overwhelming majority of Tyroleans. In seizing the film, the Austrian authorities acted to ensure religious peace in that region and to prevent some people feeling the object of attacks on their religious beliefs in an unwarranted and offensive manner. The Austrian authorities could not be regarded as having overstepped their margin of appreciation in this respect. No violation of A 10 could therefore be found as far as the seizure was concerned. The same reasoning applied to the forfeiture. A 10 could not be interpreted as prohibiting the forfeiture in the public

interest of items whose use had lawfully been adjudged illicit. Although the forfeiture made it permanently impossible to show the film anywhere in Austria, the means employed were not disproportionate to the legitimate aim pursued and therefore the national authorities did not exceed their margin of appreciation in that respect. There had accordingly been no violation of A 10 as regards the forfeiture either.

Cited: Bricmont v B (7.7.1989), Chorherr v A (25.8.1993), Handyside v UK (7.12.1976), Informationsverein Lentia and Others v A (24.11.1993), Klass and Others v D (6.9.1978), Kokkinakis v GR (25.5.1993), Müller and Others v CH (24.5.1988), Norris v IRL (26.10.1988), Open Door and Dublin Well Woman v IRL (29.10.1992), Papamichalopoulos and Others v GR (24.6.1993).

Owners' Services Ltd v Italy 91/35

[Application lodged 13.3.1986; Commission report 15.1.1991; Court Judgment 28.6.1991]

By summons served on 13 March 1982, the applicant took proceedings before the Salerno court against a company to recover ITL 29,850,000 which it had paid in error and which the defendant refused to refund. The investigation began at the hearing of 28 April 1982. On 2 December 1986 the court allowed the applicant's claim for reimbursement. The text of the decision was lodged with the registry on 6 March 1987. The applicant company complained of the length of the civil proceedings brought by it. On 2 June 1987 the applicant agreed to a friendly settlement of the case.

Comm found unanimously V 6(1).

Court struck the case from the list.

Judges: Mr R Ryssdal, President, Mr B Walsh, Mr J Pinheiro Farinha, Mr R Bernhardt, Mr C Russo, Mr A Spielmann, Mr I Foighel, Mr JM Morenilla, Mr F Bigi.

In a letter of 13 May 1991 the applicant company informed the Court of its wish to 'withdraw' and its decision not to seek just satisfaction. That was a 'fact of a kind to provide a solution of the matter', there was no reason of public policy for continuing the proceedings.

Cited: De Becker v B (27.3.1962).

Özgür Gündem v Turkey 00/91

(Application lodged 9.12.1993; Commission report 29.10.1998; Court Judgment 16.3.2000]

Gurbetelli Ersöz, Fahri Ferda Çetin, Yasar Kaya and Ülkem Basin ve Yayincilik Sanayi Ticaret Limited were, respectively, the editor-in-chief and the assistant editor-in-chief and the owners of the newspaper *Özgür Gündem*. The application concerned the applicants' allegations that there had been a concerted and deliberate assault on their freedom of expression through a campaign of targeting journalists and others involved in the newspaper *Özgür Gündem*. The campaign had involved killings, disappearances, arson, harassment and intimidation of journalists, distributors and others associated with the newspaper. In one operation on 10 December 1993, the police conducted a search at the *Özgür Gündem* office in Istanbul. During the operation, they took into custody those present in the building (107 persons) and seized all the documents and archives. Numerous prosecutions were brought against the newspaper. The applicants claimed that the Government instigated or tolerated the actions. The Government denied that State agents were involved and considered the newspaper to be run by the PKK. The Susurluk report commissioned by the Prime Minster described acquiescence and connivance by State authorities in unlawful activities, some of which targeted *Özgür Gündem*.

Court unanimously struck case out of the list insofar as it concerned Gurbetelli Ersöz, found unanimously V 10, NV 14.

Judges: Mr M Pellonpää, President, Mr G Ress, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mr V Butkevych, Mr F Gölcüklü (pd), ad hoc judge.

The applicant, Gurbetelli Ersöz, was formerly the editor of *Özgür Gündem*. After submission of her application, she died in autumn of 1997 and no information had been received that any heir or

close relative wished to pursue her complaints. Accordingly, the part of the case relating to her was struck off the list.

While the Susurluk report could not be relied on for establishing to the required standard of proof that State officials were implicated in any particular incident, the Court considered that the report, which was drawn up at the request of the Prime Minister and which he decided should be made public, had to be regarded as a serious attempt to provide information on and analyse problems associated with the fight against terrorism from a general perspective and to recommend preventive and investigative measures. On that basis, the report could be relied on as providing factual substantiation of the fears expressed by the applicants from 1992 onwards that the newspaper and persons associated with it were at risk of unlawful violence. The Court was satisfied that from 1992 to 1994 there were numerous incidents of violence, including killings, assaults and arson attacks and that the concerns of the newspaper were brought to the attention of the authorities. It did not appear, however, that any measures were taken to investigate that allegation. Nor did the authorities respond by any protective measures. Although the essential object of many provisions of the Convention was to protect the individual against arbitrary interference by public authorities, there could in addition be positive obligations inherent in an effective respect of the rights concerned. Genuine, effective exercise of freedom of expression did not depend merely on the State's duty not to interfere, but could require positive measures of protection, even in the sphere of relations between individuals. In determining whether or not a positive obligation existed, regard had to be had to the fair balance that had to be struck between the general interest of the community and the interests of the individual, the search for which was called for throughout the Convention. The scope of the obligation would inevitably vary, having regard to the diversity of situations obtaining in Contracting States, the difficulties involved in policing modern societies and the choices which must be made in terms of priorities and resources. Nor should such an obligation be interpreted in such a way as to impose an impossible or disproportionate burden on the authorities. Having regard to the seriousness of the attacks and their widespread nature, the Government could not rely on the investigations lodged by individual public prosecutors into specific incidents, which did not provide adequate or effective responses to the applicants' allegations that the attacks were part of a concerted campaign which was supported, or tolerated, by the authorities. Moreover, the Government's conviction that *Özgür Gündem* and its staff supported the PKK and acted as its propaganda tool, even if true, did not provide a justification for failing to take steps effectively to investigate and, where necessary, provide protection against unlawful acts involving violence. The Government had failed, in the circumstances, to comply with their positive obligation to protect *Özgür Gündem* in the exercise of its freedom of expression.

The operation on 10 December 1993, which resulted in newspaper production being disrupted for two days, constituted a serious interference with the applicants' freedom of expression. The operation was conducted according to a procedure prescribed by law for the purpose of preventing crime and disorder. However, a measure of such dimension was not proportionate to the aim. No justification had been provided for the seizure of the newspaper's archives, documentation and library and no explanation for the blanket apprehension of every person found on the newspaper's premises, including the cook, cleaner and heating engineer. The presence of 40 persons who were not employed by the newspaper was not, in itself, evidence of any sinister purpose or of the commission of any offence. The search operation, as conducted by the authorities, had not been shown to be necessary, in a democratic society, for the implementation of any legitimate aim. Regarding the legal measures taken in respect of the issues of the newspaper, there was no reason for criticising the approach adopted by the Commission which consisted in selecting domestic decisions for examination. Given the number of prosecutions and decisions, a detailed analysis of all cases would have been impracticable. The articles examined varied in subject-matter and form and the Government had not provided any reason for holding that the selection was biased, unrepresentative or otherwise gave a distorted picture; nor did they identify any court decisions or articles which should have been examined

instead. The measures constituted an interference with freedom of expression under A 10. The measures were prescribed by law and pursued the legitimate aims of protecting national security and territorial integrity and of preventing crime and disorder. The Court recalled its case-law. With regard to necessity, the essential role of the press had to be taken into account and the dominant position of the State. Regarding the prosecutions concerning the offence of insulting the State and the military authorities, there were no convincing reasons for penalising any of those publications. Regarding the prosecutions concerning the offence of provoking racial and regional hostility, there were not relevant and sufficient reasons for imposing criminal convictions and penalties in respect of the article. Regarding the prosecutions for reporting statements of the PKK, the words used and the context in which they were published had to be considered: some could not be regarded as inciting to violence in view of their content, tone and context, others could, and given the relatively light penalties imposed, the measures complained of were reasonably proportionate to the legitimate aims of preventing crime and disorder and could be justified as necessary in a democratic society within the meaning of A 10(2). Regarding the prosecutions identifying officials participating in the fight against terrorism, in some of the articles the officials named were not alleged to be responsible for the misconduct, while in others neither the truth of their content nor the fact that the names were already in the public domain was taken into account and the reasons given for the criminal sanctions could not be regarded as sufficient to justify the restrictions placed on the newspaper's freedom of expression. Regarding the prosecutions for statements constituting separatist propaganda, while the use of the term 'Kurdistan' might be highly provocative to the authorities, the public enjoyed the right to be informed of different perspectives on the situation in south-east Turkey, irrespective of how unpalatable those perspectives appeared to the authorities and, even against the background of serious disturbances in the region, expressions which appeared to support the idea of a separate Kurdish entity did not have to be regarded as inevitably exacerbating the situation. While several of the articles were highly critical of the authorities and attributed unlawful conduct to the security forces, sometimes in colourful and pejorative terms, they could not be reasonably regarded as advocating or inciting the use of violence. Having regard to the severity of the penalties imposed, the restrictions imposed on the newspaper's freedom of expression disclosed in those cases were disproportionate to the aim pursued and could not be justified as necessary in a democratic society. The respondent State had failed to take adequate protective and investigative measures to protect *Özgür Gündem*'s exercise of its freedom of expression and had imposed measures on the newspaper, through the search and arrest operation of 10 December 1993 and through numerous prosecutions and convictions in respect of issues of the newspaper, which were disproportionate and unjustified in the pursuit of any legitimate aim. As a result of those cumulative factors, the newspaper ceased publication. There had accordingly been a breach of A 10.

There was no reason to believe that the restrictions on freedom of expression which resulted could be attributed to a difference of treatment based on the applicants' national origin or to association with a national minority. Accordingly, there had been no breach of A 14.

Damages (TRL 9,000,000,000 to applicant company), non-pecuniary damage (GBP 5,000 each to Fahri Ferda Çetin and Yasar Kaya), costs and expenses (GBP 16,000 less FF 9,195).

Cited: Assenov and Others v BG (28.10.1998), Fressoz and Roire v F (21.1.1999), Gaskin v UK (7.7.1989), Lingens v A (8.7.1986), McCann and Others v UK (27.9.1995), Osman v UK (28.10.1998), Otto-Preminger-Institut v A (20.9.1994), Plattform 'Ärzte für das Leben' v A (21.6.1988), Rees v UK (17.10.1986), Sürek (No 1) v TR (8.7.1999), Sürek (No 2) v TR (8.7.1999), Sürek and Özdemir v TR (8.7.1999), X and Y v NL (26.3.1985), Yasa v TR (2.9.1998), Zana v TR (25.11.1997).

Öztürk v Germany (1984) 6 EHRR 409, (1985) 7 EHRR 251 84/1

[Application lodged 14.2.1979; Commission report 12.5.1982; Court Judgment 21.2.1984 (merits), 23.10.1984 (A 50)]

Mr Abdulbaki Öztürk, a Turkish citizen born in 1934, arrived in the Federal Republic in 1964 and worked in the motor-car industry. After passing the necessary test, he was issued with a German

driving licence on 7 May 1969. On 27 January 1978 in Bad Wimfen, the applicant drove his car into a parked car causing damage to both vehicles. On arriving at the scene of the accident, the police, by means of a notice written in Turkish, informed the applicant, amongst other things, of his rights to refuse to make any statement and to consult a lawyer. He availed himself of these rights, and a report was transmitted to the Heilbronn administrative authorities. By decision of 6 April 1978, the Heilbronn administrative authorities imposed on the applicant a fine of DM 60 for causing a traffic accident by colliding with another vehicle as a result of careless driving and ordered him to pay DM 13 in respect of fees and costs. On 11 April 1978, the applicant lodged an objection and requested a public hearing before a court. The public prosecutor's office indicated that it had no objection to a purely written procedure and that it would not be attending the hearings. Sitting in public on 3 August 1978, the Heilbronn District Court heard the applicant, who was assisted by an interpreter, and then three witnesses. Immediately thereafter, the applicant withdrew his objection. The Heilbronn administrative authorities' decision of 6 April 1978 accordingly became final. The District Court directed that the applicant should bear the court costs and his own expenses which were fixed at DM 184.70, of which DM 63.90 represented interpreter's fees. On 4 October, the applicant entered an appeal against the bill of costs with regard to the interpreter's fees. The District Court dismissed the appeal on 25 October. The applicant complained of the fact that the Heilbronn District Court had ordered him to bear the interpreter's fees.

Comm found by majority (8–4) V 6(3)(e).

Court found by majority (13–5) 6(3)(e) applicable, (12–6) V 6(3)(e).

Judges (merits): Mr G Wiarda, President, Mr R Ryssdal, Mr J Cremona, Mr Thór Vilhjálmsson (so), Mr W Ganshof van der Meersch, Mrs D Bindschedler-Robert (so), Mr D Evrigenis, Mr L Liesch (so), Mr F Gölcüklü, Mr F Matscher (so), Mr J Pinheiro Farinha (so), Mr E García de Enterría, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt (so).

Judges (A 50): Mr G Wiarda, President, Mr R Ryssdal, Mr Thór Vilhjálmsson, Mr W Ganshof van der Meersch, Mr F Matscher, Mr B Walsh, Mr R Bernhardt.

Under German law, the misconduct committed by the applicant was not treated as a criminal offence but as a 'regulatory offence'. By removing certain forms of conduct from the category of criminal offences under domestic law, the law-maker may be able to serve the interests of the individual as well as the needs of the proper administration of justice, in particular in so far as the judicial authorities were thereby relieved of the task of prosecuting and punishing contraventions, which were numerous but of minor importance, of road traffic rules. The Convention was not opposed to the moves towards 'decriminalisation'. Nevertheless, if the Contracting States were able at their discretion, by classifying an offence as 'regulatory' instead of criminal, to exclude the operation of the fundamental clauses of A 6 and 7, the application of those provisions would be subordinated to their sovereign will. The notion of 'criminal' as conceived of under A 6 was autonomous. In determining whether or not the 'regulatory offence' committed by the applicant was a 'criminal' one within the meaning of A 6, the Court would rely on the criteria adopted in the *Engel and Others* judgment. The first matter to be ascertained was whether or not the text defining the offence in issue belonged, according to the legal system of the respondent State, to criminal law; next, the nature of the offence and, finally, the nature and degree of severity of the penalty that the person concerned risked incurring had to be examined, having regard to the object and purpose of A 6, to the ordinary meaning of the terms of that article and to the laws of the Contracting States. Under German law, the facts alleged against the applicant amounted to a 'regulatory offence' and did not fall within the ambit of the criminal law. However, no absolute partition separated German criminal law from the law on 'regulatory offences', and the provisions of the ordinary law governing criminal procedure applied by analogy to 'regulatory' proceedings, notably in relation to the judicial stage, if any, of such proceedings. However, the indications furnished by the domestic law of the respondent State had only a relative value, the nature of the offence, represented a factor of appreciation of greater weight. According to the ordinary meaning of the terms, there generally came within the ambit of the criminal law offences that made their perpetrator liable to penalties intended, *inter alia*, to be deterrent and usually consisting of fines

and of measures depriving the person of his liberty. Misconduct of the kind committed by the applicant continued to be classified as part of the criminal law in the vast majority of the Contracting States. The changes resulting from the domestic legislation related essentially to procedural matters and to the range of sanctions. The rule of law infringed by the applicant had undergone no change of content. The sanction sought to punish as well as to deter. The general character of the rule and the purpose of the penalty, being both deterrent and punitive, sufficed to show that the offence in question was, in terms of A 6, criminal in nature. The fact that it was a minor offence, hardly likely to harm the reputation of the offender, did not take it outside the ambit of A 6. There was nothing to suggest that the criminal offence referred to in the Convention necessarily implied a certain degree of seriousness. It would be contrary to the object and purpose of A 6 if the State were allowed to remove from the scope of that article a whole category of offences merely on the ground of regarding them as petty. As the contravention committed by the applicant was criminal for the purposes of A 6, there was no need to examine it also in the light of the final criterion. The relative lack of seriousness of the penalty at stake could not divest an offence of its inherently criminal character. 'Charge', for the purposes of A 6 could, in general, be defined as 'the official notification given to an individual by the competent authority of an allegation that he had committed a criminal offence. In the present case, the applicant was 'charged' at the latest as from the beginning of April 1978 when the decision of the Heilbronn administrative authorities was communicated to him. A 6(3)(e) was thus applicable in the instant case. Conferring the prosecution and punishment of minor offences on administrative authorities was not inconsistent with the Convention provided that the person concerned was enabled to take any decision thus made against him before a tribunal that did offer the guarantees of A 6.

The Court recalled its judgment in *Luedicke, Belkacem and Koç* and found that the impugned decision of the Heilbronn District Court violated A 6(3)(e).

Interpretation fees of DM 63.90 had been borne by the applicant's insurance company and not by him personally so that there was no prejudice capable of being the subject of a claim for restitution. No evidence to support legal costs. Claim for just satisfaction therefore rejected.

Cited: Adolf v A (26.3.1982), Corigliano v I (10.12.1982), Deweer v B (27.2.1980), Engel and Others v NL (8.6.1976), Foti and Others v I (10.12.1982), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Luedicke, Belkacem and Koç v D (28.11.1978), Campbell and Fell v UK (A 50 28.6.1984).

Öztürk v Turkey 99/55

[Application lodged 24.5.1993; Commission report 30.6.1998; Court Judgment 28.9.1999]

Mr Ünsal Öztürk owned a publishing house. In October 1988 he published a book by MN Behram entitled 'A testimony to life – Diary of a death under torture' about the life of Ibrahim Kaypakkaya, one of the founder members of the Communist Party of Turkey – Marxist-Leninist (TKP-ML), an illegal Maoist organisation. As the first edition had sold out as soon as it was placed on sale, the book was republished in November 1988. On 21 December 1988 the public prosecutor at the Ankara National Security Court instituted criminal proceedings against Mr Behram and the applicant. In December 1988 copies of the second edition were seized. On 30 March 1989 the National Security Court found the applicant guilty and sentenced him to fines of 328,500 and TRL 285,000 and ordered the book's confiscation. On 22 May 1991 Mr Behram, the author, was acquitted on the same charges. The applicant lodged further appeals. The National Security Court noted that the judgment delivered on 30 March 1989 had become final with regard to the conviction but that the confiscation order remained operative. The Court of Cassation rejected the applicant's further appeal. MN Behram's book went on open sale published by another publishing house, under the different title, 'Biography of a Communist'. The applicant complained that his conviction infringed A 10.

Comm found unanimously V 10, by majority (30–1) not necessary to examine P1A1.

Court unanimously dismissed the Government's preliminary objection, found V 10, not necessary to consider P1A1.

Judges: Mr L Wildhaber, President, Mr A Pastor Ridruejo, Mr G Bonello, Mr L Caflisch, Mr P Kûris, Mr J-P Costa, Mrs F Tulkens, Mrs V Stráznická, Mr M Fischbach, Mr V Butkevych, Mr J Casadevall, Mrs HS Greve, Mr A Baka, Mr R Maruste, Mr K Traja, Mrs S Botoucharova, Mr F Gölcüklü, ad hoc judge.

The reference by written order provided for in Turkish law was an extraordinary remedy available against judgments given at last instance against which no appeal lay to the Court of Cassation, it was not directly accessible to people whose cases had been tried. Consequently, it was not necessary for that remedy to have been used for the requirements of A 35 of the Convention to be held to have been satisfied and it should not, in principle, be taken into consideration for the purposes of the six-month rule. However, it was a different matter where, as in the present case, the remedy has actually been exercised. In that case it became similar to an ordinary appeal on points of law, in that it gave the Court of Cassation the opportunity to set aside the impugned judgment, if necessary, and remit the case to the lower court, and therefore to remedy the situation criticised by the person whose case had been tried. By requesting the Minister of Justice to refer his case to the Court of Cassation the applicant set in motion a procedure which, in the present case, proved to be effective, and the six-month period began to run on 8 January 1993, the date of the Court of Cassation's judgment on the second reference. The applicant therefore lodged his application in good time, and the Government's objection had to be dismissed.

A 10 guaranteed freedom of expression to 'everyone'. No distinction was made in it according to the nature of the aim pursued or the role played by natural or legal persons in the exercise of that freedom. By providing authors with a medium, publishers participated in exercise of the freedom of expression, just as they were vicariously subject to the duties and responsibilities which authors took on when they disseminated their opinions to the public. The applicant's conviction for helping to publish and distribute Mr Behram's book unquestionably constituted interference with the exercise of his freedom of expression under A 10(1). The interference with the applicant's right to freedom of expression was prescribed by law. Having regard to the sensitive nature of the fight against terrorism, and the need for the authorities to exercise vigilance when dealing with actions likely to exacerbate violence, the applicant's conviction pursued the aims of prevention of disorder or crime. The Court recalled its case-law. The book in issue took the form of a biography, giving a politicised version of the subject's life. Through his book the author intended, at least implicitly, to criticise both the Turkish authorities' actions in the repression of extreme left-wing movements and the conduct of those alleged to be responsible for Kaypakkaya's death. Albeit indirectly, the book thus gave moral support to the ideology which he had espoused. There was little scope under A 10(2) for restrictions on political speech or on debate on matters of public interest. The dominant position which the government occupied made it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means were available for replying to the unjustified attacks and criticisms of its adversaries. Nevertheless, it remained open to the competent State authorities to adopt, in their capacity as guarantors of public order, measures, even of a criminal-law nature, intended to react appropriately and without excess to such remarks. Finally, where such remarks incited to violence against an individual, a public official or a sector of the population, the national authorities enjoyed a wider margin of appreciation when examining the need for an interference with exercise of freedom of expression. In that connection, it was important to note the conclusion reached by the bench of the National Security Court which tried the author of the book. In its judgment of 22 May 1991, it ruled that nothing in the book disclosed any incitement to crime capable of justifying Mr Behram's conviction under the Criminal Code. This striking contradiction between two interpretations of one and the same book separated in time by about two years and made by two different benches of the same court was one element to be taken into consideration, regard being had to what was at stake for the applicant in the proceedings against him. The words used in the relevant edition of the book, whose content, moreover, did not differ in any way from that of the other editions, could not be regarded as incitement to the use of violence or to hostility and hatred between citizens. Admittedly, the Court could not exclude the possibility that such a book might conceal objectives and intentions different from the ones it proclaimed. However, as there was no evidence of any concrete action which

might belie it, the Court saw no reason to doubt the sincerity of the aim pursued by the applicant in the second edition of the book, especially as the first had sold out without occasioning criminal proceedings. The Court was prepared to take into account the background to the cases submitted to it, particularly problems linked to the prevention of terrorism. It was for the domestic courts to determine whether the applicant had published the book with a reprehensible object. The fact that domestic law did not require proof that the offence of which the applicant was accused had had any concrete effect did not in itself weaken the need to justify the interference under A 10(2). The book had been on open sale since 1991 and had not apparently aggravated the 'separatist' threat. Moreover, the Government had not explained how the second edition of the book could have caused more concern to the judicial authorities than the first, published in October 1988. There was nothing which might justify the finding that the applicant had any responsibility whatsoever for the problems caused by terrorism in Turkey and the use of the criminal law against him could not be regarded as justified in the circumstances of the present case. Having regard to the fact that the preventive aspect of the interference under consideration – namely, the seizure of some copies of the book – in itself raised issues under A 10, the Court considered, in the circumstances of the present case, that it could not attach decisive weight to the moderate amount of the fine imposed on the applicant. Accordingly it had not been established in the present case that, at the time when the edition in issue was published, there was a pressing social need capable of justifying a finding that the interference in question was proportionate to the legitimate aim pursued. Nor, on that point, could the Court accept the Government's argument, based on 'developments in the case-law' since the applicant's conviction, that where a violation of the Convention initially committed had subsequently been made good, the Court should not rule on the matter. The Court's sole task was to assess the particular circumstances of a given case and a decision or measure favourable to an applicant was not sufficient in principle to deprive him of his status as a 'victim' unless the national authorities had acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention. In the present case, however, the applicant did not even benefit from any such decision or measure. Even supposing that 'developments in the case-law' prompted Mr Behram's acquittal, it could only be noted that those did not prove to be sufficiently pertinent to enable the Court of Cassation to remedy the situation the applicant now complained of before the Court. Accordingly, there had been a violation of A 10.

The confiscation of the copies of the edition complained of by the applicant had been an incidental effect of his conviction, which the Court had held to have been in breach of A 10. It was consequently unnecessary to consider that complaint separately.

Pecuniary damage (USD 10,000), costs and expenses (FF 20,000).

Cited: Amuur v F (25.6.1996), Autronic AG v CH (22.5.1990), Baskaya and Okçuoglu v TR (8.7.1999), Casado Coca v E (24.2.1994), Ceylan v TR (8.7.1999), Engel and Others v NL (8.6.1976), Incal v TR (9.6.1998), Karatas v TR (8.7.1999), Müller and Others v CH (24.5.1988), Rekvényi v H (20.5.1999), Socialist Party and Others v TR (25.5.1998), Sürek No 1 v TR (8.7.1999), Müller and Others v CH (24.5.1988), Yasa v TR (2.9.1998), Zana v TR (25.11.1997).

P

P v Italy 99/112

[Application lodged 24.12.1997; Court Judgment 14.12.1999]

Mr P complained about the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mrs M Tsatsa-Nikolovska, Mr A Baka.

The period to be taken into consideration began on 6 October 1992 and was still pending on 8 October 1999, a duration of a little more than seven years at one instance. In four judgments of 28 July 1999 the Court had found that there existed in Italy a practice incompatible with the Convention, resulting from an accumulation of breaches of the 'reasonable time' requirement. That accumulation constituted circumstances aggravating the violation of A 6.

Non-pecuniary damage (ITL 21,000,000), costs and expenses (ITL 5,000,000).

Cited: Bottazzi v I (28.7.1999).

PL v France (1998) 25 EHRR 481 97/19

[Application lodged 20.7.1992; Commission report 11.4.1996; Court Judgment 2.4.1997]

On 16 September 1988 Mr PL was remanded in custody on suspicion of a number of offences of rape of his stepdaughters. On 3 October 1989 the proceedings were declared null and void and the applicant was released. A second set of proceedings was commenced and on 5 December 1989 the applicant was remanded in custody for the same matters. On 18 October 1991 the appellant was committed for trial. On 25 March 1992 he was sentenced to 17 years' imprisonment on a number of counts of aggravated rape. He applied unsuccessfully to the judge responsible for the execution of sentences to deduct one year and 18 days, that is, the equivalent of the time he had spent in prison during his initial period of detention on remand, from his sentence. He also wrote to the public prosecutor. He was informed that the period in detention on remand in connection with the first judicial investigation could not be taken into account for the execution of his sentence since it took place during proceedings which had been declared null and void and for that reason were deemed never to have existed. On 8 April 1994 the applicant petitioned the French President for a pardon, seeking remission of part (one year and 18 days) of his sentence. That petition was dismissed on 28 February 1995 but reconsidered and granted on 27 January 1997. The applicant complained of the fact that the term of imprisonment to which he had been sentenced had not been reduced by the length of his initial period of detention on remand in connection with a judicial investigation subsequently declared null and void.

Comm found by majority (25–3) V 5(1), unanimously not necessary to consider 14+5(1).

Court unanimously struck the case out of the list.

Judges: Mr R Bernhardt, President, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr J De Meyer, Mr AN Loizou, Sir John Freeland, Mr D Gotchev, Mr B Repik.

The Court noted that the Government and the applicant had not reached a 'friendly settlement' within the meaning of Rule 49(2), but that the applicant had stated that he was not proceeding. The pardon granted in the decree of 27 January 1997 gave the applicant what he was seeking from the French authorities, namely a reduction of his sentence of imprisonment by one year and 18 days. Those circumstances could be regarded as an 'arrangement or other fact of a kind to provide a solution of the matter' within the meaning of Rule 49(2). There was no reason of public policy why the case should not be struck out of the list.

Paccione v Italy (1995) 20 EHRR 396 95/13

[Application lodged 24.2.1989; Commission report 11.5.1994; Court Judgment 27.4.1995]

Mr Francesco Paccione was a retired district medical officer. On 1 March 1980 San Remo District Council communicated to him its decision determining the amount of his ordinary retirement pension. He claimed that he applied to the Court of Audit on 7 April 1980, complaining that the assessment did not take account of all the relevant factors. In a letter of 11 April 1985 he asked for his application to be dealt with speedily. That request was registered on 18 April 1985 and it was listed on 20 April. The Court of Audit gave its ruling on 11 March 1992, the text of the judgment was deposited in the registry on 4 March 1993. The applicant complained of the length of the proceedings in the Court of Audit.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr C Russo, Sir John Freeland, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr B Repik, Mr P Jambrek, Mr K Jungwiert.

The applicant did not prove that he had applied to the Court of Audit in 1980. Only his letter of 11 April 1985 was registered and listed by the registry of that court. That date therefore marked the beginning of the proceedings, which ended on 4 March 1993, when the judgment dismissing his application was made public on being deposited in the registry. They thus lasted nearly seven years and eleven months. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The first adjournment was justified but the second adjournment caused a delay of just under eleven months. The investigation into the applicant's service record was not relevant. The Court of Audit waited until 11 March 1992 before dismissing the application on the sole ground that it had not been served on the Treasury. As this was a condition of admissibility, the Court of Audit should have noticed immediately that it had not been satisfied. The investigation was therefore unnecessary. There had been a violation of A 6(1).

Claim for just satisfaction dismissed as being out of time.

Cited: Muti v I (23.3.1994).

Padalino v Italy 00/77

[Application lodged 18.8.1997; Commission report 4.3.1999; Court Judgment 15.2.2000]

Messrs Vincenzo and Giuseppe Padalino complained of the length of civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr L Ferrari Bravo, Mr G Bonello, Mrs M Tsatsa-Nikolovska, Mr P Lorenzen, Mr AB Baka, Mr E Levits.

The period to be taken into consideration began on 10 October 1983 and ended on 15 July 1998, a period of more than 14 years and nine months at one level of jurisdiction. In four judgments of 28 July 1999 the Court had found that there existed in Italy a practice incompatible with the Convention, resulting from an accumulation of breaches of the 'reasonable time' requirement. That accumulation constituted circumstances aggravating the violation of A 6.

Non-pecuniary damage (ITL 45,000,000), costs and expenses (ITL 1,500,000).

Cited: Bottazzi v I (28.7.1999).

Paderni v Italy 00/41

[Application lodged 23.12.1996; Court Judgment 25.1.2000]

Mr Giulio Paderni complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 1 February 1992 and was still pending; it had lasted over 7 years 11 months at two levels of jurisdiction. In four judgments of 28 July 1999 the Court had found that there existed in Italy a practice incompatible with the Convention, resulting from an accumulation of breaches of the 'reasonable time' requirement. That accumulation constituted circumstances aggravating the violation of A 6.

Costs and expenses (310 000 ITL).

Cited: Bottazzi v I (28.7.1999).

Padovani v Italy 93/7

[Application lodged 1 July 1987; Commission report 6 June 1991; Court Judgment 26.2.1993]

Mr Alessandro Padovani was a workman. On 21 February 1987 he was arrested by the police with regard to possession of stolen property. He was brought before the Bergamo magistrate, who immediately after questioning him confirmed his arrest. The magistrate also heard two other accused. On 26 February the magistrate issued a warrant for the applicant's arrest and initiated immediate proceedings (giudizio direttissimo) against him and his co-accused. He set a hearing date of 2 March, and found the case proved against the applicant. He imposed a suspended sentence and a fine. The judgment was filed with the registry seven days later, on 9 March 1987. The applicant complained that the magistrate had not been an impartial tribunal.

Comm found by majority (16–2) V 6(1).

Court unanimously dismissed the Government's preliminary objection, found NV 6(1).

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr B Walsh, Mr R Macdonald, Mr C Russo, Mr J De Meyer (c), Mr N Valticos, Mr JM Morenilla.

The Government's preliminary objection of non-exhaustion was unfounded, as the magistrate acted in accordance with the legislation in force at the time. The argument that the applicant could have asked the appellate court to refer a question to the Constitutional Court was not put forward before the Commission and was therefore subject to estoppel. In any event, an individual was not entitled to apply directly to the Italian Constitutional Court for a review of the constitutionality of a law, so that the applicant did not have available to him in that respect a remedy whose exhaustion was required under A 26.

The task of the Court was not to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to or affected the applicant gave rise to a violation of A 6(1). The existence of impartiality for the purposes of A 6(1) had to be determined according to a subjective test, that is, on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that is, ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in that respect. As to the subjective test, the personal impartiality of a judge had to be presumed until there was proof to the contrary, and no evidence had been produced which might suggest bias on the part of the magistrate. As to the objective test, it had to be determined whether, quite apart from the judge's conduct, there were ascertainable facts which might raise doubts as to his impartiality. In this respect even appearances might be of a certain importance. What was at stake was the confidence which the courts in a democratic society had to inspire in the public and above all, as far as criminal proceedings were concerned, in the accused. In deciding whether there was a legitimate reason to fear that a particular judge lacked

impartiality, the standpoint of the accused was important but not decisive. What was decisive was whether the fear could be regarded as objectively justified. In the instant case the fear of lack of impartiality was based on the fact that the magistrate had before the trial questioned the applicant, taken measures restricting his liberty and summoned him to appear before him. Although such a situation could occasion misgivings on the part of the applicant, they could for all that be regarded as objectively justified. The summary investigative measures consisted in the present case merely of questioning the accused, even though under the Code of Criminal Procedure the magistrate could have carried out further questioning. In issuing the arrest warrant of 26 February 1987, the magistrate relied, *inter alia*, on the applicant's own statements. The magistrate followed specific rules applicable to *flagrante delicto* cases within his jurisdiction. Giudizio direttissimo was a flexible procedure which sought to satisfy the 'reasonable time' requirement. There had therefore not been a violation of A 6(1).

Cited: Brozicek v I (19.12.1989), Ciulla v I (22.2.1989), Hauschildt v DK (24.5.1989), Sainte-Marie v F (16.12.1992).

Paez v Sweden 97/85

[Application lodged 16.11.1995; Commission report 6.12.1996; Court Judgment 30.10.1997]

Mr Jorge Antonio Paez was a Peruvian citizen who arrived in Sweden on 12 February. He requested asylum on the grounds that his activities within the armed opposition group Communist Party of Peru – Shining Path – had led to difficulties for him. On 1 June 1993 the National Immigration Board rejected his asylum request and ordered his expulsion. The applicant subsequently appealed to the Aliens Appeals Board which referred the appeal to the Government. On 12 October 1995 the Minister of Labour rejected the applicant's appeal. The enforcement of the applicant's expulsion was stayed following his appeal to the Commission. He complained that his expulsion to Peru would give rise to a violation of A 3.

Comm found by majority (15–14) that expulsion to Peru would not violate 3.

Court unanimously struck case out of list.

Judges: Mr R Bernhardt, President, Mr C Russo, Mrs E Palm, Mr AN Loizou, Sir John Freeland, Mr L Wildhaber, Mr P Jambrek, Mr P Kûris, Mr E Levits.

The Court noted that there had been no friendly settlement or agreed arrangement in the present case. The Swedish authorities had granted a permanent residence permit and the repeal of the expulsion order on 23 June 1997 in response to a fresh request by the applicant. Those circumstances disclosed a 'fact of a kind to provide a solution of the matter'. The threat of a potential violation had been removed by virtue of the decision of 23 June 1997. There was no reason of public policy for continuing the proceedings. The Court noted that it had had the opportunity to rule previously on similar cases and the present case did not disclose any fact or circumstance which would require the Court to pursue its examination of the case. Accordingly, the case should be struck out of the list.

Cited: Chahal v UK (15.11.1996), Cruz Varas and Others v S (20.3.1991), Soering v UK (7.7.1989), Vilvarajah and Others v UK (30.10.1991).

Pafitis and Others v Greece (1999) 27 EHRR 566 98/14

[Application lodged 30.6.1992; Commission report 4.9.1996; Court Judgment 26 February 1998]

Following an invitation from the Governor of the Bank of Greece to the Bank of Central Greece (BCG) to increase its capital, a temporary administrator issued new shares, thus increasing BCG's share capital by two and half times its former value. The applicants declined to take up an option to purchase the new shares before 27 August 1986. There were five further increases in the share capital and new administrators were appointed. On 1 December 1986 some of the applicants challenged in the Supreme Administrative Court the decisions of the Governor of the Bank of Greece and the Prefect of Athens approving the first increase in the BCG's capital. After numerous

adjournments, on 17 April 1992, the Supreme Administrative Court dismissed the application. Some of the applicants brought proceedings in the Athens District Court, seeking declarations that the increases in capital were null and void. After numerous adjournments and delays, including some caused by a lawyers' strike and a decision of the court to seek a preliminary ruling from the European Court of Justice, the Athens District Court gave judgment on 27 February 1997 dismissing the actions. The applicants complained, *inter alia*, of the length of proceedings.

Comm found unanimously V 6(1) in two of the nine sets of proceedings.

Court found unanimously 6(1) applicable, unanimously V 6(1) as regards Mr CP Pafitis, Mr P Pafitis, Mr T Frangos, the Sterea company, Mrs P Vossinaki and Mr N Vossinakis in the proceedings for judicial review in the Supreme Administrative Court and in the proceedings concerning action No 10429/1986 in the Athens District Court, by majority (8–1) NV 6(1) as regards the other 29 applicants.

Judges: Mr Thór Vilhjálmsson, President, Mr F Gölcüklü, Mr B Walsh, Mr N Valticos, Mr AN Loizou, Mr L Wildhaber, Mr G Mifsud Bonnici (pd), Mr P Jambrek, Mr P Van Dijk.

The purpose of the proceedings was to settle a dispute over the applicants' 'civil rights and obligations', since, as shareholders in a bank, they could arguably claim under Greek and European Community legislation the right to vote on the increase in the bank's capital and thus participate in decisions concerning the value of their shares. A 6(1) was therefore applicable in the case.

The Court did not question the complexity of the case or the importance of what was at stake for the parties to the proceedings in issue. The dispute the Supreme Administrative Court and the Athens District Court were required to settle raised serious questions regarding the interpretation of Greek and European Community law and the outcome would have important repercussions not only for the parties to the various sets of proceedings but also for the country's economy in general. However, the dispute's complexity alone was not sufficient to justify such lengthy delays as occurred in the present case. More decisive in that respect was the conduct of the parties and of the relevant judicial authorities. Only delays imputable to the relevant judicial authorities could justify a finding that a reasonable time had been exceeded. Even in legal systems applying the principle that the procedural initiative lay with the parties, the latter's attitude did not absolve the courts from the obligation to ensure the expeditious trial required by A 6(1). Three additional factors contributed to the prolongation of the proceedings in the case, the reference to the Court of Justice of the European Communities for a preliminary ruling, the strike by members of the Athens Bar for nearly a year and the close connection between the nine sets of proceedings. Whilst a question was being referred to the European Court of Justice the proceedings were stayed, which prolonged them by two years, seven months and nine days. The Court could not, however, take that period into consideration in its assessment of the length of each particular set of proceedings: even though it may at first sight appear relatively long, to take it into account would adversely affect the system instituted by Article 177 of the EEC Treaty and work against the aim pursued in substance in that Article. With regard to the strike, the Athens Bar was calling on its members to withdraw their services, it was taking action designed to defend their professional interests, not exercising one of the functions of a public authority. The delays caused by the strike could not therefore be attributed to the State. On the question of the close connection between the different sets of proceedings, the Athens District Court adjourned a number of the cases concerned and the Fourth Division of the Supreme Administrative Court relinquished jurisdiction in favour of the plenary court. Although A 6 required judicial proceedings to be conducted expeditiously, it also lay down the more general principle of the proper administration of justice. In the circumstances of the case, the stayed proceedings and the reference to the plenary court were compatible with the fair balance which had to be struck between the various aspects of that fundamental requirement. The delays due to the above three factors were therefore beyond the jurisdiction of the domestic courts in general and the Supreme Administrative Court and the Athens District Court in particular. The Court would accordingly take into consideration only the delays that the latter could, in one way or another, have avoided or reduced.

The proceedings for judicial review in the Supreme Administrative Court, brought by Mr T Frangos, Mr CP Pafitis and Mr P Pafitis began on 1 December 1986 and ended on 17 April 1992 with the judgment of the plenary court. They therefore lasted five years, four months and 16 days. There were twelve adjournments, eight of which were ordered by the Supreme Administrative Court of its own motion. Having regard to the above, the Court could not consider the period reasonable in the present case.

The proceedings in the Athens District Court No 10429/1986 brought by Mr T Frangos, Mr CP Pafitis, Mr P Pafitis, the Sterea company, Mrs P Vossinaki and Mr N Vossinakis, began on 22 December 1986 and were still pending in the Court of Cassation. The delay was due to the length of the proceedings in the Supreme Administrative Court. As in the latter instance, therefore, there had been a breach of A 6(1) as regards the applicants concerned.

Regarding the remaining applicants, they applied to the District Court on 12 May 1992, after the Supreme Administrative Court had given judgment. However, most of the delays which occurred after that date were due, first, to the proceedings concerning the reference to the Court of Justice of the European Communities for a preliminary ruling, and secondly to the strike by members of the Athens Bar. There had been no breach therefore of A 6(1) as regards those applicants.

With regard to the proceedings concerning action Nos 5220/1989, 11301/1990, 6137/1991, 5055/1993, 23/1994, 45/1994 and 7968/1994 in the Athens District Court, there had been no breach of A 6(1) as regards those proceedings.

Non-pecuniary damage (GRD 7,500,000 jointly to Mr CP Pafitis, Mr P Pafitis, Mr T Frangos, the Sterea company, Mrs P Vossinaki and Mr N Vossinakis), costs and expenses (GRD 9,000,000).

Cited: Boddaert v B (12.10.1992), Papamichalopoulos and Others v GR (31.10.1995, A 50).

Pailot v France 98/24

[Application lodged 2.7.1996; Commission report 9.7.1997; Court Judgment 22.4.1998]

Mr Jean-Marc Pailot was a clerical worker employed by an insurance firm. He was a haemophiliac and had received numerous blood transfusions. Following a test on 27 August 1985, he was found to be infected with HIV. On 23 December 1989 the applicant submitted a preliminary application for compensation to the Minister for Solidarity, Health and Social Protection. His application was rejected on 30 March 1990 and he commenced proceedings. On 28 December 1994 the applicant lodged an application with the European Commission of Human Rights. On 28 June 1995, having declared the application admissible, the Commission adopted a report noting that the parties had reached agreement on a friendly settlement. The applicant's appeal in respect of his compensation claim continued in the domestic courts. On 2 July 1996 he lodged a further application with the Commission. On 23 April 1997 the Conseil d'Etat quashed the judgments of the lower courts and found the State liable for the applicant's infection. The applicant complained of the length of time it had taken for his application for compensation from the State to be considered.

Comm found unanimously V 6(1).

Court unanimously dismissed the Government's preliminary objection, found V 6(1).

Judges: Mr Thór Vilhjálmsson, President, Mr L-E Pettiti, Mr I Foighel, Mr R Pekkanen, Mr L Wildhaber, Mr B Repik, Mr P Jambrek, Mr J Casadevall, Mr P van Dijk.

The wording of the declaration between the applicant and the State referred to the domestic proceedings up to the point they had reached when the friendly settlement was agreed and excluded any subsequent proceedings. It was highly unlikely that the applicant would have accepted a friendly settlement proposal that allowed the outcome of the proceedings to be delayed with impunity. The waiver of a right guaranteed by the Convention had to be established in an unequivocal manner. Those requirements were not fulfilled in the present case. The preliminary objection therefore had to be dismissed.

The present case, as referred to the Court, concerned the proceedings subsequent to the friendly settlement being reached. The starting-point therefore had to be 29 June 1995, that being the day

after the Commission adopted its report noting that a settlement had been agreed. The proceedings in issue had lasted one year and 10 months. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what was at stake for the applicant in the litigation had to be taken into account. Even though the case was of some complexity, that fact alone could not justify the length of the proceedings in question as the information needed to determine the State's liability had been available for a long time. The applicant sought twice, on 17 January and 17 April 1996, to expedite the proceedings, but without success. What was at stake in the proceedings was of crucial importance to the applicant in view of the disease from which he was suffering. He was infected in 1985 and was classified in 1994 as having reached stage 3, the last but one stage of infection. Exceptional diligence was called for, notwithstanding the number of cases to be dealt with, in particular as the facts of the controversy had been known to the Government for several years and its seriousness must have been obvious to them. There had been delays in the proceedings. Having regard to all the circumstances of the case and in particular to the applicant's situation, the time taken in the present case could not be considered to have been reasonable. There had been a violation of A 6(1).

Damage (FF 150,000), costs and expenses (FF 42,210).

Cited: Karakaya v F (26.8.1994), Martins Moreira v P (26.10.1988), Pfeifer and Plankl v A (25.2.1992), Silva Pontes v P (23.3.1994), Vallée v F (26.4.1994), X v F (31.3.1992).

Pakelli v Germany (1984) 6 EHRR 1 83/4

[Application lodged 5.10.1978; Commission report 12 December 1981; Court Judgment 25.4.1983]

Mr Lütfü Pakelli, a Turkish national, arrived in the Federal Republic of Germany in February 1964 and held various jobs. In 1974 he was arrested on suspicion of having committed an offence against the Narcotics Act. He was granted the assistance of an officially appointed lawyer. He was tried, convicted and sentenced to imprisonment. On 3 May 1976, his lawyer filed an appeal on points of law. The applicant was released on 10 August 1976 and returned to Turkey. On 29 November 1977, in the absence of the applicant and his lawyer, after hearing submissions of an official of the Federal public prosecutor's office and after deliberating in private, the court dismissed the appeal. The applicant's lawyer appealed unsuccessfully to the Federal Constitutional Court. The applicant complained, *inter alia*, of the refusal of the Federal Court, in proceedings concerning an appeal on points of law, to appoint his lawyer as official defence counsel for the hearing of 29 November 1977 before that court.

Comm found unanimously V 6(3)(c), by majority (11–1) not necessary to determine 6(1).

Court found unanimously V 6(3)(c), not necessary to examine 6(1).

Judges: Mr G Wiarda, President, Mr R Ryssdal, Mr L Liesch, Mr L-E Pettiti, Mr B Walsh, Mr R Bernhardt, Mr J Gersing.

A 6(3)(c) guaranteed three rights to a person charged with a criminal offence: to defend himself in person, to defend himself through legal assistance of his own choosing and, on certain conditions, to be given legal assistance free. The question of the applicant's means played no part in the decision complained of: the refusal of the request for the appointment of the lawyer was based solely on the fact that, in the opinion of the court, the case did not fall within the category of cases for which German law prescribed the assistance of a defence counsel. It was in practice impossible now to prove that in 1977 the applicant did not have the means to pay his lawyer, although there were some indications that that was so. The evidence led the Court to regard the first of the two conditions contained in A 6(3)(c) as satisfied. This was one of the rare cases in which the Federal Court held a hearing. It was therefore necessary, in order to ensure a fair trial, to comply with the rule that oral proceedings should take place with the participation of both parties. Although the applicant confined himself to alleging that there had been procedural errors, he would have been able, had his lawyer appeared before the court, to explain his complaints, to supply further

particulars thereof if need be and to develop his written arguments. The personal appearance of the appellant would not have compensated for the absence of his lawyer. The appeal proceedings were not conducted with the participation of both parties at the stage of the hearings. The opportunity of refuting the public prosecutor's office's arguments should have been made available to the applicant at the hearings. By refusing to provide him with a defence counsel, the Federal Court deprived him, during the oral stage of the proceedings, of the opportunity of influencing the outcome of the case, a possibility that he would have retained had the proceedings been conducted entirely in writing. In those circumstances, the interests of justice required that the applicant be granted legal assistance for the hearings before the Federal Court. Accordingly, there had been a violation of A 6(3)(c)

The provisions of A 6(3)(c) represented specific applications of the general principle of a fair trial, stated in A 6(1). Accordingly, the question whether para 1 was observed had no real significance in the applicant's case; it was absorbed by the question whether para 3(c) was complied with. The finding of a breach of the requirements of para 3 (c) dispensed the Court from also examining the case in the light of para 1.

Costs and expenses (DM 668.96).

Cited: Adolf v A (26.3.1982), Artico v I (13.5.1980), Delcourt v B (17.1.1970), Deweer v B (27.2.1980), Dudgeon v UK (24.2.1983), Le Compte, Van Leuven and De Meyere v B (18.10.1982), Marckx v B (13.6.1979), Sunday Times v UK (26.4.1979), X v UK (18.10.1982).

Palaoro v Austria 95/38

[Application lodged 28.5.1990; Commission report 19.5.1994; Court Judgment 23.10.1995]

On 7 November 1987 a police car observed the applicant, Mr Peter Palaoro, driving on the motorway at speeds considerably in excess of the maximum speed limits. On 6 December 1987 the Tyrol regional police authority imposed two separate fines on the applicant for speeding. On 16 November 1988, after administrative proceedings which involved an examination of the reporting police officers in the absence of the applicant, the Imst district authority found the applicant guilty of two speeding offences under the Road Traffic Act and he was fined, with a period of imprisonment set in default of payment. The applicant appealed to the Tyrol regional government, which reduced the fines. He then applied to the Constitutional Court, which rejected his application. His appeal to the Administrative Court was dismissed on 25 October 1989. The applicant complained, *inter alia*, that he had been unable to bring his case before a tribunal, and that he had been denied the right to examine a witness in the administrative proceedings.

Comm found unanimously V 6(1) in that the applicant had not been able to bring his case before a tribunal, no separate issue regarding the lack of a hearing before the Administrative Court and the failure by the administrative authorities to allow the witnesses to be examined by the applicant.

Court found unanimously 6 applicable, V 6(1) as regards access to a court, not necessary to examine the complaints regarding the lack of a hearing in the Administrative Court and that court's failure to take evidence from witnesses.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Mr R Macdonald, Mr SK Martens (c), Mr I Foighel, Mr JM Morenilla, Sir John Freeland, Mr J Makarczyk.

In order to determine whether an offence qualified as 'criminal' for the purposes of the Convention, it was first necessary to ascertain whether or not the provision defining the offence belonged, in the legal system of the respondent State, to criminal law; next, the 'very nature of the offence' and the degree of severity of the penalty risked had to be considered. Although the offences in issue and the procedures followed in the case fell within the administrative sphere, they were nevertheless criminal in nature. That was reflected in the terminology employed. In addition, the fine imposed on the applicant was accompanied by an order for his committal to prison in the event of his defaulting on payment. Those considerations were sufficient to establish that the offence of which the applicant was accused could be classified as criminal for the purposes of the Convention. It followed that A 6 applied.

The applicant based his complaints on A 6, whereas the wording of the Austrian reservation mentioned only A 5 and made express reference solely to measures for the deprivation of liberty. Moreover, the reservation only came into play where both substantive and procedural provisions of one or more of the four specific laws indicated in it had been applied. Here, however, the substantive provisions of a different Act, the Road Traffic Act 1960, were applied. The reservation in question did not therefore apply in the instant case.

Decisions taken by administrative authorities which did not themselves satisfy the requirements of A 6(1), had to be subject to subsequent control by a judicial body that had full jurisdiction. The Constitutional Court was not such a body. In the present case it could look at the impugned proceedings only from the point of view of their conformity with the Constitution, and that did not enable it to examine all the relevant facts. It accordingly lacked the powers required under A 6(1). The powers of the Administrative Court had to be assessed in the light of the fact that the court in this case was sitting in proceedings that were of a criminal nature for the purposes of the Convention. It followed that when the compatibility of those powers with A 6(1) was being gauged, regard had to be had to the complaints raised in that court by the applicant as well as to the defining characteristics of a judicial body that had full jurisdiction. Those included the power to quash in all respects, on questions of fact and law, the decision of the body below. As the Administrative Court lacked that power, it could not be regarded as a tribunal within the meaning of the Convention. It followed that the applicant did not have access to a tribunal. There had accordingly been a violation of A 6 on that point. Having regard to the conclusion above, it was not necessary to examine the complaints regarding the lack of a hearing in the Administrative Court and that court's failure to take evidence from witnesses.

Present judgment afforded sufficient reparation.

Costs and expenses (ATS 100,000).

Cited: Albert and Le Compte v B (10.2.1983), Chorherr v A (25.8.1993), Demicoli v Malta (27.8.1991), Fischer v A (26.4.1995), Hauschildt v DK (24.5.1989), Öztürk v D (21.2.1984), Saïdi v F (20.9.1993).

Palmigiano v Italy 00/7

[Application lodged 12.8.1997; Court Judgment 11.1.2000]

Mr Natale Palmigiano complained of the length of criminal proceedings brought against him.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr MP Lorenzen, Mrs M Tsatsa-Nikolovska.

The period to be taken into consideration began on 4 October 1985 and ended on 22 February 1997; it had lasted 11 years and four months for one level of jurisdiction and could not be considered reasonable.

Non-pecuniary damage (ITL 32,000,000), costs and expenses (ITL 5,000,000).

Corigliano v I (10.12.1982), Pelissier and Sassi v F (25.3.1999) Philis v GR (No 2) (27.6.1997), Portington v GR (23.9.1998).

Pammel v Germany (1998) 26 EHRR 100 97/34

[Application lodged 15.8.1990; Commission report 25.1.1996; Court Judgment 1.7.1997]

Mr Friedrich Wilhelm Pammel was a retired civil servant. In 1971 he inherited a plot of land leased to the Höxter town council in 1949 to be used as allotment gardens. The Höxter town council leased the land to the Höxter Allotment Garden Association, which, in its turn, sub-let it to individual tenants. Mr Pammel brought proceedings contesting the rent fixed by the Land Government and also brought proceedings seeking an order for possession against the Höxter town council and the Allotment Garden Association. He complained of the length of the proceedings in the Federal Constitutional Court.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr I Foighel (c), Mr R Pekkanen, Mr MA Lopes Rocha, Mr L Wildhaber, Mr K Jungwiert, Mr U Lôhmus, Mr J Casadevall.

In accordance with the Court's established case-law on the question, the relevant criterion for determining whether proceedings before a constitutional court should be taken into account in order to establish whether the overall length of proceedings was reasonable was the question whether the result of those proceedings might influence the outcome of the proceedings in the ordinary courts. Proceedings came within the scope of A 6(1), even if they were conducted before a constitutional court, where their outcome was decisive for civil rights and obligations. The dispute before the civil courts concerned the applicant's right of property, a civil right within the meaning of A 6. The proceedings in the Federal Constitutional Court were closely linked to those in the civil courts; not only was the former's decision directly decisive for the applicant's civil right, but in addition, as the proceedings arose from an application for a preliminary ruling, the Hamm Court of Appeal was obliged to wait for the Federal Constitutional Court's decision before it could give judgment. Therefore A 6(1) was applicable to the proceedings in issue. The period to be taken into consideration was only the time taken for the proceedings in the Federal Constitutional Court, which began on 26 June 1987 when the Hamm Court of Appeal made its application to the Federal Constitutional Court and ended on 23 September 1992 when the latter gave judgment. It therefore lasted just under five years and three months. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of each case and having regard in particular to the complexity of the case and the conduct of the parties and the relevant authorities. The case was undoubtedly complex. The applicant was not responsible for any delay to the proceedings. A 6(1) imposed on the Contracting States the duty to organise their judicial systems in such a way that their courts could meet each of its requirements, including the obligation to hear cases within a reasonable time. Although that obligation could not be construed in the same way for a constitutional court as for an ordinary court, it was for the European Court in the last instance to verify that it had been complied with, having regard to the particular circumstances of each case and the criteria laid down in its case-law. Moreover, a temporary backlog of court business did not entail a Contracting State's international liability if it took appropriate remedial action with the requisite promptness. However, a chronic overload, like the one the Federal Constitutional Court had laboured under since the end of the 1970s, could not justify an excessive length of proceedings. The proceedings remained pending before the Federal Constitutional Court for more than five years. German reunification could have played only a secondary role in the present case because when the reunification treaty was signed, on 3 October 1990, the *Pammel* case had been pending in the Federal Constitutional Court for more than three years. Moreover, the Federal Court of Justice had already submitted the same question to the Federal Constitutional Court in connection with the *Probstmeier* case in May 1985, that was two years before the Hamm Court of Appeal. Accordingly, despite the complexity of the case, the length of the constitutional proceedings could not satisfy the reasonable time requirement laid down in A 6(1).

Pecuniary damage (DM 15,000), costs and expenses (DM 10,000).

Cited: Martins Moreira v P (26.10.1988), Ruiz-Mateos v E (23.6.1993), Schouten and Meldrum v NL (9.12.1994), Silva Pontes v P (23.3.1994), Süßmann v D (16.9.1996), Unión Alimentaria Sanders SA v E (7.7.1989), Zander v S (25.11.1993).

Pandolfelli and Palumbo v Italy 92/31

[Application lodged 20.8.1987; Commission report 15.1.1991; Court Judgment 27.2.1992.

Mr Gennaro Pandolfelli and Mrs Domenica Palumbo took proceedings on 13 September 1972 before the Terracina magistrates' court against Mrs M in order to establish that they had right of way through her land. There were various hearings and on 5 December 1975 judgment was

reserved. However, on 6 March 1976, the magistrates' court decided to reopen the investigation and obtain further clarifications from the expert. Judgment was again reserved on 9 February 1979. On 14 February 1979 the magistrates' court found that it lacked jurisdiction to settle the dispute. The applicants applied to the Court of Cassation which, on 28 December 1979, found that the Terracina magistrates' court did have jurisdiction. The text of the decision was lodged with the registry on 28 March 1980. The hearings returned to the magistrate's court which allowed the applicants' claim. On 3 December 1982 Mrs M appealed to the Latina District Court, which on 12 January 1988 overruled the magistrates' court's decision. The applicants appealed, on 20 December 1988, to the Court of Cassation, which gave judgment on 31 May 1991; its decision had not yet been filed with the registry. The applicants complained of the length of the civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration did not begin when the proceedings were instituted against Mrs M in the Terracina magistrates' court, on 13 September 1972, but only on 1 August 1973, when the Italian declaration accepting the right of individual petition (A 25) took effect. However, in order to determine the reasonableness of the length of time which elapsed after that date, regard had to be had to the state of the case at that time. The period ended, at the earliest, on 31 May 1991, as the text of the judgment had not yet been filed with the registry. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. Although the decision to reopen the investigation at first instance undoubtedly complicated the course of the proceedings, it was taken by the judge who had studied the file and who had at his disposal all the evidence adduced up to that point. It was not a very simple case. Nevertheless, the investigation was conducted under the supervision of the magistrates' court, which remained responsible for the preparation and the speedy conduct of the trial. Furthermore, it concluded that it lacked jurisdiction nearly six and a half years after the case had been brought before it. Although the Court of Cassation only required until 28 December 1979 to overrule it on this question, it took three months for the text of that decision to be filed with the registry. With regard to the long interval due to, among other things, the transfer of the investigating judge, A 6(1) imposed on Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. The Court of Cassation did not give judgment for more than two years and five months; moreover, eight months had gone by since then and the text of the judgment had still not been filed with the registry. The parties were responsible for a number of adjournment and delays for which the State could not be held responsible. Taking the proceedings as a whole, a lapse of time of more than 18 years could not be regarded as reasonable.

Non-pecuniary damage (ITL 5,000,000), costs and expenses (ITL 3,850,000).

Cited: Capuano v I (25.6.1987), Vocaturo v I (24.5.1991).

Papachelas v Greece 99/13

[Application lodged 6.2.1996; Commission report 14.1.1998; Court Judgment 25.3.1999 (merits), 4.4.2000 (A 41)]

On 9 January 1989 the Greek State expropriated more than 150 properties, some of which belonged to the applicants, in order to build a new major road between Stavros and Elefsina. Law no 653/1977 created a presumption that, on the building of a new major road, adjoining owners whose properties fronted the road derived benefit. It accordingly provided that on the expropriation of such properties the owners had to contribute towards the costs thereof. Applying that presumption, the authorities considered in the instant case that the applicants, Mr Aristomenis Papachelas and Mr Eugène Papachelas, had derived an economic benefit from the building of the major road which offset their right to compensation for some of the expropriated land. The Court

of First Instance assessed the provisional unit amount for compensation. On 5 March 1992 the applicants brought an action in the Athens Court of Appeal for the assessment of the final unit amount for compensation. Thereafter they appealed to the Court of Cassation which dismissed their appeal on 20 June 1995. They complained that their case had not been heard within a reasonable time and that there had been two violations of P1A1: firstly, by the award of compensation that was less than the value of the expropriated land and, secondly, the application of the presumption created by Law No 653/1977.

Comm found unanimously V 6(1), V P1A1.

Court unanimously dismissed the Government's preliminary objection, found by majority (12–5) NV 6(1), (15–2) NV P1A1 as regards the amount of compensation per square metre awarded in the instant case, unanimously V P1A1 as a result of the application of the irrebuttable presumption created by s 1(3) of Law No 653/1977.

Judges: Mr L Wildhaber, President, Mrs E Palm (pc/pd), Mr L Ferrari Bravo, Mr Gaukur Jörundsson (pc/pd), Mr L Caflisch, Mr I Cabral Barreto, Mrs F Tulkens (pc/pd), Mr W Fuhrmann, Mr M Fischbach, Mr B Zupancic (pc/pd), Mr J Hedigan, Mrs W Thomassen (jpc/pd), Mrs M Tsatsa-Nikolovska, Mr T Pantiru (jpc/pd), Mr E Levits, Mr K Traja, Mr N Valticos.

Where an applicant was entitled to be served *ex officio* with a written copy of the final domestic decision the object and purpose of A 26 (now A 35(1)), were best served by counting the six-month period as running from the date of service of the written judgment. Where, as in the present case, the domestic law did not provide for service, it was appropriate to take the date the decision was finalised as the starting-point, that being when the parties were definitely able to find out its content. The Court of Cassation's judgment was finalised on 28 September 1995 and the applicants obtained a copy on 9 October 1995. They lodged their application with the Commission less than six months later, on 6 February 1996. Consequently, the Government's preliminary objection was dismissed.

The relevant period began on 5 June 1991, when the Greek State brought an action in the Athens Court of First Instance for the assessment of a provisional unit amount for compensation. It ended on 20 June 1995, when the Court of Cassation delivered its judgment. It therefore amounted to four years and fifteen days. The reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. The case was relatively complex, owing in particular to the number of properties that were expropriated. Only delays for which the State could be held responsible could justify a finding that a 'reasonable time' has been exceeded. The length of the proceedings before the Court of First Instance (five months and 15 days) and the Athens Court of Appeal (15 months and nine days) was not unreasonable. The proceedings in the Court of Cassation lasted a year and a half, which was not excessive, regard being had in particular to the fact that the applicants lodged their appeal submissions approximately six months after their notice of appeal. In the light of the facts of the case, there had been no violation of A 6(1).

The applicants had been deprived of their property in accordance with the provisions of legislation, so that improvements could be made to a major road, the expropriation therefore pursued a lawful aim in the public interest. Accordingly, it was the second sentence of the first paragraph of P1A1 which was applicable in the instant case. An interference with peaceful enjoyment of possessions had to strike a fair balance between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights. Compensation terms under the relevant legislation were material to the assessment whether the contested measure respected the requisite fair balance and, notably, whether it did not impose a disproportionate burden on the applicant. In that connection, the taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference that could not be justified under P1A1. That Article did not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of

public interest might call for less than reimbursement of the full market value. Having regard to the margin of appreciation P1A1 afforded national authorities, the price paid to the applicants bore a reasonable relation to the value of the expropriated land. Consequently, there had been no violation of P1A1 as regards the amount of compensation per square metre awarded in the present case.

In the system applied in the present case, the compensation was in every case reduced by a particular amount, without the owners concerned being allowed to argue that in reality the effect of the works concerned either had been of no or less benefit to them or had caused them to sustain varying degrees of loss. That system, which was too inflexible, took no account of the diversity of situations, ignored the differences due in particular to the nature of the works and the layout of the site and was found in the Court's previous case-law to amount to a breach of P1A1. The Court saw no reason not to follow that case-law in the present case as the applicants were prevented from asserting before the domestic courts their right to compensation in full for the loss of their property. The applicants had had to bear a burden that was individual and excessive and could have been rendered legitimate only if they had had the possibility of proving their alleged damage and, if successful, of receiving the relevant compensation. It was not necessary at this stage to determine whether the applicants were in fact prejudiced; it was in their legal situation itself that the requisite balance was no longer to be found. There had therefore been a violation of P1A1 as a result of the application of the presumption created by s 1(3) of Law No 653/1977.

Costs and expenses (GRD 2,000,000). FS (Government to pay applicants GRD 74,880,000 and interest) therefore A 41 SO.

Cited: Cazenave de la Roche v F (9.6.1998), Holy Monasteries v GR (9.12.1994), Katikaridis and Others v GR (15.11.1996), Mellacher and Others v A (19.12.1989), Papageorgiou v GR (22.10.1997), Sporrong and Lönnroth v S (23.9.1982), Tsomtsos and Others v GR (15.11.1996), Worm v A (29.8.1997).

Papadopoulos v Cyprus 00/94

[Application lodged 9.2.1998; Court Judgment 21.3.2000]

On 19 July 1994 Mr Christos Papadopoulos filed an action in the District Court of Limassol against four defendants claiming, *inter alia*, arrears of salary, payment for services rendered and damages for unfair dismissal. Because of the amount claimed, the action had to be heard by the Full Court which, moreover, had to be composed of the President of the District Court and another District Court judge. On 28 February 1997 the Court heard the final addresses of all parties concerned. Judgment was reserved. On 30 June 1997 the President of the District Court of Limassol and member of the Full Court which had tried the applicant's case was appointed by the Government to the Public Service Commission. The new President of the District Court of Limassol fixed further dates and eventually delivered judgment on 26 April 1999. The defendants appealed against this judgment to the Supreme Court where the case was still pending when the applicant submitted his observations on the merits to the Court on 29 November 1999. The applicant complained of the length of proceedings.

Court found unanimously V 6(1).

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr L Loucaides, Mr P Kûris, Mrs F Tulkens, Mr K Jungwiert, Mrs HS Greve.

The proceedings concerned started on 19 July 1994 when the applicant filed an action with the District Court of Limassol. As of 29 November 1999, they were still pending before the Supreme Court. By then they had lasted over five years and four months. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. Only delays for which the State could be held responsible could justify a finding that a reasonable time has been exceeded. The length of the proceedings relating to the first hearing of the case were not excessive, allowing for five adjournments at the request of both parties. Testimonies were completed on 28 February 1997,

namely two years, seven months and nine days after the introduction of the application before the District Court of Limassol and the case was ready for judgment. However, following the appointment of its President to the Public Service Commission on 30 June 1997, the District Court was unable to deliver its judgment. It took five months and five days for the new President of the District Court to decide that a rehearing of the case from the beginning was necessary. There were further delays and the District Court then needed 16 hearings to re-examine a total of nine witnesses. It delivered its judgment on 26 April 1999, four years, nine months and seven days after the introduction of the case. Such a delay was hard to reconcile with the need to render justice with the effectiveness and credibility required by the Convention. The applicant's case was not heard within a reasonable time and there had therefore been a violation of A 6(1).

Non-pecuniary damage (CYP 2,500), costs and expenses (CYP 2,630).

Cited: Monnet v F (27.10.1993), Papageorgiou v GR (22.10.1997).

Papageorgiou v Greece 97/81

[Application lodged 24.5.1994; Commission report 15.5.1996; Court Judgment 22.10.1997]

On 23 December 1987 Mr Christos Papageorgiou and 109 other persons brought an action in the Athens District Court against their employer, the Public Electricity Company ('DEI'), to recover a sum deducted from their salaries for the benefit of the Manpower Employment Organisation ('the OAED'). In a judgment of 20 April 1989 the District Court allowed the applicant's claim in part. The DEI and the OAED appealed to the Athens Court of First Instance which, in a judgment of 30 November 1990, reduced the amount awarded to the applicant by the District Court. The DEI and OAED appealed to the Court of Cassation, which on 19 November 1993 set aside the judgment appealed against. The Court's judgment was not served on the applicant, who claims that he became aware of it on 22 December 1993. The applicant complained that the enactment of Law No 2020/1992 and its application in his case when his action was still pending amounted to violations of A 6(1), 13 and 14 and further complained of the length of proceedings.

Comm found unanimously V 6(1) with respect to the fairness and length of the proceedings, no separate issue arose under 14+6(1) or 13.

Court unanimously dismissed the Government's preliminary objection, found V 6(1) as regards right to a fair hearing and hearing within a reasonable time, not necessary to rule on 14+6(1) or 13.

Judges: Mr R Bernhardt, President, Mr R Macdonald, Mr C Russo, Mr N Valticos, Mr I Foighel, Mr MA Lopes Rocha, Mr J Makarczyk, Mr U Lôhmus, Mr J Casadevall.

The Commission's Rules of Procedure did not imply that proof that the applicant had complied with the six-month time-limit was a prerequisite to registration of his application. An application was lodged on the date of the applicant's first letter, provided the applicant has sufficiently indicated the purpose of the application. Registration had only one practical consequence: it determined the order in which applications would be considered by the Commission. The parties to proceedings could not be required to inquire day after day whether a judgment that had not been served on them had been delivered. The Government's preliminary objections of failure to comply with the six-month time-limit and negligence in not finding out from the Court of Cassation's registry when judgment was to be delivered were dismissed.

The legislature was not, in principle, precluded from regulating by new provisions rights arising under laws previously in force. The Court could not ignore the effect of s 26 of Law No 2020/1992 in conjunction with the method and timing of its enactment. Although s 26 clarified the meaning of previous legislation, it also provided that any claims for repayment of contributions previously paid to the OAED were extinguished and any proceedings concerning such claims pending in any court were to be struck out. In addition, s 26 was contained in a statute whose title bore no relation to that provision; the absence of such a connection was prohibited by the Greek Constitution. Finally, s 26 was enacted after the appeal against the judgment of the Athens Court of First Instance, sitting as an appellate court, had been lodged with the Court of Cassation by the DEI,

joined by the OAED, and before the latter court had held its hearing. At that time it was certainly foreseeable that the Court of Cassation would follow its recent case-law, in which it had already clarified the meaning of the previous legislation and which was favourable to the applicant. In the circumstances of the present case the enactment of s 26 at such a crucial point in the proceedings resolved the substantive issues for practical purposes and made carrying on with the litigation pointless. Consequently, there had been a violation of A 6(1) with respect to the right to a fair hearing.

The proceedings concerned started on 23 December 1987, when 110 employees of the DEI, including the applicant, brought proceedings in the Athens District Court and ended on 23 November 1993, when the Court of Cassation delivered its judgment. They therefore lasted five years and 11 months. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. Only delays for which the State could be held responsible could justify a finding that a reasonable time had been exceeded. The length of the proceedings before the Athens District Court (16 months) and the Athens Court of First Instance sitting as an appellate court (17 months) were not excessive. Certain delays were due either to procedural requirements or to the conduct of the parties. The proceedings in the Court of Cassation lasted two years and eight months, a relatively lengthy period. The strike by members of the Athens Bar could not render a Contracting State liable with respect to the reasonable time requirement; however, the efforts made by the State to reduce any resultant delay were to be taken into account for the purposes of determining whether the requirement had been complied with. On 21 October 1992, when the Court of Cassation could not reasonably have known when the end of the strike would be, it set a new hearing date of 19 October 1993, that is to say 12 months later and 13 months after the initial hearing date. The Court was not unaware of the complications which strikes as enduring as the one that occurred in the present case could cause by overloading the list of cases to be heard by courts such as the Court of Cassation. Nevertheless, A 6(1) required that cases be heard within a reasonable time. A delay of that length in a case that had been pending in the Court of Cassation since 13 March 1991 was hard to reconcile with the need to render justice with the effectiveness and credibility required by the Convention. The applicant's case was not heard within a reasonable time and there had therefore been a violation of A 6(1) with respect to the length of the proceedings.

In view of the findings under A 6(1), there was no need to rule on the complaints under A 14 or A 13.

Non-pecuniary damage (GRD 2,500,000). Costs and expenses not awarded as not quantified.

Cited: H v F (24.10.1989), Monnet v F (27.10.1993), Stran Greek Refineries and Stratis Andreadis v GR (9.12.1994).

Papamichalopoulos and Others v Greece (1993) 16 EHRR 440 93/26

[Application lodged 7.11.1988; Commission report 9.4.1992; Court Judgment 24.6.1993]

Mr Ioannis Papamichalopoulos, Mr Pantelis Papamichalopoulos, Mr Petros Karayannis, Mrs Angeliki Karayanni, Mr Panayotis Zontanos, Mr Nikolaos Kyriakopoulos, Mr Konstantinos Tsapalas, Mrs Ioanna Pantelidi, Mrs Marika Hadjinikoli, Mrs Irini Kremmyda, Mrs Christina Kremmyda, Mr Athanas Kremmydas, Mr Evangelos Zybeloudis and Mrs Konstantina Tsouri, who were all of Greek nationality, were the owners or co-owners of land in the area of Agia Marina Loimikou, near Marathon, Attica. By a Law of 20 August 1967, which was passed some months after the dictatorship was established, the Greek State transferred an area of land near Agia Marina beach to the Navy Fund. The applicants applied unsuccessfully to the courts for restoration of their land. The Navy constructed a naval base and a holiday resort for officers on the land. After the fall of the dictatorship in 1974, the Athens Court of First Instance held that the Navy Fund was obliged to return the land. The decision was upheld by the Athens Court of Appeal and the Court of Cassation. As construction on the land prevented its return, it was ordered that the land be exchanged for other land of equal value. There was no exchange and no compensation awarded to the applicants. They complained that their land had been unlawfully occupied by the Navy Fund

since 1967 and that to date they had not been able either to enjoy their possessions or to obtain compensation.

Comm found unanimously V P1A1.

Court unanimously dismissed the Government's preliminary objections, found V P1A1.

Judges: Mr R Bernhardt, President, Mr F Gölcüklü, Mr A Spielmann, Mr N Valticos, Mr R Pekkanen, Mr JM Morenilla, Mr F Bigi, Mr L Wildhaber, Mr J Makarczyk.

The Court found that there was estoppel in respect of the two preliminary objections of lack of victim and non-exhaustion. The Government had not raised the first objection before the Commission, and they made the second only in respect of the compensation proceedings.

For the purposes of the present dispute, the applicants had to be regarded as the owners of the land in issue. The breach claimed by the applicants began in 1967. At that time Greece had already ratified the Convention and P1, on 28 March 1953. Greece denounced them on 12 December 1969 with effect from 13 June 1970 but was not thereby released from its prior obligations. It ratified them again on 28 November 1974 after the collapse of the military dictatorship established by the coup d'état of April 1967. Greece did not recognise the Commission's competence to receive 'individual' petitions (under A 25) until 20 November 1985 and then only in relation to acts, decisions, facts or events subsequent to that date. However, the applicants' complaints related to a continuing situation, which still obtained at the present time. The occupation of the land in issue by the Navy Fund represented a clear interference with the applicants' exercise of their right to the peaceful enjoyment of their possessions. The interference was not for the purpose of controlling the use of property within the meaning of the second paragraph of P1A1. The applicants' lands were never formally expropriated: the law did not transfer ownership of the land in question to the Navy Fund. Since the Convention was intended to safeguard rights that were practical and effective, it had to be ascertained whether the situation complained of amounted nevertheless to a *de facto* expropriation. In 1967, under a Law enacted by the military government of the time, the Navy Fund took possession of a large area of land which included the applicants' land; it established a naval base there and a holiday resort for officers and their families. From that date the applicants were unable either to make use of their property or to sell, bequeath, mortgage or make a gift of it; Mr Petros Papamichalopoulos, the only one who obtained a final court decision ordering the Navy to return his property to him, was even refused access to it. The loss of all ability to dispose of the land in issue, taken together with the failure of the attempts made so far to remedy the situation complained of, entailed sufficiently serious consequences for the applicants *de facto* to have been expropriated in a manner incompatible with their right to the peaceful enjoyment of their possessions. There had been and there continued to be a breach of P1A1.

A 50 reserved.

Cited: Sporrong and Lönnroth v S (23.9.1982).

Paradiso v Italy 00/49

[Application lodged 30.9.1996; Court Judgment 8.2.2000]

Mr Antonio Paradiso complained of the length of administrative proceedings.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr B Conforti, Mr G Ress, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mrs N Vajic.

The period to be taken into consideration began on 20 January 1983 and ended on 22 April 1996. It had lasted about 13 years and three months at two levels of jurisdiction. That delay could not be considered reasonable.

Non-pecuniary damage (ITL 32,000,000), costs and expenses (ITL 5,000,000).

Cited: Bottazzi v I (28.7.1999).

Pardo v France (1994) 17 EHRR 383, (1996) 22 EHRR 563, (1998) 26 EHRR 302 93/35

[Application lodged 12.11.1986; Commission report 1.4.1992; Court Judgment 20.9.1993 (merits), 10.7.1996 (request for revision), 29.4.1997 (request for revision)]

Mr Ernest Pardo was a manager of a limited company and ran another business. He appealed against a court order requiring him to pay a contribution to the deficiency in the assets of his two undertakings after they were compulsorily wound up. He complained that he had had no opportunity to plead his case on the merits in the Court of Appeal in breach of A 6(1). Following the Court's judgment there was a request for revision.

Comm found unanimously V 6 (1).

Court found by majority (6–3) NV 6 (1).

Court found by majority (5–4) request for revision admissible, unanimously dismissed the request for revision.

Judges (merits): Mr R Ryssdal, President, Mr R Bernhardt (jd), Mr F Gölcüklü, Mr L-E Pettiti, Mr C Russo, Mrs E Palm, Mr AN Loizou (jd), Mr AB Baka (jd), Mr J Makarczyk.

Judges (revision of judgment of 20.9.1993, admissibility): Mr R Ryssdal, President, Mr F Gölcüklü (jd), Mr F Matscher, Mr L-E Pettiti (jd), Mr A Spielmann, Mrs E Palm (jd), Mr L Wildhaber, Mr G Mifsud Bonnici, Mr K Jungwiert (jd).

Judges (revision of judgment of 20.9.1993): Mr R Ryssdal, President, Mr R Bernhardt, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr A Spielmann, Mr J De Meyer, Mr N Valticos, Mrs E Palm, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla, Sir John Freeland, Mr AB Baka, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr D Gotchev, Mr B Repik, Mr P Jambrek, Mr P van Dijk.

The Court was confronted with a dispute concerning the exact course of the proceedings in the Aix-en-Provence Court of Appeal and had to reach its decision on the basis of the available evidence. The documents produced by the applicant did not provide sufficient *prima facie* evidence of the accuracy of his version of events. In addition, the record of the hearing, which was produced for the first time before the Court, constituted a significant element in support of the opinion that judgment was reserved at the conclusion of the hearing on 9 November 1984; in principle, that ruled out the possibility of a further hearing. There was nothing to show that in the course of the sole hearing the parties confined themselves to expanding upon their submissions concerning the stay of the proceedings. On the contrary, the Court of Appeal's judgment gave the impression that the trustee's lawyer presented argument on the merits. One of the grounds of the judgment indicated that, contrary to the applicant's claims, the relevant documents were in fact filed in the proceedings before the appeal court. Having regard to those considerations, the Court could not find a violation of A 6.

The Commission based its request for revision on two documents to which the applicant did not secure access until after the delivery of the judgment of 20 September 1993. The admissibility of any request for revision of a judgment of the Court was subject to strict scrutiny. The two documents related to the hearing in the Aix-en-Provence Court of Appeal. One of them was a letter which the applicant had not been able to produce, a fact to which express reference was made in the judgment of 20 September 1993. In those circumstances, the Court could not exclude the possibility that the documents in question 'might by [their] nature have a decisive influence'. The Commission's request was accordingly admissible.

The Court had to determine whether the documents cast doubt on the conclusions it reached in 1993; it had to establish whether the two documents in question provided sufficient *prima facie* evidence in support of the applicant's version of events. After reviewing the evidence, the Court concluded that the documents on which the Commission based its request would not have had a decisive influence on the judgment of 20 September 1993 and did not constitute grounds for revision. The letter referred to had been merely a covering letter. Of the list of documents, the Court had had regard to those concerning the course of the domestic proceedings in the original

judgment, the other documents in the appeal file did not provide any information on the course of the domestic proceedings. The Commission's request was accordingly unfounded.

Cited: Artico v I (13.5.1980); Messina v I (26.2.1993).

Parisse v Italy 00/55

[Application lodged 23.4.1997; Court Judgment 8.2.2000]

Mr Angelo Parisse complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska.

The period to be taken into consideration began on 22 December 1983 and finished on 5 May 1999. It had lasted more than 15 years and four months at one level of jurisdiction. That delay could not be considered reasonable.

Non-pecuniary damage (17,000,000 ITL), costs and expenses (1,500,000 ITL).

Cited: Bottazzi v I (28.7.1999).

Paskhalidis and Others v Greece 97/15

[Applications lodged various dates between 28.7.1992 and 30.9.1993; Commission report 6.9.1995; Court Judgment 19.3.1997]

The 93 applicants were Turkish or Egyptian nationals of Greek origin born between 1902 and 1938 who worked as private-sector employees in Istanbul, Alexandria or Cairo between 1927 at the earliest and 1965 at the latest. Having been obliged to leave Turkey or Egypt, they settled permanently in Athens between 1960 and 1980. On various dates between 10 April 1973 and 13 September 1985 the applicants applied or renewed applications to the various social-security bodies in Athens or Piraeus for recognition of their entitlement to an old-age, invalidity or survivor's pension and for the reckonable period earned by insurance contributions paid by them and their employers in Turkey or Egypt to be recognised in Greece after they had bought back the appropriate years. Their applications were refused by the relevant social-security bodies on the ground that they were out of time and they appealed. Their appeals to higher authority, to the Athens or Piraeus Administrative Courts and to the Supreme Administrative Court were dismissed. The applicants complained of the length of proceedings.

Comm found by majority (12–1) V 6(1).

Court unanimously struck the case of Mr Karatzalidis out of the list, found V 6(1).

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr L-E Pettiti, Mr C Russo, Mr N Valticos, Mr G Mifsud Bonnici, Mr D Gotchev, Mr P Jambrek, Mr P Kûris.

Mr Karatzalidis died in 1983 while the proceedings concerning him in the Greek courts was still pending. His lawyer omitted him from the list of applicants submitted to the Court. His heirs did not instruct his lawyer to refer the case to the Commission. His case was therefore severed from those of the other applicants and struck out of the list.

Despite the public-law features, the applicants were not only affected in their relations with the administrative authorities as such, but also suffered an interference with their means of subsistence. They were claiming an individual, economic right derived from specific rules laid down in the Greek legislation. The proceedings in the Greek courts concerned the question whether the one-year time-limit within which the applicants had to submit their applications in order to have the benefit of the provisions of the legislative decrees was binding on them. The outcome of those proceedings were therefore directly 'decisive for civil rights and obligations'. It followed that A 6(1) was applicable in the case.

The period to be taken into consideration began on 20 November 1985, when the Greek declaration recognising the right of individual petition took effect. Depending on the applicant concerned, it

ended on various dates between 3 February 1992 and 29 June 1993, that is to say when the Supreme Administrative Court delivered the judgments dismissing the applications for judicial review lodged by the applicants between 10 June 1983 and 6 April 1989. The period in question therefore lasted six years, two months and 13 days at the shortest and seven years, seven months and nine days at the longest. However, in order to determine whether the time which elapsed was reasonable, it was also necessary to take into account the state of the proceedings on the critical date. On the critical date the longest proceedings had already lasted more than seven years. The reasonableness of the length of proceedings had to be determined in the light of the criteria laid down in the Court's case-law and by reference to the circumstances of the case. The cases in issue were not at all complex; they concerned determination of the time-limit within which the applicants had to submit their applications in order to be allowed the benefit of the provisions of the Legislative Decrees. There were delays on the part of the authorities. Having regard to all the circumstances of the case and what was at stake in the proceedings for the applicants, whose conduct was not above reproach, the Court could not regard as reasonable the length of time which elapsed in the present case. It followed that there had been a breach of A 6(1).

Non-pecuniary (GRD 500,000 to each of the applicants), costs and expenses (GRD 2,000,000 to all applicants jointly).

Cited: Schuler-Zgraggen v CH (24.6.1993).

Pauger v Austria (1998) 25 EHRR 105 97/26

[Application lodged 14.2.1990; Commission report 27.2.1996; Court Judgment 28.5.1997]

Mr Dietmar Pauger was Professor of Public Law and Political Sciences at the University of Graz. His wife, who was a schoolteacher with the status of a civil servant, died on 23 June 1984. On 24 August 1984 he applied to the Regional Education Council for a survivor's pension. His application was dismissed on the ground that whereas under the Pensions Act 1965 a widow of a civil servant could, in certain circumstances, claim a pension, a widower could not. His appeals to the Styria Regional Government, the Administrative Court and the Constitutional Court were all dismissed. Following the reform of the Pensions Act he reapplied to the Regional Education Council for a survivor's pension. The Council awarded him a reduced pension and he appealed. On 16 March 1988 the Constitutional Court repealed the relevant section of the Pensions Act and quashed the Regional Government's decision. On 11 August 1988 the applicant again applied to the Constitutional Court claiming that the transitional provisions of the Pensions Act under which he was only entitled to a reduced pension until 1 January 1995 were unconstitutional. He did not ask for a hearing. On 3 October 1989, after deliberating in private, the Constitutional Court dismissed his appeal. On 5 June 1990 the applicant applied to the Human Rights Committee of the United Nations relying on the same facts. On 30 March 1993 the Human Rights Committee found that there had been a violation of A 26. The applicant complained of the lack of public hearing in the Constitutional Court.

Comm found by majority (17–11) NV 6(1).

Court found unanimously NV 6(1), not necessary to examine of its own motion 27(1)(b).

Judges: Mr R Bernhardt, President, Mr F Matscher (c), Mr R Macdonald, Mr J De Meyer, Mrs E Palm, Mr JM Morenilla, Mr MA Lopes Rocha, Mr L Wildhaber, Mr J Makarczyk.

There was a dispute over the scope of the applicant's rights to a pension and even as to their existence. The right to a pension was a civil right. Proceedings came within the scope of A 6(1) even where they were conducted before a constitutional court, if their outcome was decisive for civil rights and obligations. The only means by which the applicant could challenge the administrative authorities' decisions was an application to the Constitutional Court as it alone could rule on the constitutionality of the statutory provisions in issue. If it found that those provisions were unconstitutional, they would be declared void and the applicant's pension rights would be reassessed. The Constitutional Court's judgment was therefore directly decisive for the applicant's civil right. A 6(1) accordingly applied to the proceedings in issue.

Section 19(4) of the Constitutional Court Act, on which the decision not to hold a hearing was based, came into force in 1984, whereas Austria ratified the Convention and made the reservation in question in 1958. Under A 64(1), a reservation could only be made in respect of laws 'then in force' in the State's territory. In 1958, there was no provision like s 19(4), enacted in 1984. The reservation did not preclude the Court reviewing the applicant's complaint as to the lack of a hearing in the Constitutional Court. The public character of court hearings constituted a fundamental principle enshrined in A 6(1), but neither the letter nor the spirit of that provision prevented a person from waiving of his own free will, either expressly or tacitly, the entitlement to have his case heard in public. Any such waiver had to be made in an unequivocal manner and not run counter to any important public interest. In the present case the Regional Education Council and the Regional Government which ruled on the applicant's pension claim were wholly administrative bodies. Given the nature of the complaints raised by the applicant, only the Constitutional Court could rule on the constitutionality of the provisions in issue. The applicant was thus in principle entitled to a public hearing, as none of the exceptions laid down in the second sentence of A 6(1) applied. However, the Constitutional Court did not as a rule hear parties unless one of them expressly asked it to do so. The applicant could consequently have been expected to ask for a hearing if he found it important that one be held: he was a professor of public law and was therefore familiar with Constitutional Court procedure. As the applicant made no such request, he had to be considered to have unequivocally waived his right to a public hearing. It was necessary to determine whether, in spite of the waiver, the dispute in the Constitutional Court ran counter to an important public interest which made it necessary for a hearing to be held. The question of the principle of equality between widows and widowers as regards pension entitlement had already been resolved by the Constitutional Court, after holding a public hearing, in its judgment of 4 October 1984. The applicant's application only related to the constitutionality of the transitional provisions of the 1985 Act, which were unfavourable to widowers. His case did not therefore raise a matter of public interest such as warranted a public hearing. There had accordingly been no violation of A 6(1).

The Government did not raise the issue of compliance with A 27(1)(b) (applicant bringing the same case before the Human Rights Committee of the United Nations) before the Court and it was not necessary for the Court to consider it of its own motion.

Cited: Campbell v UK (25.3.1992), Fischer v A (26.4.1995), Håkansson and Sturesson v S (21.2.1990), Francesco Lombardo v I (26.11.1992), Giancarlo Lombardo v I (26.11.1992), Massa v I (24.8.1993), Melin v F (22.6.1993), Papamichalopoulos and Others v GR (24.6.1993), Schuler-Zgraggen v CH (24.6.1993), Süßmann v D (16.9.1996).

Paulsen-Medalen and Svensson v Sweden (1998) 26 EHRR 260 98/5

[Application lodged 7.8.1989; Commission report 4.9.1996; Court Judgment 19.2.1998]

The first applicant, Ms Anne-Marie Paulsen-Medalen, was the mother of two children, P and J. The second applicant, Mr Sven-Erik Svensson, was J's father. On 8 February 1989, in the light of an investigation by the social authorities, the children were taken into care on a provisional basis. The first applicant appealed unsuccessfully against the decision to take the children provisionally into care. The first applicant's access to the children was restricted to once every second week for 2 and a half hours in the children's home. The first applicant's appeals regarding access were unsuccessful. The second applicant's appeal regarding access to his son was also unsuccessful. He did not pursue the matter. The first applicant complained, *inter alia*, about the length of the access proceedings and the second applicant complained about the lack of a court remedy to have a determination of his right of access to his son.

Comm found unanimously V 6(1) with regard to the first applicant, NV 6(1) with respect to the second applicant.

Court found unanimously V 6(1) with respect to the first applicant, NV 6(1) with respect to the second applicant, not necessary to examine the second applicant's complaint under A 8 and 13.

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mrs E Palm, Mr R Pekkanen, Mr AN Loizou, Mr MA Lopes Rocha, Mr K Jungwiert, Mr U Lôhmus, Mr P van Dijk.

The period to be taken into consideration started on 19 March 1990, when the first applicant submitted her request to the social authorities concerning access rights, and ended on 28 June 1993, when the Supreme Administrative Court gave its judgment. The only phase of the proceedings that gave rise to misgivings was that between 22 January 1991, when the first applicant applied for leave to appeal to the Supreme Administrative Court, and 28 June 1993, when that court decided to uphold the lower courts' judgments in respect of the restrictions on access. It did not transpire from the evidence that the delay had been due to the applicant's conduct or the complexity of the case. Against that background, the authority concerned could not be said to have acted with the exceptional diligence required by A 6(1). Accordingly, there had been a violation of that provision in respect of the first applicant.

While it was unclear whether a father who did not have custody or did not enjoy access rights pursuant to a court order or agreement could claim a right of access under the domestic legislation, that was not excluded by the wording of the provision. That section applied to 'a parent or other person who has custody of [the child]'. Furthermore, the fact that the maternal grandparents of J, although they fell outside the category of persons referred to in the relevant section of the legislation, were able to obtain a formal decision on access, suggested that such a decision could also have been taken in respect of the applicant father. In response to the second applicant's request for access, the Head of the Social Services had replied on 11 February 1991 that only the first applicant, as the child's mother, was covered by the provisions on access in the 1990 Act. However, as was also pointed out, the second applicant was invited to discuss access arrangements with the relevant social officer, but did not pursue the matter. Nor did he take any initiative to follow up the reply to his query by the social authorities on 6 October 1995, in which they stated that a right of access for a person other than the custody holder did not exist under domestic law. He had furnished no particulars in support of his submission that he specifically requested, and that the relevant authority was unwilling or unable to take, a formal decision on his request for access. In those circumstances, the Court was not persuaded by the second applicant's claim that he, as a parent, could not have obtained a decision of the kind in issue. Moreover, it had not been established that it would have been impossible for him to institute judicial review proceedings before the County Administrative Court in respect of a decision refusing him access. The facts of the case did not disclose a breach of A 6(1) with regard to the second applicant.

Having regard to the findings with respect to A 6(1) it was not necessary to consider the same matter under A 8 and 13.

Non-pecuniary damage (SEK 10,000), legal costs (SEK 40,000 less FF 3,900).

Cited: Margareta and Roger Andersson v S (25.2.1992), Johansen v N (7.8.1996), Z v SF (25.2.1997).

Pauwels v Belgium (1989) 11 EHRR 238 88/7

[Application lodged 19.11.1982; Commission report 4.12.1986; Court Judgment 26.5.1988]

Mr Willy Pauwels was a regular army officer. On 2 April 1982, the Board of Inquiry of Field Court Martial 'A', sitting at Cologne, ordered the applicant's arrest and charged him with embezzlement of State funds. The Board was chaired by Mr G Van Even, a senior deputy auditeur militaire, who had questioned Mr Pauwels on 23 and 24 March. The applicant lodged an application for his immediate release but on 8 April the Board of Inquiry, again chaired by Mr Van Even, confirmed the order. On 23 April, the Board of Inquiry, again chaired by Mr Van Even, confirmed the arrest order for the second time. The applicant's further appeals to the Courts-Martial Appeal Court and Court of Cassation were unsuccessful. Following trial, at which evidence was heard from Mr Van Even, the applicant was convicted and sentenced to imprisonment. His appeal to the Courts-Martial Appeal Court was partially successful and his sentence was reduced. His appeal to the

Court of Cassation was dismissed. He complained, *inter alia*, of the role of the Board of Inquiry, the auditeur militaire and deputy auditeur militaire in his case.

Comm found unanimously V 5(3).

Court found unanimously V 5(3).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr L-E Pettiti, Mr C Russo, Mr J De Meyer, Mr N Valticos.

Although an auditeur militaire in Belgium was hierarchically subordinate to the auditeur général and the Minister of Justice, he was completely independent in the performance of the duties devolving upon him both as a member of the public prosecutor's office and as chairman of the Board of Inquiry. The only issue arising was whether in the instant case Mr Van Even, in his capacity as chairman of the Board of Inquiry, afforded the guarantees of impartiality inherent in the concept of 'officer authorised by law to exercise judicial power' when he could be – and in fact was – called upon to act in the same case, in respect of the same defendant, as prosecuting authority and thus as a party. In two cases concerning Dutch legislation on military arrest and detention, the Court found that an auditeur-militaire was also liable to have to act in one and the same case as prosecuting authority after the case had been sent for trial by a court martial; it concluded from that fact that he could not be independent of the parties at that preliminary stage precisely because he was likely to become one of the parties at the next stage of the procedure. The same conclusion is inevitable in the instant case. Mr Van Even combined the functions of investigation and prosecution. That being so, his impartiality was capable of appearing to be open to doubt. There was therefore a breach of A 5(3).

No causal link between alleged non-pecuniary damage and violation found.

Costs and expenses (BEF 150,000).

Cited: Belilos v CH (29.4.1988), De Cubber v B (26.10.1984), De Jong, Baljet and van den Brink v NL (22.5.1984), Piersack v B (1.10.1982), Van der Sluijs, Zuiderveld and Klappe v NL (22.5.1984).

Pélissier and Sassi v France 99/16

[Application lodged 18.7.1994; Commission report 13.1.1998; Court Judgment 25.3.1999]

Mr François Pélissier and Mr Philippe Sassi were committed to stand trial in the Toulon Criminal Court on charges of criminal bankruptcy. The court acquitted them in 1991, finding that they had not acted as *de jure* or *de facto* managers. On 26 November 1992 the Aix-en-Provence Court of Appeal held that the applicants were guilty, not of the offences charged, but of the separate offence of aiding and abetting criminal bankruptcy through the concealment of assets. The court sentenced them to a suspended term of imprisonment and imposed a fine. The applicants' appeal to the Court of Cassation was dismissed on 14 February 1994. The applicants complained that the Court of Appeal had convicted them of aiding and abetting criminal bankruptcy, which was not the offence charged, without hearing arguments from the parties on the issue. They also complained of the length of the proceedings. The first applicant also complained that a certificate relied by the Court of Appeal should not have been admitted in evidence.

Comm found unanimously V 6(1) and 6(3)(a) and (b).

Court found unanimously V 6(1)+6(3)(a)(b) as regards fairness of proceedings, V 6(1) as regards length of proceedings.

Judges: Mr L Wildhaber, President, Mrs E Palm, Sir Nicolas Bratza, Mr M Pellonpää, Mr L Ferrari Bravo, Mr Gaukur Jörundsson, Mr L Caflisch, Mr J-P Costa, Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach, Mrs N Vajic, Mr J Hedigan, Mrs M Tsatsa-Nikolovska, Mr T Pantiru, Mr E Levits, Mr K Traja.

The Convention did not lay down rules on evidence as such. It could not therefore exclude as a matter of principle and in the abstract evidence obtained in breach of provisions of domestic law. It was for the national courts to assess the evidence they had obtained and the relevance of any evidence that a party wished to have produced. The Court had nevertheless to ascertain whether the proceedings considered as a whole, including the way in which the evidence was taken, were

fair as required by A 6(1). In the instant case, the Court found that the document in issue and the Court of Appeal's reliance on it were not decisive in the conviction or sentence of the first applicant. The fact that the document was admitted in evidence did not impair the fairness of the proceedings, and consequently, the use by the Court of Appeal of the document did not result in a violation of A 6(1). The provisions of A 6(3)(a) pointed to the need for special attention to be paid to the notification of the 'accusation' to the defendant. Particulars of the offence play a crucial role in the criminal process, in that it was from the moment of their service that the suspect was formally put on written notice of the factual and legal basis of the charges against him. A 6(3)(a) afforded the defendant the right to be informed not only of the 'cause' of the accusation (ie, the acts he is alleged to have committed and on which the accusation was based) but also the legal characterisation given to those acts. That information should be detailed. The scope of the above provision had, in particular, to be assessed in the light of the more general right to a fair hearing guaranteed by A 6(1). In criminal matters the provision of full, detailed information concerning the charges against a defendant, and consequently the legal characterisation that the court might adopt in the matter, was an essential prerequisite for ensuring that the proceedings are fair, although A 6(3)(a) did not impose any special formal requirement as to the manner in which the accused was to be informed of the nature and cause of the accusation against him. Regarding the complaint under A 6(3)(b), sub-paras (a) and (b) were connected and that the right to be informed of the nature and the cause of the accusation had to be considered in the light of the accused's right to prepare his defence. It had not been established that the applicants were aware that the Court of Appeal might return an alternative verdict of 'aiding and abetting' criminal bankruptcy. Aiding and abetting did not constitute an element intrinsic to the initial accusation known to the applicants from the beginning of the proceedings. In using the right which it had to re-characterise facts over which it had jurisdiction, the Court of Appeal should have afforded the applicants the possibility of exercising their defence rights on that issue in a practical and effective manner and, in particular, in good time. There was nothing in the instant case capable of explaining why the hearing was not adjourned for further argument or the applicants were not requested to submit written observations while the Court of Appeal was in deliberation. It appeared that the applicants were given no opportunity to prepare their defence to the new charge, as it was only through the Court of Appeal's judgment that they learnt of the re-characterisation of the facts. That was too late. The applicants' right to be informed in detail of the nature and cause of the accusation against them and their right to have adequate time and facilities for the preparation of their defence were infringed. Consequently, there was a violation of A 6(3)(a) and (b), taken together with A 6(1).

The period to be taken into consideration in determining whether the proceedings satisfied the reasonable length requirement began when the applicants were charged, and ended with the judgment of the Court of Cassation: nine years and five months in the case of the first applicant and eight years, eight months and two days in the case of the second applicant. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities. There was nothing exceptional or complex about the case. Changes to the law in 1985 simplified the offence of criminal bankruptcy, which ought to have made the investigating judge's task that much easier. The case involved only four defendants, connected with companies engaged in the same line of business, and there was no evidence of the use of legal structures sophisticated enough to have impeded the investigators' work to any great extent. Accordingly, the length of the proceedings could not be justified by the complexity of the case. The applicants were not responsible for the delays in the proceedings. Thus there was no justification for the investigation taking more than five years. There were unjustified delays and periods of inactivity during the investigation. As regards the proceedings before the Criminal Court and the Court of Appeal, there was an unjustified delay between 22 March 1991, when the public prosecutor lodged an appeal, and 16 April 1992, when the Aix-en-Provence Court of Appeal held its first hearing. The taking of procedural steps as basic and commonplace as serving summonses to appear, in proceedings in which the number of parties could not be said to have been unusually high, could not explain such

a lengthy delay. A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of the requirements of that provision, including the obligation to decide cases within a reasonable time. The evidence adduced in the present case showed that there were excessive delays, which were attributable to the national authorities. Having regard to all the evidence, the reasonable time requirement had been exceeded, and there was therefore a violation of A 6(1) as regards the length of the proceedings.

Pecuniary and non-pecuniary damages (FF 90,000), costs and expenses (FF 70,000).

Cited: Artico v I (13.5.1980), Chichlian and Ekindjian v F (28.11.1988), Colozza v I (12.2.1985), Delta v F (19.12.1990), Deweer v B (27.2.1980), Duclos v F (17.12.1996), Goddi v I (9.4.1984), Imbrioscia v CH (24.11.1993), Kamasinski v A (19.12.1989), Kemmache v F (27.11.1991), Mantovanelli v F (18.3.1997), Miailhe (No 2) v F (26.9.1996), Schenk v CH (12.7.1988).

Pelladoah v The Netherlands (1995) 19 EHRR 81 94/30,

[Application lodged 17.4.1990; Commission report 4.5.1993; Court Judgment 22.9.1994]

Mr Satyanund Pelladoah, a Mauritian national, was arrested on 27 December 1985 at Schiphol Airport after customs officials found more than 20 kg of heroin in a suitcase which he was carrying. He was charged with drugs offences. He was tried by the Haarlem Regional Court and, following conviction on 21 August 1986, was sentenced to detention. Both the prosecution and the defence appealed against the Regional Court's judgment to the Amsterdam Court of Appeal. The applicant was expelled from The Netherlands pursuant to the Aliens Act before the appeals were heard. At hearings before the Amsterdam Court of Appeal, witnesses were heard, but the applicant's lawyer was refused leave to present the defence. On 5 February 1988 the Court of Appeal found the applicant guilty and sentenced him to imprisonment. Through his lawyer, the applicant appealed unsuccessfully to the Supreme Court. The applicant complained that he had not had a fair trial in that his counsel had not been heard by the Court of Appeal.

Comm found unanimously V 6(1)+6(3)(c).

Court found unanimously V 6(1)+6(3)(c).

Judges: Mr R Ryssdal (c), President, Mr F Matscher, Mr B Walsh, Mr SK Martens, Mr R Pekkanen, Mr JM Morenilla, Mr AB Baka, Mr G Mifsud Bonnici (c), Mr J Makarczyk.

As the requirements of A 6(3) were to be seen as particular aspects of the right to a fair trial guaranteed by A 6(1), the Court would examine the complaints under both provisions taken together. The applicant's complaint was not that the appeal was heard in his absence but rather that the Court of Appeal decided the case without his counsel, whom he had charged to conduct the defence and who attended the trial with the clear intention of doing so, being allowed to defend him. The importance of what was at stake for the applicant was nonetheless a factor to be taken into account. The present case concerned a criminal appeal by way of rehearing, which was the last instance where, under domestic law, the case could be fully examined as to questions of both fact and law. In the interests of a fair and just criminal process, it was of capital importance that the accused should appear at his trial. As a general rule, this was equally true for an appeal by way of rehearing. However, it was also of crucial importance for the fairness of the criminal justice system that the accused be adequately defended, both at first instance and on appeal, the more so if, as was the case under Netherlands law, no objection could be filed against a default judgment given on appeal. The fact that the defendant, in spite of having been properly summoned, did not appear, could not, even in the absence of an excuse, justify depriving him of his right under A 6(3) to be defended by counsel. Regarding the Government's argument that the applicant cannot claim to be a victim of an interference with his rights under the said provisions because his counsel failed to ask the Court's permission, in accordance with the relevant rule of Netherlands criminal procedure, to defend the accused, the Court noted that everyone charged with a criminal offence had the right to be defended by counsel. For that right to be practical and effective, and not merely theoretical, its exercise should not be made dependent on the fulfilment of unduly formalistic conditions: it was for the courts to ensure that a trial was fair and, accordingly, that counsel who

attended trial for the apparent purpose of defending the accused in his absence, was given the opportunity to do so. There had been a violation of A 6(1) and (3)(c).

Finding of a violation constituted just satisfaction for any non-pecuniary damage. No claim made for costs and expenses.

Cited: Poitrimol v F (23.11.1993), Saïdi v F (20.9.1993).

Pellegrin v France 99/95

[Application lodged 8.7.1995; Commission report 17.9.1998; Court Judgment 8.12.1999]

Mr Gilles Pellegrin worked as a management and accountancy consultant. In 1989 he was recruited as a technical adviser to the Minister for the Economy, Planning and Trade of Equatorial Guinea. As head of project, he was to be responsible for drawing up the budget of State investment for 1990 and was to participate in the preparation of the three-year plan and the three-year programme of public investment, in liaison with Guinean civil servants and international organisations. Subsequently he contested a decision by the French Minister for Co-operation and Development not to offer him a new contract, lodging an application on 16 May 1990 with the Paris Administrative Court. The applicant complained of the length of proceedings which were still pending in that court.

Comm found by majority (18–14) V 6(1).

Court found by majority (13–4) A 6 not applicable in the present case.

Judges: Mrs E Palm, President, Mr A Pastor Ridruejo, Mr L Ferrari Bravo (c), Mr L Caflisch, Mr J-P Costa, Mrs F Tulkens (jd), Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach (jd), Mr V Butkevych, Mr J Casadevall (jd), Mr B Zupancic, Mrs N Vajic, Mr J Hedigan, Mrs W Thomassen (jd), Mr T Pantîru, Mr K Traja (so).

The facts of the present case raised the problem of the applicability of A 6(1) to disputes raised by servants of the State over their conditions of service. The Court, after reviewing its case-law, considered that, as it stood, it contained a margin of uncertainty for Contracting States as to the scope of their obligations under A 6(1) in disputes raised by employees in the public sector over their conditions of service. The criterion relating to the economic nature of a dispute, for its part, left scope for a degree of arbitrariness, since a decision concerning the 'recruitment', 'career' or 'termination of service' of a civil servant nearly always had pecuniary consequences. That being so, it was difficult to draw a distinction between proceedings of 'purely' or 'essentially' economic interest and other kinds of proceedings. The Court therefore wished to put an end to the uncertainty which surrounded application of the guarantees of A 6(1) to disputes between States and their servants. It was important, with a view to applying A 6(1), to establish an autonomous interpretation of the term 'civil service' which would make it possible to afford equal treatment to public servants performing equivalent or similar duties in the Convention States, irrespective of the domestic system of employment and, in particular, whatever the nature of the legal relation between the official and the administrative authority (whether stipulated in a contract or governed by statutory and regulatory conditions of service). In addition, that interpretation had to take into account the disadvantages engendered by the Court's existing case-law. To that end, in order to determine the applicability of A 6(1) to public servants, whether established or employed under contract, the Court considered that it should adopt a functional criterion based on the nature of the employee's duties and responsibilities. In so doing, it had to adopt a restrictive interpretation, in accordance with the object and purpose of the Convention, of the exceptions to the safeguards afforded by A 6(1). The Court therefore ruled that the only disputes excluded from the scope of A 6(1) of the Convention were those which were raised by public servants whose duties typified the specific activities of the public service in so far as the latter was acting as the depositary of public authority responsible for protecting the general interests of the State or other public authorities. A manifest example of such activities was provided by the armed forces and the police. In practice, the Court would ascertain, in each case, whether the applicant's post entailed, in the light of the nature of the duties and responsibilities appertaining to it, direct or indirect participation in the

exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities. In so doing, the Court would have regard, for guidance, to the categories of activities and posts listed by the European Commission in its communication of 18 March 1988 and by the Court of Justice of the European Communities. Accordingly, no disputes between administrative authorities and employees who occupied posts involving participation in the exercise of powers conferred by public law would attract the application of A 6(1) since the Court intended to establish a functional criterion. However, disputes concerning pensions would all come within the ambit of A 6(1) because, on retirement, employees break the special bond between themselves and the authorities; they, and *a fortiori* those entitled through them, then find themselves in a situation exactly comparable to that of employees under private law in that the special relationship of trust and loyalty binding them to the State had ceased to exist and the employee could no longer wield a portion of the State's sovereign power. In the present case, the applicant was employed by the Ministry of Co-operation and Development. As one of the civilian co-operation staff in post in foreign States, he was under specific obligations 'inherent in the public-service nature' of his duties. As evidenced by those obligations, such an activity, which came under the aegis of a government Ministry and partook of the conduct of foreign relations, typified the specific activities of the public service as defined above. The facts of the case showed that the tasks assigned to the applicant gave him considerable responsibilities in the field of the State's public finances, which was, par excellence, a sphere in which States exercised sovereign power. That entailed participating directly in the exercise of powers conferred by public law and the performance of duties designed to safeguard the general interests of the State. Accordingly, A 6(1) was not applicable in the present case.

Cited: Abenavoli v I (2.9.1997), Benkessiouer v F (24.8.1998), Cazenave de la Roche v F (9.6.1998), Couez v F (24.8.1998), De Santa v I (2.9.1997), Lapalorcia v I (2.9.1997), Le Calvez v F (29.7.1998), Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993), Neigel v F (17.3.1997), Nicodemo v I (2.9.1997), Pierre-Bloch v F (21.10.1997).

Pentidis and Others v Greece 97/30

[Application lodged 30.12.1993; Commission report 27.2.1996; Court Judgment 9.6.1997]

Mr Zissis Pentidis, Mr Dimitrios Katharios and Mr Anastassios Stagopoulos were all Jehovah's Witnesses. On 28 June 1990 they rented under a private agreement a room in a building to be used for all kinds of meetings, weddings, etc, of Jehovah's Witnesses. Following complaints by residents of the town, the public prosecutor's office instituted criminal proceedings against the applicants for having 'established a place of worship for religious meetings and ceremonies without appropriate authorisation'. On 2 July 1991 the Alexandroupolis Criminal Court sitting at first instance acquitted the applicants. The public prosecutor's office appealed. On 21 May 1992 the Alexandroupolis Criminal Court sitting on appeal and composed of three judges convicted the applicants and sentenced them to imprisonment convertible into a pecuniary penalty the applicant's appeal was dismissed by the Court of Cassation.

Comm found by majority (27–1) V 9, unanimously no separate issue under 14+9, 10, 11, 14+10, 14+11, unanimously NV 3, 8, by majority (27–1) NV P1A1.

Court unanimously struck case out of list.

Judges: Mr R Ryssdal, President, Mr R Macdonald, Mr N Valticos, Sir John Freeland, Mr AB Baka, Mr B Repik, Mr U Lôhmus, Mr J Casadevall, Mr E Levits.

On 23 April 1997 the Minister of Education and Religious Affairs granted the authorisation to open a place of worship (prayer room) for Jehovah's Witnesses in Alexandroupolis. The Court noted that the authorisation granted constituted a 'fact of a kind to provide a solution of the matter' within the meaning of Rule 49(2) of Rules of Court A.

FS (applicants granted authorisation to open a place of worship for Jehovah's Witnesses) therefore SO.

Cited: Manoussakis and Others v GR (26.9.1996).

Pepe v Italy 00/137

[Application lodged 5.10.1995; Court Judgment 2.4.2000]

Mr Umberto Pepe complained of the length of criminal proceedings.

Court found unanimously V 6(1).

Judges: Mr CL Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr MP Lorenzen, Mrs M Tsatsa-Nikolovska.

The period to be taken into consideration began on 16 May 1991, the date of the applicant's arrest, and ended on 17 July 1995, the date of the final judgment of the Frosinone Court. It had lasted four years two months and one day. The length of proceedings could not be considered reasonable.

Damage (ITL 12,000,000).

Cited: Pélissier and Sassi v F (25.3.1999), Philis v GR (No 2) (27.6.1997).

Pérez de Rada Cavanilles v Spain (2000) 29 EHRR 245 98/89

[Application lodged 20.6.1995; Commission report 21.10.1997 Court Judgment 28.10.1998]

Mrs María Gloria Pérez de Rada Cavanilles had been in dispute with a neighbour concerning a view over her property at Lumbier in the province of Navarre. On 6 May 1993 the applicant applied to the Aoiz Court of First Instance for enforcement of an agreement that the neighbour block the view from his patio over the applicant's property. On 25 May 1993 the court gave judgment for the applicant which was subsequently overturned by another court. The applicant lodged a reposición application which the Court of First Instance declared inadmissible as being out of time. The applicant's appeal to the Navarre Audiencia Provincial was dismissed on 23 December 1994. She lodged an amparo appeal with the Constitutional Court which was declared inadmissible. She complained that the dismissal of her reposición application as being out of time had deprived her of the possibility of appealing and of thereby defending her legitimate interests in the courts.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Bernhardt, President, Mr F Gölcüklü, Mr N Valticos, Mrs E Palm, Mr JM Morenilla, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr K Jungwiert, Mr U Lôhmus.

According to the Court's case-law, it was the moment when the right asserted actually became effective which constituted determination of a civil right, regardless of the form of the authority to execute. In the instant case, the proceedings to enforce the agreement were decisive for whether the applicant's right actually became effective or not. A 6(1) therefore applied.

It was not the task of the Court to take the place of the domestic courts. It was primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. The Court's role was confined to ascertaining whether the effects of such an interpretation are compatible with the Convention. That applied in particular to the interpretation by courts of rules of a procedural nature such as time-limits governing the filing of documents or lodging of appeals. The 'right to a court', of which the right of access was one aspect, was not absolute; it was subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal were concerned, since by its very nature it called for regulation by the State, which enjoyed a certain margin of appreciation in this regard. However, those limitations should not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right was impaired. Those limitations would not be compatible with A 6(1) if they did not pursue a legitimate aim or if there was not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. The rules on time-limits for appeals were undoubtedly designed to ensure the proper administration of justice and compliance with, in particular, the principle of legal certainty. In the present case, although the reposición application had been posted within the three days laid down by law, it was received at the registry

of the Aoiz Court of First Instance two days after that period had expired. In view of the usual time taken to deliver mail, however, it seemed unlikely that a letter could reach its destination more quickly. The applicant could not be accused of having acted negligently, in view of the short period of time available to her for submitting her application, for which sufficient grounds had to be given. Under the relevant domestic legislation, the decision in issue could not be regarded as foreseeable in the context of proceedings to enforce an agreement. The applicant also tried to lodge the application, within the time-limit, with the registry of the Madrid duty court; noticing, however, that the application should have been lodged at the Aoiz Court of First Instance, the head of the registry crossed out the stamp with which it had been marked, thereby invalidating it. She also applied unsuccessfully to the Aoiz Court of First Instance to set aside its decision of 13 December 1993 whereby, in declaring the reposición application inadmissible as being out of time, it had barred any appeal to the Navarre Audiencia Provincial. The applicant had been represented by a lawyer. However, her husband, who was also her legal representative, had explicitly and successfully asked the registry of the Aoiz Court of First Instance for the decision in issue to be served at the applicant's home in Madrid as she was not at her home in Lumbier at the time. To require the applicant to travel to Aoiz in order to lodge her application within the prescribed time, when the decision in question had been served on her in Madrid, would in this instance have been unreasonable. In view of the fact that the applicant demonstrated her clear intention of lodging a reposición application against the decision of 7 September 1993 whereby the Aoiz Court of First Instance declared the agreement concluded with her neighbour to be void, and that the dismissal of that application as being out of time prevented her from appealing, in this instance the particularly strict application of a procedural rule by the domestic courts deprived the applicant of the right of access to a court. There had therefore been a violation of A 6(1).

Present judgment constituted just satisfaction for non-pecuniary damage. Costs and expenses (ESP 1,000,000).

Cited: Brualla Gómez de la Torre v E (19.12.1997), Di Pede v I (26.9.1996), Edificaciones March Gallego SA v E (19.2.1998), Estima Jorge v P (21.4.1998), Tejedor García v E (16.12.1997), Zappia v I (26.9.1996).

Perks and Others v United Kingdom (2000) 30 EHRR 33 99/62

[Applications lodged 26.4.1994, 27.4.1994, 24.6.1994, 27.6.1994, 14.7.1995, 26.7.1995 and 24.8.1995; Commission report 9.9.1998; Court Judgment 12.10.1999]

The applicants, Mr Kevin Perks, Mrs Andrea Rowe (Kennedy), Mr Gordon Mudryj, Mr Robert Massey, Mr Alan Beattie, Mr Leveson Knight, Mr Arthur Tilley and Mr John Crane were imprisoned in the early 1990s for failure to pay the community charge following separate proceedings in various magistrates' courts. At the time, the applicants were dependent on State benefits or living on a low income. Legal aid was not available and the applicants were not legally represented before the magistrates' courts. The applicants were released on bail after applying for judicial review before the High Court. Following judicial review proceedings, each applicant obtained an order quashing the magistrates' imprisonment order in his or her case. The 8 applicants variously alleged breaches of A 5(1) and 5(5) and A 6(1) and (3)(c).

Commission found unanimously NV 5, V 6(1), V6(3)(c).

Court found unanimously not necessary to consider complaints of Mr Beattie under 5(1) and 5(5), by majority (5–2) NV 5(1) in respect of Mr Perks, unanimously NV 5(1) in respect of any of the remaining six applicants unanimously 5(5) not applicable, unanimously V 6(1) and 3(c) in respect of each of all applicants.

Judges: Mr J-P Costa, President, Mr P Kûris, Mrs F Tulkens (jpd), Mr K Jungwiert, Mrs H Greve (jpd), Mr K Traja, judges, Sir Rupert Jackson, ad hoc judge.

The Government only sought a ruling on the issue of just satisfaction under A 41 of the Convention in respect of the undisputed breach of A 6(1) and 6(3)(c). The Court held that the scope of the case was not confined to this sole provision. Mr Beattie expressly stated that he did not pursue before the Court his complaint that there had been violations of A 5(1) and 5(5), and the

Court saw no reason to deal with the complaints of its own motion. The remaining applicants complained that their detention was unlawful and contrary to A 5(1). The main issue was whether the disputed detention was 'lawful', including whether it complied with 'a procedure prescribed by law'. The Convention essentially refers back to national law and stated the obligation to conform to the substantive and procedural rules thereof, but it required in addition that any deprivation of liberty should be consistent with the purpose of A 5, namely, to protect individuals from arbitrariness. It was in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under A 5(1), failure to comply with domestic law entailed a breach of the Convention, the Court could and should exercise a certain power to review whether the law had been complied with. A period of detention would in principle be lawful if it was carried out pursuant to a court order. A subsequent finding that the court erred under domestic law in making the order would not necessarily retrospectively affect the validity of the intervening period of detention. In the present case the Court had to examine whether it could be said, with a degree of certainty, that the applicant's detention was unlawful under domestic law. As regards Mr Perks, the Court was not convinced that the relevant domestic case-law should be read as clearly providing for a fresh inquiry as a condition precedent to the magistrates' jurisdiction to issue a warrant which had previously been postponed. In these circumstances the Court did not find it established that the magistrates' decision to issue a warrant against Mr Perks suffered from a defect other than unreasonableness within the meaning of the '*Wednesbury*' doctrine. In the cases of Mrs Rowe, Mr Mudryi, Mr Massey, Mr Knight, Mr Tilley and Mr Crane, the magistrates failed to consider alternatives to imprisonment as a means to extract payment and that their decisions were quashed on that ground. The contested issue was whether that defect was of such a nature as to render them invalid for being in excess of jurisdiction. The Court attached importance to the reasoning of the High Court judgments in these applicants' cases: the High Court apparently left open the possibility that the imprisonment orders were within the magistrates' jurisdiction, their defect being only a fettered exercise of discretion, and that the use of the word 'unlawful' in some of the judgments could not be regarded as a finding of a failure to observe a condition precedent. It could not be excluded that these orders were 'flawed' or 'unlawful' in the sense of being an unreasonable exercise of discretion within the *Wednesbury* doctrine, but nevertheless fell within the jurisdiction of the courts by which they were made. The Court found that it could not be said, in respect of any of the seven applications, that the judgments of the national courts quashing the magistrates' imprisonment orders were to the effect that the magistrates had acted in excess of jurisdiction within the meaning of English law. The Court did not find that the imprisonment orders were invalid or that the detention which resulted from it was unlawful under national law. The applicants also contended that, by not considering alternatives to imprisonment, the magistrates' detention orders were not permissible under A 5(1)(b). The Court held that purpose of the detention orders was to secure the fulfilment of the applicants' obligations to pay the community charge owed by them and were compatible with the objectives of A 5(1)(b). The Court did not find that the nature of the applicants' imprisonment was altered to such an extent as to question the applicability of A 5(1)(b). In none of the cases of the seven applicants did the magistrates' orders amount to arbitrariness. There was no violation of A 5(1). The applicants Perks, Rowe, Mudryi, Massey, Knight, Tilley and Crane also alleged that, since the entry into force of s 108 of the Courts and Legal Services Act 1990, UK law was in structural breach of A 5(5) in that it did not ensure compensation for unlawful detention without establishing bad faith on the part of the authorities. The Court observed that A 5(5) guaranteed an enforceable right to compensation only to those who have been the victims of arrest or detention in contravention of the provisions of A 5. In view of its finding that there was no violation of A 5(1) in this case, A 5(5) was not applicable. It was common ground among the parties that there had been a violation of A 6(1) and 6(3)(c) in each of the applicants' cases in that they were not legally represented and had no right to legal aid in the proceedings before the magistrates' courts which led to their imprisonment. It was undisputed that the applicants lacked sufficient means to pay for legal representation and that free assistance by way of legal representation before the magistrates' court was not available at the relevant time. Having regard to the severity of the penalty risked by

the applicants and the complexity of the applicable law, the interests of justice demanded that, in order to receive a fair hearing, the applicants ought to have benefited from free legal representation before the magistrates. Since this was not the case in any of the eight applications, the Court found that there was a violation of A 6(1) and 6(3)(c) in each of them.

By majority (5–2) finding of violation constituted just satisfaction in respect of Mrs Rowe, Mr Mudryj, Mr Massey, Mr Beattie, Mr Knight, Mr Tilley and Mr Crane, unanimously non-pecuniary damage (GBP 5,500 to Mr Perks), costs and expenses (GBP 28,000 less FF 23,958).

Cited: Benham v UK (10.6.1996), Nikolova v BG (25.3.1999), TW v Malta (29.4.1999).

Petix v Italy 00/40

[Application lodged 4.6.1993; Court Judgment 25.1.2000]

Mr Salvatore Petix complained of the length of civil proceedings.

Court found unanimously V6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 23 November 1979 and was still pending on 3 February 1999. It had lasted more than 19 years and two months at one level of jurisdiction. The period could not be considered to be reasonable.

Non-pecuniary damage (ITL 69,000,000), costs and expenses (ITL 2,000,000).

Cited: Bottazzi v I (28.7.1999).

Petra v Romania 98/83

[Application lodged 19.11.1994; Commission report 30.10.1997; Court Judgment 23.9.1998]

Mr Ioan Petra was serving a 15 year sentence for murder imposed on 30 April 1991 by the County Court. He complained that he had not had a fair trial in the County Court and that he had encountered difficulties in sending letters from prison and that there had been interference with his correspondence.

Comm found unanimously V 8 no separate issue under 25.

Court found unanimously V 8, V 25.

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr A Spielmann, Mr N Valticos, Sir John Freeland, Mr G Mifsud Bonnici, Mr P Kûris, Mr M Voicu, Mr V Toumanov

In his application bringing the case before the Court, the applicant had complained of hindrance of his correspondence with the Commission, his family and the national authorities. The Court had jurisdiction *ratione materiae* within the compass of the Commission's decision on the admissibility of an application. The Commission had expressed the opinion that there had been a violation of A 8 on account of the opening and delaying of correspondence between the applicant and it. The case file did not contain any letters sent by the applicant to his family or to his country's authorities that had been intercepted and monitored by prison authorities. In view of the lack of evidence in support of those allegations, the Court did not consider that it had to entertain them.

There was interference by a public authority with the exercise of the applicant's right to respect for his correspondence. Such an interference would contravene A 8 unless it was in accordance with the law, pursued one or more of the legitimate aims referred to in A 8(2) and was necessary in a democratic society in order to achieve them. While a law which conferred a discretion had to indicate the scope of that discretion, it was impossible to attain absolute certainty in the framing of the law, and the likely outcome of any search for certainty would be excessive rigidity. In the instant case the domestic provisions applicable to the monitoring of prisoners' correspondence and its implementing regulations left the national authorities too much latitude. Monitoring of correspondence appeared to be automatic, independent of any decision by a judicial authority and

unappealable. The implementing regulations had not been published, so that the applicant was unable to acquaint himself with them. The Government did not dispute the Commission's conclusion that the implementing regulations did not satisfy the requirement of accessibility entailed by A 8(2) and that Romanian law did not indicate with reasonable clarity the scope and manner of exercise of the discretion conferred on the public authorities. Therefore, the applicant did not enjoy the minimum degree of protection to which citizens were entitled under the rule of law in a democratic society and the interference complained of was not therefore in accordance with the law. Accordingly, there had been a violation of A 8. Having regard to that conclusion, it was not necessary in the instant case to ascertain whether the other requirements of A 8(2) were complied with.

It was of the utmost importance for the effective operation of the system of individual petition under A 25 that applicants or potential applicants should be able to communicate freely with the Commission without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. The expression 'any form of pressure' had to be taken to cover not only direct coercion and flagrant acts of intimidation of applicants or potential applicants or their families or legal representatives but also other improper indirect acts or contacts designed to dissuade or discourage them from pursuing a Convention remedy. Whether or not contacts between the authorities and an applicant or potential applicant were tantamount to unacceptable practices from the standpoint of A 25 had to be determined in the light of the particular circumstances at issue. In this respect, regard had to be had to the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities. The applicant's complaints that he had twice been threatened by the Aiud prison authorities when he had asked to write to the Commission were not contradicted by the respondent Government. Such remarks as 'The Council of Europe is at Aiud and nowhere else' and 'I'll give you Council of Europe!', amounted in this instance to a form of illegitimate and unacceptable pressure which hindered the right of individual petition, contrary to A 25(1).

Non-pecuniary damage (FF 10,000). No claim for costs and expenses.

Cited: Campbell v UK (25.3.1992), Calogero Diana v I (15.11.1996), Guerra and Others v I (19.2.1998), Kurt v TR (25.5.1998), Silver and Others v UK (25.3.1983).

Petrovic v Austria 98/18

[Application lodged 3.8.1992; Commission report 15.10.1996; Court Judgment 27.3.1998]

Mr Antun Petrovic was a student and worked part time. His wife, who had already finished her university studies and was a civil servant in a federal ministry, gave birth on 27 February 1989. She carried on working while the applicant took parental leave to look after the child. On 25 April 1989 Mr Petrovic claimed a parental leave allowance. His claim was turned down by the local employment office on the ground that only mothers could claim such an allowance when a child was born. His appeal against that decision to the Vienna Regional Employment Office was dismissed, as was his further appeal to the Constitutional Court. He complained of the refusal to grant him a parental leave allowance and of the discriminatory nature of that decision.

Comm found by majority (25–5) V 14+8.

Court found by majority (7–2) NV 14+8.

Judges: Mr R Bernhardt (jd), President, Mr F Matscher, Mr L-E Pettiti (c), Mr B Walsh, Mr A Spielmann (jd), Sir John Freeland, Mr MA Lopes Rocha, Mr B Repik, Mr J Casadevall.

A 14 complemented the other substantive provisions of the Convention and its Protocols. It had no independent existence, since it had effect solely in relation to 'the enjoyment of the rights and freedoms' safeguarded by those provisions. Although the application of A 14 did not presuppose a breach of those provisions, and to that extent it was autonomous, there could be no room for its application unless the facts at issue fell within the ambit of one or more of the latter. The Court therefore had to determine whether the facts of the present case came within the scope of A 8 and,

consequently, of A 14. The refusal to grant the applicant a parental leave allowance could not amount to a failure to respect family life, since A 8 did not impose any positive obligation on States to provide the financial assistance in question. Nonetheless, the allowance paid by the State was intended to promote family life and necessarily affected the way in which the latter was organised. A 14 came into play whenever the subject-matter of the disadvantage constituted one of the modalities of the exercise of a right guaranteed, or the measures complained of were linked to the exercise of a right guaranteed. By granting parental leave allowance, States were able to demonstrate their respect for family life within the meaning of A 8; the allowance therefore came within the scope of that provision. It followed that A 14, taken together with A 8, was applicable.

A difference in treatment was discriminatory for the purposes of A14 if it had no objective and reasonable justification, that is, if it did not pursue a legitimate aim or if there was not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The payment of parental leave allowance only to mothers, not fathers, once a period of eight weeks had elapsed after the birth and the right to a maternity allowance had been exhausted, amounted to a difference in treatment on grounds of sex. While aware of the differences which may exist between mother and father in their relationship with the child, the Court started from the premise that so far as taking care of the child during that early period was concerned, both parents are similarly placed. Contracting States enjoyed a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justified a different treatment in law. The scope of the margin of appreciation varied according to the circumstances, the subject matter and its background; in this respect, one of the relevant factors could be the existence or non-existence of common ground between the laws of the Contracting States. At the material time, that is, at the end of the 1980s, there was no common standard in this field, as the majority of the Contracting States did not provide for parental leave allowances to be paid to fathers. It therefore appeared difficult to criticise the Austrian legislature for having introduced in a gradual manner, reflecting the evolution of society in that sphere, legislation which was, all things considered, very progressive in Europe. There still remained a very great disparity between the legal systems of the Contracting States in this field. While measures to give fathers an entitlement to parental leave had now been taken by a large number of States, the same was not true of the parental leave allowance, which only a very few States granted to fathers. The Austrian authorities' refusal to grant the applicant a parental leave allowance had not, therefore, exceeded the margin of appreciation allowed to them. Consequently, the difference in treatment complained of was not discriminatory within the meaning of A 14.

Cited: Karlheinz Schmidt v D (18.7.1994), National Union of Belgian Police v B (27.10.1975), Rasmussen v DK (28.11.1984), Schmidt and Dahlström v S (6.2.1976), Schuler-Zgraggen v CH (24.6.1993), Van Raalte v NL (21.2.1997).

Pfarrmeier v Austria (1996) 22 EHRR 175 95/39

[Application lodged 13.6.1990; Commission report 19.5.1994; Court Judgment 23.10.1995]

On 5 April 1986 Mr Harald Pfarrmeier was stopped by the police after he had parked his car at the side of the road with its headlights on and the engine running. He refused to submit to a breath test. In a 'sentence order' of the same day the Bregenz district authority imposed on him a fine with imprisonment in default of payment, for an offence under the Road Traffic Act. The applicant's appeal to the Vorarlberg regional government was dismissed on 11 November 1987. He applied to the Administrative Court, which quashed the decision of the regional government and referred the case back to it. The Vorarlberg regional government, giving a second ruling on 23 December 1988, upheld the Bregenz district authority's decision on the issue of guilt, but reduced the sentence. On 10 February 1989 the applicant applied to the Constitutional Court which, on 10 March 1989, declined to accept the appeal for adjudication. A further appeal to the Administrative Court was dismissed. The applicant complained that he had not had access to a court with full jurisdiction and had not been able to examine witnesses.

Comm found unanimously V 6(1) as regards access to a court, no separate issue regarding failure to hold a hearing or impossibility of examining witnesses.

Court found unanimously 6 applicable, V 6(1) as regards access to a court, not necessary to examine the complaints regarding the lack of a hearing in the Administrative Court and that court's failure to take evidence from witnesses.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Mr R Macdonald, Mr SK Martens (so), Mr I Foighel, Mr JM Morenilla, Sir John Freeland, Mr J Makarczyk.

In order to determine whether an offence qualified as 'criminal' for the purposes of the Convention, it was first necessary to ascertain whether or not the provision defining the offence belonged, in the legal system of the respondent State, to criminal law; next, the 'very nature of the offence' and the degree of severity of the penalty risked had to be considered. Although the offences in issue and the procedures followed in the case fell within the administrative sphere, they were nevertheless criminal in nature. That was reflected in the terminology employed. In addition, the fine imposed on the applicant was accompanied by an order for his committal to prison in the event of his defaulting on payment. Those considerations were sufficient to establish that the offence of which the applicant was accused could be classified as 'criminal' for the purposes of the Convention. It followed that A 6 applied.

The applicant based his complaints on A 6, whereas the wording of the Austrian reservation mentioned only A 5 and made express reference solely to measures for the deprivation of liberty. Moreover, the reservation only came into play where both substantive and procedural provisions of one or more of the four specific laws indicated in it had been applied. Here, however, the substantive provisions of a different Act, the Road Traffic Act 1960, were applied. The reservation in question did not therefore apply in the instant case.

Decisions taken by administrative authorities which did not themselves satisfy the requirements of A 6(1) had to be subject to subsequent control by a judicial body that had full jurisdiction. The Constitutional Court was not such a body. In the present case it could look at the impugned proceedings only from the point of view of their conformity with the Constitution, and that did not enable it to examine all the relevant facts. It accordingly lacked the powers required under A 6(1). The powers of the Administrative Court had to be assessed in the light of the fact that the court in this case was sitting in proceedings that were of a criminal nature for the purposes of the Convention. It followed that when the compatibility of those powers with A 6(1) was being gauged, regard had to be had to the complaints raised in that court by the applicant as well as to the defining characteristics of a judicial body that had full jurisdiction. Those included the power to quash in all respects, on questions of fact and law, the decision of the body below. As the Administrative Court lacked that power, it could not be regarded as a tribunal within the meaning of the Convention. It followed that the applicant did not have access to a tribunal. There had accordingly been a violation of A 6 on that point. Having regard to the conclusion above, it was not necessary to examine the complaints regarding the lack of a hearing in the Administrative Court and that court's failure to take evidence from witnesses.

Judgment afforded sufficient reparation for damages.

Costs and expenses (ATS 100,000).

Cited: Albert and Le Compte v B (10.2.1983), Chorherr v A (25.8.1993), Demicoli v Malta (27.8.1991), Fischer v A (26.4.1995), Hauschildt v DK (24.5.1989), Öztürk v D (21.2.1984), Saïdi v F (20.9.1993).

Pfeifer and Plankl v Austria (1992) 14 EHRR 692 92/2

[Application lodged 23.9.1983; Commission report 11.10.1990; Court Judgment 25.2.1992]

Mr Heinrich Pfeifer and Mrs Margit Plankl were detained on remand in 1982 in connection with separate criminal proceedings brought against them before the Klagenfurt Regional Court. Two of the investigating judges later presided over the first applicant's trial. In the absence of his lawyer he waived his right to have the judges disqualified. He was convicted and sentenced. The Supreme Court dismissed his challenge and confirmed his sentence. The first applicant

complained that his case had not been examined by an independent and impartial tribunal. Both applicants claimed that the censorship of a letter from Mrs Plankl to Mr Pfeifer constituted an unjustified interference with their right to respect for their correspondence under A 8.

Comm found unanimously V 6(1) and by majority (10–1) V 8.

Court unanimously rejected Government's preliminary objection, found unanimously V 6(1), no need to examine 8 in the case of Mr Pfeifer, V 8 with respect to both applicants.

Judges: Mr J Cremona, President, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr B Walsh, Mr R Bernhardt (so), Mr J De Meyer, Mr N Valticos, Mr AN Loizou.

Preliminary objection of non-exhaustion was joined to the merits and rejected. The waiver of a right guaranteed by the Convention had to be established in an unequivocal manner and a waiver of procedural rights required minimum guarantees commensurate to its importance. In the present case the judge on his own initiative had approached the applicant in the absence of his lawyer, the lawyer having appeared in earlier proceedings, put a question of law which a layman could not have completely appreciated. The fact that the applicant did not think it necessary for his lawyer to be present made no difference. The circumstances surrounding the applicant's decision deprived it of validity from the point of view of the Convention and so there had been a violation of A 6(1).

There had been an interference with the exercise of the applicants' right to respect for their correspondence. The disputed measure was based on the Code of Criminal Procedure. The censorship was aimed at ensuring the protection of the rights of others and the prevention of crime. Some measure of control over prisoners' correspondence was not incompatible with the Convention but the resulting interference must not exceed what was required by the legitimate aim pursued. In this case the disputed passage was said to contain 'jokes of an insulting nature against prison officers'. The Court noted its decision in *Silver v UK*; although the deletion of the passages in this case was a less serious interference, in the circumstances of the case it was disproportionate and there had therefore been a violation of A8 with respect to both applicants.

Costs and expenses (ATS 20,000 to Mr Pfeifer and ATS 1,500 to Mrs Plankl, and ATS 60,000 to the two applicants jointly).

Cited: Cardot v F (19.3.1991), De Wilde, Ooms and Versyp v B (18.6.1971), Oberschlick v A (23.5.1991), Piersack v B (1.10.1982), Pine Valley Developments Ltd v IRL (29.11.1992), Silver v UK (25.3.1983).

Pham Hoang v France (1993) 16 EHRR 53 92/16

[Application lodged 20.8.1987; Commission report 26.2.1991; Court Judgment 25.9.1992]

On 3 January 1984 Mr Tuan Tran Pham Hoang was arrested in Paris with four other people from Hong Kong, Cambodia or Vietnam. He was charged with an offence under the drugs legislation and committed for trial. On 31 May 1985 the Paris tribunal de grande instance acquitted him of all the charges for lack of sufficient evidence. The Director-General of Customs appealed against the decision to acquit the applicant. On 10 March 1986 the Paris Court of Appeal found the applicant guilty and sentenced him to a financial penalty. The applicant's appeal to the Court of Cassation was dismissed on 9 March 1987. He complained that he had been convicted on the basis of statutory presumptions of guilt which were contrary to A 6(1) and 6(2) because they were incompatible with the rights of the defence and with the presumption of innocence. He also complained that he had not been assisted by a lawyer during the hearing of his appeal on points of law.

Comm found by majority (7–5) NV 6(1), 6(2), unanimously V 6(3)(c).

Court unanimously rejected the Government's preliminary objection, found NV 6(1), 6(2), V 6(3)(c).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr A Spielmann, Sir John Freeland.

The Government's preliminary objection dismissed as, in the circumstances of the case, the refusal of an official assignment of counsel rendered the remedy in question ineffective.

A 6 required Contracting States to confine presumptions of fact or of law provided for in their criminal law within reasonable limits which took into account the importance of what was at stake and maintained the rights of the defence. The applicant was not, in fact, deprived of all means of defending himself, he could rely on other parts of the legislation. The presumption of his responsibility was not an irrebuttable one. The Court of Appeal weighed the evidence before it, assessed it carefully and based its finding of guilt on it. It refrained from any automatic reliance on the presumptions created in the relevant provisions of the Customs Code and did not apply them in a manner incompatible with A 6(1) and 6(2).

The right of a person charged with a criminal offence to free legal assistance was one element, amongst others, of the concept of a fair trial in criminal proceedings. A 6(3)(c) attached two conditions to that right. The first, lack of 'sufficient means to pay for legal assistance', was not in dispute in the present case. On the other hand, it is necessary to determine whether the 'interests of justice' required that the applicant be granted such assistance. The proceedings were fraught with consequences for the applicant, who had been acquitted at first instance but found guilty on appeal of unlawfully importing prohibited goods and sentenced to pay large sums to the customs authorities. In addition he intended to challenge in the Court of Cassation the compatibility of the Customs Code with A 6(1) and 6(2) of the Convention. He did not have the legal training essential to enable him to present and develop the appropriate arguments on such complex issues himself. Only an experienced counsel could have undertaken that. The interests of justice accordingly required a lawyer to be officially assigned to the case. Since he was unable to secure this, the applicant was the victim of a breach of A 6(3)(c).

Finding of a breach constituted just satisfaction for non-pecuniary damage. Costs and expenses (FF 30,000).

Cited: Artico v I (13.5.1980), Quaranta v CH (24.5.1991), Salabiaku v F (7.10.1988), Tomasi v F (27.8.1992).

Philis v Greece (1991) 13 EHRR 741 91/36

[Applications lodged 5.1.1987, 6.4.1988 and 24.6.1988; Commission report 8.3.1990; Court Judgment 27.8.1991]

Mr Nicolaos Philis was a consultant engineer. Following a disagreement as to the amount of fees owed to him for a number of projects which he had designed, three disputes arose between him and those who had commissioned the work, two public corporations and a private individual. Proceedings for the recovery of fees were instituted by the Technical Chamber of Greece (TEE). The applicant argued that he was deprived of his right of access to a court by a Royal Decree, according to the terms of which only the TEE was empowered to bring an action for the recovery of fees. That meant that he was dependent on the intervention of a third party, he was able to participate in person in the proceedings only for the purpose of supporting the TEE's arguments and did not therefore have effective control of them.

Comm found unanimously V 6(1) with regard to right of access to a court, by majority (11–2) V 6(1) with regard to hearing within a reasonable time, unanimously no separate issue under 13.

Court found by majority (8–1) V 6(1) with regard to right of access to a court, unanimously not necessary to determine 6(1) regarding reasonable time, not necessary to examine 13 or 14+6.

Judges: Mr R Ryssdal, President, Mr D Bindschedler-Robert, Mr F Gölcüklü, Mr L-E Pettiti (d), Mr B Walsh, Mr C Russo, Mr N Valticos, Mrs E Palm, Mr I Foighel.

The Court could take cognisance of every question of law arising in the course of the proceedings and concerning the facts submitted to its examination by a Contracting State or by the Commission. Being master of the characterisation to be given in law to these facts, the Court was empowered to examine them if it deemed it necessary and if need be of its own motion, in the light of the Convention as a whole. Having regard to all the evidence before it, the Court considered that it could also examine the complaint based on A 14 because it related to the same facts as the complaints under A 6 and 13. On the other hand, the Court considered that the other articles relied on (8, 17, P1A1) should not be taken into account.

A 6(1) secured to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way the article embodied the right to a court, of which the right of access, that is, the right to institute proceedings before courts in civil matters, constituted one aspect. The right of access was not absolute but could be subject to limitations since the right by its very nature called for regulation by the State. Nonetheless, the limitations applied should not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right was impaired. Since the applicant was not able to institute proceedings, directly and independently, to seek the payment from his clients, even to the TEE in the first instance, of fees which were owed to him, the very essence of his right to a court was impaired, and this could not be redressed by any remedy available under Greek law. There had therefore been on this point a violation of A 6(1).

In the light of the findings above, the Court did not consider it necessary to examine this complaint of length of proceedings.

Having regard to its decision concerning A 6, it was not necessary to examine the case under A 13 as its requirements were less strict than, and were here absorbed by, those of A 6.

Regarding A 14, in view of the finding under A 6, no useful purpose would be served in determining whether the applicant had, in addition, suffered discrimination as compared with other persons who were subject to lesser limitations on the same right.

Non-pecuniary damage (GRD 1,000,000), costs and expenses (GRD 6,800,000).

Cited: Ashingdane v UK (28.5.1985), Dudgeon v UK (22.10.1981), Golder v UK (21.1.1975), Håkansson and Sturesson v S (21.2.1990), Handyside v UK (7.12.1976), Mellacher and Others v A (19.12.1989).

Philis v Greece (No 2) (1998) 25 EHRR 417 97/33

[Application lodged 15.1.1992; Commission report 16.1.1996; Court Judgment 27.6.1997]

Mr Nicolas Philis was working as an engineer. Following an investigation, he was charged with insulting the judiciary. On 9 October 1986 he appeared before the investigating judge. On 12 October 1988 the Athens Criminal Court convicted him and sentenced him to imprisonment, a penalty which was converted into a fine. The applicant appealed and on 25 October 1991 the Court of Appeal allowed the appeal and quashed the conviction. The Court of Appeal's judgment became final on 29 November 1991. Following complaints against the applicant the Greek Chamber of Technology (TEE) initiated disciplinary proceedings against the applicant for improper conduct. On 14 November 1983 the charges were drawn and a rapporteur appointed. On 20 November 1984 the disciplinary board suspended the applicant from practising his profession for 10 months. He appealed, and on 10 March 1993 the Supreme Disciplinary Council allowed the appeal and completely exonerated the applicant. The applicant complained of the length of the criminal and disciplinary proceedings.

Comm found unanimously V 6(1) as regards both the criminal and disciplinary proceedings.

Court found unanimously V 6(1) as regards both the length of the criminal proceedings and the length of the disciplinary proceedings.

Judges: Mr R Bernhardt, President, Mr B Walsh, Mr N Valticos, Mrs E Palm, Mr L Wildhaber, Mr P Jambrek, Mr K Jungwiert, Mr E Levits, Mr J Casadevall.

The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. It was necessary among other things to take account of the importance of what was at stake for the applicant in the litigation. As the Court had been unable to ascertain when notice of the investigation was first served on the applicant or when he was first affected by it, the period to be taken into consideration began on 9 October 1986, when the applicant first appeared before the investigating judge; it ended on 29 November 1991, when the Court of Appeal's decision quashing his conviction became final. Consequently, the period to be taken into consideration under this

head lasted more than five years. The case was not particularly complex and the applicant was not in any way responsible for the length of the proceedings. The applicant was convicted at first instance and there was a period of inactivity of approximately three years between the date of his appeal and the date on which his conviction was quashed. Such a period may be considered reasonable only in exceptional circumstances which the respondent State had to account for. The Government pleaded the excessive caseload of the Court of Appeal and organisational difficulties. However, as the Court had repeatedly held, A 6(1) imposed on Contracting States the duty to organise their judicial systems in such a way that their courts could meet each of its requirements, including the obligation to hear cases within a reasonable time. Accordingly, and taking into account what was at stake for the applicant in the proceedings, the Court could not regard the period of time that elapsed in the instant case as reasonable.

Disciplinary proceedings in which, as in the present case, the right to continue to practise a profession was at stake gave rise to disputes over civil rights within the meaning of A 6(1). The procedural guarantees of A 6(1) applied to all litigants, not just those who had not won their case in the national courts. The period to be taken into consideration began at the latest on 14 November 1983, when the disciplinary charges against the applicant were drawn. The Court acquired jurisdiction *ratione temporis* when Greece's recognition of the right of individual petition took effect on 20 November 1985. However, in order to assess the reasonableness of the length of time which elapsed after that date, regard had to be had to the state of the case at the time. The proceedings ended on 10 March 1993, when the Supreme Disciplinary Council completely exonerated the applicant. The disciplinary proceedings had lasted more than nine years, seven of which were within the jurisdiction *ratione temporis* of the Convention institutions. There was a long period of inactivity between the lodging of the applicant's appeal with the Supreme Disciplinary Council in June 1985 and the hearing in March 1993. The case was not complex. The Supreme Disciplinary Council never expressly ordered a deferment pending the outcome of other cases. The duty to administer justice expeditiously was incumbent in the first place on the relevant authorities, especially in proceedings in which they had the power of initiative and the power to ensure that progress was made. A period of more than seven years to consider a case acknowledged to be simple failed to satisfy the 'reasonable time' requirement in the Convention. There had therefore been a breach of A 6(1) in this respect too.

As the other complaints raised by the applicant were declared inadmissible by the Commission, the Court had no jurisdiction to entertain them.

Non-pecuniary damage (GRD 1,500,000), costs and expenses (GRD 2,000,000 less FF 17,750).

Cited: Albert and Le Compte v B (10.2.1983), Diennet v F (26.9.1995), Foti and Others v I (10.12.1982), Kemmache v F (Nos 1 and 2) (27.11.1991), König v D (28.6.1978), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Masson and Van Zon v NL (28.9.1995), Phocas v F (23.4.1996), Süßmann v D (16.9.1996), Zappia v I (26.9.1996).

Phocas v France 96/16

[Application lodged 19.11.1990; Commission report 4.7.1994; Court Judgment 23.4.1996]

Mr Léopold Phocas owned and ran commercial premises at a spot where one road crossed another. In a decision of 20 May 1960, the Minister of Public Works and Transport adopted a scheme for improving the crossroads in question. The applicant complained of the restrictions imposed on his right of property on account of the scheme for improving the crossroads where his property was situated and of the duration of proceedings.

Comm found unanimously V P1A1, not necessary to consider 6(1).

Court found by majority (7–2) NV P1A1, dismissed unanimously the Government's preliminary objection, found unanimously NV 6(1) in respect of application for judicial review lodged on 15 November 1976, by majority (7–2) NV 6(1) in respect of application for judicial review lodged on 9 February 1979, by majority (5–4) NV 6(1) in respect of compensation proceedings of 8 January 1982.

Judges: Mr R Ryssdal, President, Mr L-E Pettiti, Mr C Russo (jd), Mrs E Palm (jd), Mr I Foighel (jd), Mr JM Morenilla, Mr F Bigi (jd), Mr K Jungwiert, Mr P Kûris.

The measures relating to the applicant's property amounted to an interference with his right to the peaceful enjoyment of his possessions. From 31 July 1965 (when the Prefect of Hérault decided to adjourn the application lodged by the applicant on 1 March 1965) to 22 January 1982 (the date of the judgment in which the Expropriations Division of the Court of Appeal of Hérault finally determined the expropriation compensation), there was an interference with the right secured to the applicant by P1A1. The interference in issue was designed to enable an urban development scheme to be carried out. Contracting States enjoyed a wide margin of appreciation in order to implement their town-planning policy. The interference answered the needs of the general interest. The applicant's rights as an owner had for the most part been preserved; he could make use of his building – and, in particular, continue to use it for business purposes – or let it as it was. Furthermore, if it had proved difficult to sell the building because of the restriction affecting it, the possibility of having it purchased by the authorities had been open to him. In sum, the balance between the community's interests and those of the applicant had not been upset. There were various interferences with the applicant's full enjoyment of his property as a result of different kinds of proceedings. The threat of expropriation and the restrictions on building were undoubtedly an obstacle to continuing to run his business on the premises and made it doubtful that he could sell or let to a trader. Nor was the applicant able to convert his building as he wished, since three of his applications for planning permission were adjourned and one refused. Such a situation was in principle incompatible with the fair balance required by P1A1. However, the procedures provided in domestic law afforded a remedy sufficient to ensure protection of the right to the peaceful enjoyment of possessions. In short, there had not been a breach of P1A1.

The applicant raised the slowness of the proceedings in the national courts and thus, in substance, relied on A 6(1). Therefore the preliminary objection based on the A 6(1) application being out of time was dismissed.

The applicant provided no particulars in support of his complaint. He initiated various distinct sets of proceedings, which had to be assessed separately. The proceedings in connection with the application for judicial review made to the Montpellier Administrative Court on 2 December 1967 did not fall under the Court's scrutiny as they were terminated on 16 October 1972, that is to say before 3 May 1974, when France ratified the Convention. The same was true of the second set of proceedings to obtain compensation. The length of the preliminary, amicable stage of the proceedings to abandon property was mainly attributable to the conduct of the applicant. The proceedings before the expropriations judge and the Expropriations Division, on the other hand, took place speedily. Regarding the proceedings brought in the Montpellier Administrative Court on 15 November 1976 and 9 February 1979 and those relating to the applicant's first application for compensation, the reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities and the importance of what was at stake for the applicant in the litigation. The first of the three sets of proceedings lasted about two years and two months. The second set of proceedings lasted a little over four years and three months. The third set of proceedings lasted eight years and nearly five months. Those proceedings were to some degree complex. The main delay was to be ascribed to the applicant. There had been no breach of A 6(1).

Cited: Allenet de Ribemont v F (10.2.1995), Mellacher and Others v A (19.12.1989), Sporrong and Lönnroth v S (23.9.1982), Terranova v I (4.12.1995).

Pierazzini v Italy 92/32

[Application lodged 3.9.1987; Commission report 15.1.1991; Court Judgment 27.2.1992]

Mrs Paola Pierazzini was a housewife. On 27 December 1983 she took out a writ against 4 defendants before the Tempio Pausania District Court, asking for a settlement in respect of

holdings in two companies which she claimed to have inherited following the death of her father, a joint owner of the said companies. She complained of the length of the civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr A N Loizou, Mr J M Morenilla, Mr F Bigi.

The period to be taken into consideration began on 27 December 1983, when the proceedings were instituted against the defendants in the Tempio Pausania District Court. It had not yet ended as that court had still to give judgment. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The respondent State was not in principle answerable for certain adjournments which were requested by the applicant and not ordered by the judicial authorities of their own motion. However, there were two periods of stagnation for which the State was entirely responsible totalling more than three years and nine months. A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. In addition, the expert did not submit his report until 15 November 1990, a good ten months after the expiry of the prescribed time-limit. He was acting in the context of judicial proceedings supervised by the judge; the latter remained responsible for the preparation of the case and the speedy conduct of the trial. A lapse of time already amounting to more than eight years could not be regarded as reasonable.

Non-pecuniary damage (ITL 15,000,000), costs and expenses (ITL 8,000,000).

Cited: Capuano v I (25.6.1987), Vocaturo v I (24.5.1991).

Piermont v France (1995) 20 EHRR 301 95/12

[Applications lodged 6.11.1989 and 8.11.1989; Commission report 20.1.1994; Court Judgment 27.4.1995]

Mrs Dorothée Piermont, a German citizen, member of the European Parliament was an environmentalist and a pacifist. At the invitation of Mr Oscar Temaru, the President of the French Polynesian Liberation Front, she was on Polynesian territory from 24 February to 3 March 1986, during the election campaign. On 28 February 1986 she took part in a public meeting and on 1 March joined in the traditional march organised by the independence and anti-nuclear movements. She denounced the continuation of nuclear testing and the French presence in the Pacific. On 2 March 1986, the High Commissioner made an order expelling the applicant and prohibiting her from re-entering the territory. The order was served on the applicant on 3 March 1986 when she was already on board the aircraft that was to take her to New Caledonia. After leaving Polynesia on 3 March Mrs Piermont travelled to New Caledonia at the invitation of local elected representatives, including the President of the Socialist Kanak National Liberation Front. On 4 March, at 1.55 pm, she arrived at Nouméa Airport. After she had gone with the other passengers through immigration control, a police officer stopped her and took her into an airport office, where she was held until her departure. The High Commissioner issued an order excluding Mrs Piermont from the territory of New Caledonia. A police superintendent served this order on her whilst she was still within the airport perimeter, at about 6.30 pm. At about midnight the applicant was put on an aircraft bound for Tokyo. The applicant complained that the administrative measures taken against her in French Polynesia and New Caledonia failed to respect her right to liberty of movement on French territory, hindered her freedom of expression and discriminated against her on the ground of national origin.

Comm found with regard to the expulsion and exclusion from French Polynesia unanimously NV P4A2, by majority (8–6) V 10, with regard to the exclusion from New Caledonia by majority (13–1) NV P4A2, by majority (12–2) NV 10, unanimously NV 14+10.

Court found unanimously NV P4A2 as regards the measure taken in French Polynesia or New Caledonia, by majority (5–4) V 10 as regards the measure taken in French Polynesia and in New Caledonia, unanimously not necessary to consider A14+10.

Judges: Mr R Ryssdal (jpd), President, Mr F Matscher (jpd), Mr L-E Pettiti, Mrs E Palm, Mr A N Loizou, Mr J M Morenilla, Sir John Freeland (jpd), Mr J Makarczyk, Mr K Jungwiert (jpd).

P4A2 French Polynesia: The expulsion order of 2 March 1986 was served on the applicant the next day when she had already taken her seat in the aircraft. The applicant, who was not travelling on business for the European Parliament, had been able to move around Polynesia as she wished from 24 February to 3 March 1986 and during that period had suffered no interference with the exercise of her right to liberty of movement within the meaning of P4A2. Once the expulsion order had been served, the applicant was no longer lawfully on Polynesian territory and in those circumstances did not suffer any interference with the exercise of her right to liberty of movement, as secured by the provision in question, at that point either. There had been no breach of P4A2.

P4A2 New Caledonia: At an airport such as Nouméa's a passenger remained liable to checks for as long as he remained within the perimeter. In this instance the applicant was stopped just after her passport had been stamped and the impugned order was served on her before she had left the airport, since she was still held in an office under police guard. The order made by the High Commissioner of the Republic was headed 'Order prohibiting an alien from entering the territory' and it embodied the prohibition. The Conseil d'Etat, in its decision of 12 May 1989, did not question the nature of the order. That being so, the applicant was never lawfully within the territory, a requirement P4A2 was to apply. There had therefore been no breach of that provision.

A 10 French Polynesia: There had been an interference. The expulsion was prescribed by law, based on s 7 of the Act of 3 December 1849. Having regard to the particular circumstances of the case, the interference pursued the aims of the prevention of disorder, and territorial integrity. Freedom of expression constituted one of the essential foundations of a democratic society, one of the basic conditions for its progress. While freedom of expression was important for everybody, it was especially so for an elected representative of the people. Freedom of political debate was not absolute in nature. A Contracting State could make it subject to certain 'restrictions' or 'penalties', but it was for the Court to give a final ruling on the compatibility of such measures with the freedom of expression enshrined in A 10. The political atmosphere prevailing in French Polynesia at the time and the prospect of the two sets of elections were factors of some weight. The conduct of the applicant, whose political ideas were well known, could undoubtedly have had a special impact on the political atmosphere. Furthermore, she was requested on her arrival to show some discretion in what she said in public. Nevertheless, the utterances held against the applicant were made during a peaceful, authorised demonstration and her speech contributed to a democratic debate in Polynesia. No disorder followed. Although the expulsion order was served just before the applicant's departure, it was made the day after the demonstration in issue. A fair balance was accordingly not struck between, on the one hand, the public interest requiring the prevention of disorder and the upholding of territorial integrity and, on the other, Mrs Piermont's freedom of expression. The measure was not necessary in a democratic society and there had been a breach of A 10.

A 10 New Caledonia: The exclusion order made by the High Commissioner of the Republic amounted to an interference with the exercise of the right secured by A 10 as, having been detained at the airport, the applicant had not been able to come into contact with the politicians who had invited her or to express her ideas on the spot. The measure was prescribed by law. Even if some doubts may be entertained as to whether s 7 of the Act of 3 December 1849 applied to the instant case, which concerned not an expulsion in the strict sense but a refusal of entry, the High Commissioner was entitled to use his general police powers to ban the applicant from entering New Caledonia on grounds of public safety. The applicant's behaviour and the fear that she would express her views on sensitive topics on the spot could account for the reasons given for the refusal to let her enter Caledonian territory. Even if the political atmosphere was tense and her arrival led

to a limited demonstration of hostility, the Court discerned no substantial difference in the applicant's position vis-à-vis the two territories. The reasons which prompted it to hold that the measure taken in French Polynesia was not justified in the light of the requirements of A 10(2) led it to make an identical finding in respect of New Caledonia. In conclusion, there had been a breach of A 10.

Having regard to its findings in relation to A 10, the Court considered it unnecessary to ascertain whether there has also been a breach of 14+10.

Present judgment constituted just satisfaction as regards non-pecuniary damage. Costs and expenses (FF 80,000).

Cited: Castells v E (23.4.1992).

Pierre-Bloch v France (1998) 26 EHRR 202 97/79

[Application lodged 6.4.1994; Commission report 1.7.1996; Court Judgment 21.10.1997]

In the general election of 21 and 28 March 1993 Mr Jean-Pierre Pierre-Bloch stood as a candidate for the Union for French Democracy in the 19th administrative district of Paris and was elected as a member of the National Assembly. On 27 May 1993 the applicant submitted his campaign accounts to the National Commission on Election Campaign Accounts and Political Funding. He was found to have exceeded the maximum permitted amount of campaign expenditure and disqualified from standing for election. He complained that he had not had a fair hearing before the Constitutional Council and that there had been a violation of his right to an effective remedy. He also complained of discrimination on account of his political views

Comm found by majority (9-8) NV 6(1), NV 13, unanimously NV 14.

Court found by majority (7-2) A 6(1) and A 13 not applicable, unanimously not necessary to consider A 14.

Judges: Mr R Bernhardt, President, Mr F Matscher, Mr L-E Pettiti, Mr J De Meyer (d), Mr J M Morenilla, Sir John Freeland, Mr M A Lopes Rocha, Mr J Makarczyk, Mr U Lôhmus (d).

The fact that proceedings had taken place before a constitutional court did not suffice to remove them from the ambit of A 6(1). It had to be ascertained whether the proceedings in issue in the instant case did or did not relate to 'the determination of civil rights and obligations' or of a 'criminal charge'. There had been a dispute. The right to stand for election to the National Assembly and to keep one's seat was a political one and not a 'civil' one within the meaning of A 6(1) so that disputes relating to the arrangements for the exercise of it, such as ones concerning candidates' obligation to limit their election expenditure, lay outside the scope of that provision. The applicant's pecuniary interests were also at stake. The economic aspect of the proceedings in issue did not, however, make them 'civil' ones within the meaning of A 6(1). A 6(1) accordingly did not apply in its civil aspect.

There had been a 'charge'. To determine whether it was criminal, regard had to be had to three criteria: the legal classification of the offence in question in national law, the very nature of the offence and the nature and degree of severity of the penalty. The provisions in question did not belong to French criminal law but to the rules governing the financing and capping of election expenditure and therefore to electoral law. Nor could a breach of a legal rule governing such a matter be described as 'criminal' by nature. Three 'penalties' could be imposed on candidates who did not keep within the statutory limit on expenditure: disqualification from standing for election, an obligation to pay the Treasury a sum equal to the amount of the excess, and the penalties provided for in Article L 113-1 of the Elections Code. The purpose of that penalty was to compel candidates to respect the maximum limit. The penalty of disqualification was directly one of the measures designed to ensure the proper conduct of parliamentary elections, so that, by virtue of its purpose, it lay outside the 'criminal' sphere. The disqualification was limited to a period of one year from the date of the election and applied only to the election in question. Thus neither the nature nor the degree of severity of that penalty brought the issue into the 'criminal' realm. The

obligation to pay the Treasury a sum equal to the amount of the excess related to the amount by which the Constitutional Council had found the ceiling to have been exceeded. That appeared to show that it was in the nature of a payment to the community of the sum of which the candidate in question improperly took advantage to seek the votes of his fellow citizens and that it formed part of the measures designed to ensure the proper conduct of parliamentary elections and, in particular, equality of the candidates. It differed in several respects from criminal fines in the strict sense. In view of its nature, the obligation to pay the Treasury a sum equal to the amount of the excess could not be construed as a fine. The nature of those penalties in Article L 113-1 of the Elections Code were not in issue in this case as no proceedings were brought against the applicant on the basis of that Article. Accordingly A 6(1) did not apply in its criminal aspect either.

The applicant's complaint under A 14 was not reiterated either in his memorial or at the hearing before the Court. The Court saw no reason to consider it of its own motion. The right of recourse guaranteed in A 13 could only relate to a right protected by the Convention. Accordingly, having regard to its decisions on the complaints based on A 6(1), A 13 was not applicable.

Cited: Engel and Others v NL (8.6.1976), Karlheinz Schmidt v D (18.7.1994), Neigel v. F 17.3.1997, Pammel v D (1.7.1997), Putz v A (22.2.1996), Schouten and Meldrum v NL (9.12.1994).

Piersack v Belgium (1983) 5 EHRR 169, (1985) 7 EHRR 251 82/6

[Application lodged 15.3.1979; Commission report 13.5.1981; Court Judgment 1.10.1982 (merits), 26.10.1984 (A 50)]

Mr Christian Piersack was a gunsmith. He was sentenced to 18 years' hard labour on 10 November 1978 by the Brabant Assize Court for murder. He complained that he had not received a hearing by 'an independent and impartial tribunal established by law', since Mr Van de Walle, the President of the Assize Court which convicted him, had allegedly dealt with the case at an earlier stage in the capacity of a senior deputy to the procureur du Roi.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: (merits) Mr G Wiarda, President, Mr W Ganshof van der Meersch, Mr G Lagergren, Mr L Liesch, Mr F Gölcüklü, Mr J Pinheiro Farinha, Mr R Bernhardt.

Judges: (A 50) Mr G Wiarda, President, Mr Thór Vilhjálmsson, Mr W Ganshof van der Meersch, Mr G Lagergren, M F Gölcüklü, Mr F Matscher, Mr R Bernhardt.

The applicant did not adduce any supporting evidence of his assertion that the court by which he was convicted was not an independent tribunal, and the assertion did not stand up to examination. Whilst impartiality normally denoted absence of prejudice or bias, its existence or otherwise could be tested in various ways. A distinction could be drawn between a subjective approach, that was endeavouring to ascertain the personal conviction of a given judge in a given case, and an objective approach, that was determining whether he offered guarantees sufficient to exclude any legitimate doubt in that respect. As regards the first approach, Mr Van de Walle's personal impartiality did not give any cause for doubt and indeed personal impartiality was to be presumed until there was proof to the contrary. However, even appearances could be of a certain importance. What was at stake was the confidence which the courts had to inspire in the public in a democratic society. The mere fact that a judge was once a member of the public prosecutor's department was not a reason for fearing that he lacked impartiality. In order that the courts may inspire in the public the confidence which was indispensable, account had to also be taken of questions of internal organisation. If an individual, after holding in the public prosecutor's department an office whose nature was such that he may have to deal with a given matter in the course of his duties, subsequently sat in the same case as a judge, the public were entitled to fear that he did not offer sufficient guarantees of impartiality. That was what occurred in the present case. In November 1978, Mr Van de Walle presided over the Brabant Assize Court before which the Indictments Chamber of the Brussels Court of Appeal had remitted the applicant for trial. In that capacity, he enjoyed during the hearings and the deliberations extensive powers to which,

moreover, he was led to have recourse. Yet previously and until November 1977, Mr Van de Walle had been the head of a section of the Brussels public prosecutor's department, which was responsible for the prosecution instituted against the applicant. Whether or not the applicant was unaware of all those facts at the relevant time was of little moment. Neither was it necessary to endeavour to gauge the precise extent of the role played by Mr Van de Walle. It was sufficient to find that the impartiality of the tribunal which had to determine the merits of the charge was capable of appearing open to doubt. Therefore, in that respect, there was a violation of A 6(1).

In the particular circumstances, it was not necessary to examine the issue of 'tribunal established by law', for in the present case the complaint, although made in a different legal context, coincided in substance with the complaint which had been held to be well-founded; besides, the applicant did not revert to the former complaint either in his written observations on admissibility or during the hearings before the Commission and before the Court.

Respondent State to refrain from recovering, out of the court costs which the Belgian Court of Cassation and the Hainaut Assize Court ordered the applicant to bear on 21 February 1979 and 17 October 1983 respectively, a sum totalling BEF 51,978, pay to the applicant BEF 275,000 less FF 3,500, in respect of lawyer's costs before the Belgian Court of Cassation, BEF 25,000, the Hainaut Assize Court BEF 150,000 and the Convention institutions BEF 100,000.

Cited: Delcourt v B (17.1.1970), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Winterwerp v NL (24.10.1979), X v UK (5.11.1981).

Pine Valley Developments Ltd and Others v Ireland (1992) 14 EHRR 319 91/53

[Application lodged 6.11.1987; Commission report 6.6.1990; Court Judgment 29.11.1991]

The first and second applicants, Pine Valley and Healy Holdings, were land developers, the third applicant, Mr Healy, was the managing director of Healy Holdings. Pine Valley purchased land relying on outline planning permission for industrial warehouse and office development. Dublin County Council later refused the detailed planning approval applied for by Pine Valley. The applicant obtained an order of mandamus from the High Court and subsequently sold the land to Healy Holdings. On further appeal the Supreme Court held the grant outline permission *ultra vires* and therefore a nullity. The applicants complained that the respondent State's alleged failure to validate retrospectively the outline planning permission or to provide compensation or other remedy for the reduction in value of their property constituted a violation of P1A1. They also complained of discrimination in the enjoyment of their property rights taken in conjunction with P1A1 and that they did not have an effective remedy under Irish law in respect of the foregoing complaints.

Comm found unanimously NV P1A1 of Pine Valley, by majority (9–4) NV P1A1 of Healy Holdings (10-3) NV P1A1 of Mr Healy, by majority (12–1) V 14+P1A1 of Healy Holdings (12–1) V 14+P1A1 of Mr Healy, unanimously NV P1A1 of Pine Valley, unanimously NV 13.

Court dismissed the Government's preliminary objection and found unanimously regarding Pine Valley NV P1A1 and NV P1A1+14; by majority (6–3) NV P1A1 regarding Healy Holdings and Mr Healy and unanimously V14+P1A1 regarding Healy Holdings and Mr Healy, unanimously NV 13.

Judges: (merits) Mr R Ryssdal, President, Mrs D Bindschedler-Robert (pd), Mr J Pinheiro Farinha, Mr L-E Pettiti, Mr C Russo (pd), Mr J De Meyer, Mrs E Palm, Mr I Foighel (pd), Mr J Blayney, ad hoc judge.

Judges: (A 50) Mrs D Bindschedler-Robert, President, Mr L-E Pettiti, Mr C Russo, Mr J De Meyer, Mr S K Martens, Mrs E Palm, Mr I Foighel, Mr R Pekkanen, Mr J Blayney, ad hoc judge.

Preliminary objections dismissed. The three applicants could be considered victims. It was sufficient for an applicant to have owned property, later dissolution was not relevant to admissibility, nor did insolvency extinguish the right to be a victim. Arguments regarding non-exhaustion rejected.

The first applicants had purchased the property in reliance on the grant of the planning permission and so had a right with which the State had interfered even though the Supreme Court

subsequently held that right to be void *ab initio*. It was for the national courts to interpret and apply domestic law. There was no interference with the rights of the first applicant as they had sold the land before the Supreme Court's decision, but there had been a violation regarding the rights of the other applicants. There was no expropriation or deprivation of the land, the interference was a control of use of property (second paragraph of P1A1). It was lawful as it was in accordance with relevant legislation. It was proportionate as it was the only way in which the aim of preserving a green belt could be achieved. The applicants were engaged in a commercial venture which involved some risk, and they were aware of the Council's position. On the basis of the Supreme Court's obiter dictum that the domestic legislation did not apply to validate the grant of planning permission in the applicants' case, the applicants were treated differently from other property owners in the same category and so were discriminated against. The applicants could and did raise their Convention claims before the domestic courts, the effectiveness of a remedy did not depend on a favourable outcome and so no violation of A 13.

Pecuniary damage (IRP 1,200,000 to Healy Holdings Ltd and Mr Healy jointly), non-pecuniary damage (IRP 50,000 to Mr Healy), domestic costs and expenses (IRP 42,655.11), Strasbourg costs and expenses (IRP 70,000).

Cited: Artico v I (13.5.1980), Barberà, Messegué and Jabardo v E (6.12.1988), Cardot v F (19.3.1991), Ciulla v I (22.2.1989), De Jong Baljet and Van den Brink v NL (22.5.1984), De Wilde, Ooms and Versyp judgment v B (18.6.1971), Eriksson v S (22.6.1989), Fredin v S (18.2.1991), Groppera Radio v CH (28.3.1990), Håkansson and Sturesson v S 21.2.1990), Oberschlick v A (23 May 1991), Observer and Guardian v UK (26.11.1991 A 50), Soering v UK (7.7.1989).

Pio v Italy 00/50

[Application lodged 29.7.1997; Court Judgment 8.2.2000]

Mr Ruggiero Pio complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska.

The period to be taken into consideration began on 6 August 1969 and ended on 28 May 1997. It had lasted more than 27 years and nine months at one level of jurisdiction, of which 23 years and 10 months were after the coming into force of Italy's recognition of the right of individual petition. The period could not be considered as reasonable.

Non-pecuniary damage (ITL 85,000,000).

Cited: Bottazzi v I (28.7.1999).

Pisano v Italy 00/196

[Application lodged 28.10.1996; Court Judgment 27.7.2000]

Mr Massimo Pisano and his mistress were convicted of murdering his wife and concealing the corpse. During the trial the Assize Court refused the hiss request to call a witness who he said was in front of him in the queue at the land registry office at the time of the murder. The applicant's appeal to the Assize Court of Appeal challenging the refusal to call the defence witness was dismissed. He complained of lack of fair trial.

Court found by majority (5–2) NV 6(1), NV 6(1)+6(3)(d).

Judges: Mr C L Rozakis (d), President, Mr B Conforti, Mr G Bonello (d) Mr P Lorenzen, Mr M Fischbach, Mrs M Tsatsa- Nikolovska, Mr E Levits.

Under Italian law the accused, like the prosecution, had to indicate before the trial commenced the witnesses whom he wished to be called. Since the applicant indicated the name of his defence

witness only after the trial had commenced, the conditions for calling that witness were different from those applicable to the prosecution witnesses indicated in time by the prosecution. The summoning of defence witnesses was subject to stricter rules in the Code of Criminal Procedure which provided that the court was not to summon a witness unless it considered the witness absolutely necessary. The applicant did not challenge the legality of the refusal, only its appropriateness. A 6(3)(d) did not require that every witness be summoned to give evidence. The applicant was able to present to the courts of first instance, appeal and cassation his arguments regarding the appropriateness of hearing evidence for that witness. Since the fairness of the proceedings was not adversely affected by the decision to hear evidence from that witness, it could not be inferred that there was a violation of the rights of the defence. The Assize Court did not find it established that the applicant had gone to the land registry office and noted that there was other evidence which established the applicant's guilt. The brief information provided with the order refusing to summon the witness for the defence could not constitute a violation of the rights of the defence. As regards the investigations carried out, they concerned the way in which the applicant spent his time on the day of the offence and the possibility that he might have visited the scene of the crime. The applicant was able to apprise himself of the result of those investigations and to challenge the conclusions which the prosecution had drawn from them before the investigating and trial courts. He had not adduced any evidence on which it might be concluded that the prosecution had knowingly intended to interfere with the fairness of the proceedings. The rights of the defence were not subject to any restriction which deprived the applicant of a fair trial.

Cited: Asch v A (26.4.1991), Barberà, Messegué et Jabardo v E (6.12.1988), Bricmont v B (7.7.1989), Delcourt v B (17.1.1970), Engel and Others v NL (8.6.1976), Imbrioscia v CH (24.11.1993), Lüdi v CH (15.6.1992), Vidal v B (22.4.1992).

Pizzetti v Italy 93/8

[Application lodged 29.7.1986; Commission report 10.12.1991; Court Judgment 26.2.1993]

On 6 September 1983 Mr Bartolomeo Pizzetti brought an action for damages against Mr G before the Bergamo District Court in respect of the injuries he sustained when he was assaulted during an argument. He complained of the length of proceedings and lack of effective remedy.

Comm found unanimously V 6(1), by majority (14-6) NV 13.

Court found unanimously V 6(1), not necessary to examine A 13.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr N Valticos, Mr S K Martens, Mrs E Palm, Mr F Bigi.

The period to be taken into consideration began on 6 September 1983, when Mr G was summonsed before the Bergamo District Court. It had not yet ended as the proceedings were still pending in the same court at the stage of the investigation. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The applicant's attitude was not sufficient in itself to explain the total duration of the proceedings. In particular, his attempt to secure a friendly settlement and the fact that he failed to attend the medical examination could not justify the period of inactivity which lasted from 14 June 1984 to 31 March 1988. Moreover, although some hearings were adjourned at his request, he also asked for three others to be scheduled or brought forward. As regards the argument based on the backlog of cases pending before the Bergamo District Court, A 6(1) imposed on the Contracting States the duty to organise their judicial systems in such a way that their courts could meet each of its requirements. A lapse of time which was already more than nine years could not be regarded as reasonable.

In view of its decision concerning A 6 the Court did not consider it necessary also to examine the case under A 13.

Non-pecuniary damage (ITL 10,000,000), costs and expenses (ITL 3,715,800).

Cited: Tusa v I (27.2.1992).

Pizzi v Italy 97/64

[Application lodged 30.11.1993; Commission report 28.11.1995; Court Judgment 2.9.1997]

Mr Antonio Pizzi was a civil servant. On 18 May 1982 he applied to the Calabria Regional Administrative Court for judicial review of a decision of the Regional Council assigning him, at the time when he was recruited to a permanent post, to a staff category lower than the one to which he considered himself to be entitled on the basis of the duties he had performed during the period when he had been employed on a fixed-term contract. He complained of the length of proceedings which were still pending.

Comm found by majority (23–6) V 6(1).

Court found by majority (8–1) A 6(1) NA.

Judges: Mr R Bernhardt, President, Mr C Russo, Mr N Valticos, Mr R Pekkanen (d), Mr A B Baka, Mr M A Lopes Rocha, Mr G Mifsud Bonnici, Mr P Kûris, Mr E Levits.

In the law of many Member States of the Council of Europe there was a basic distinction between civil servants and employees governed by private law. That had led the Court to hold that disputes relating to the recruitment, careers and termination of service of civil servants were as a general rule outside the scope of A 6(1). In the present case the applicant sought only judicial review of the Regional Council's decision assigning him, at the time when he was recruited to a permanent post, to a category of staff lower than the one to which he considered himself to be entitled. The dispute raised by him thus clearly related simultaneously to his recruitment and his career and did not concern a 'civil' right within the meaning of A 6(1). Accordingly, A 6(1) was not applicable in the case.

Cited: Hussain v UK (21.2.1996), Francesco Lombardo v I (26.11.1992), Massa v I 24.8.1993), Neigel v F (17.3.1997), Scollo v I (28.9.1995).

Plattform 'Ärzte für das Leben' v Austria (1991) 13 EHRR 204 88/10

[Application lodged 13.9.1982; Commission report 12.3.1987; Court Judgment 21.6.1988]

The applicant association, an association of doctors campaigning against abortion, held two demonstrations which were disrupted by counter demonstrators. The applicant association lodged a complaint against the police for failing to provide sufficient protection for the demonstration. They appealed to the Constitutional Court which held that it had no jurisdiction and declared the appeal inadmissible. They complained of lack of effective remedy.

Comm found unanimously NV 13.

Court unanimously NV 13.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr R Macdonald, Mr A Spielmann, Mr J A Carrillo Salcedo.

A 13 did not only apply where a substantive provision of the Convention had been infringed. It secured an effective remedy before a national authority to anyone claiming on arguable grounds to be the victim of a violation of his rights and freedoms set out in the Convention. Although the complaint under A 11 had been dismissed as manifestly ill-founded, it was necessary nevertheless to consider whether it was arguable; the decision on admissibility could provide pointers as to the arguability of the relevant claim. A demonstration may annoy or give offence to persons opposed to it. However the participants had to be able to hold demonstrations without fear that they would be physically attacked. In a democracy the right to counter demonstrate could not extend to inhibiting the exercise of the right to demonstrate. A 11 sometimes required positive measures to be taken. Reasonable and appropriate measures had to be taken to enable lawful demonstrations to proceed peacefully but this could not be guaranteed absolutely and States had a wide discretion in the choice of means to be used. In this area the obligation entered into under A 11 was one as to measures to be taken and not as to results to be achieved. The Court did not have to assess the

expediency or effectiveness of the tactics adopted by the police but only to determine whether there was an arguable claim that the appropriate authorities failed to take the necessary measures. In this case the Austrian authorities had not failed to take reasonable and appropriate measures. No arguable claim that A 11 was violated was made out and therefore A 13 did not apply.

Cited: Abdulaziz, Cabales and Balkandali v UK (28.5.1985), Boyle and Rice v UK (27.4.1988), Rees v UK (17.10.1986), X and Y v NL (26.3.1985).

Podbielski v Poland 98/95

[Application lodged 31.3.1995; Commission report 22.10.1997; Court Judgment 30.10.1998]

Mr Janusz Podbielski was a businessman. On 25 May 1992 he sued the municipality before the Regional Court seeking payment for construction works which his company had carried out for the municipality on the basis of a contract dated 18 February 1991 and pecuniary penalties resulting from the defendant's breach of the terms of the contract. Hearings proceeded and on 30 June 1998 the applicant lodged with the Supreme Court an appeal on points of law. Those proceedings were still pending. He complained of the length of the proceedings.

Comm found by majority (13–2) V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Bernhardt R, President, Mr F Matscher, Mr I Foighel, Mr A B Baka, Mr J Makarczyk, Mr E Levits, Mr J Casadevall, Mr P Van Dijk, Mr M Voicu.

The period to be taken into consideration for the purpose of assessing the length of the proceedings from the angle of the reasonable time requirement under A 6(1) began not on 25 May 1992, when the applicant initiated civil proceedings before the Regional Court, but on 1 May 1993, when the declaration whereby Poland recognised the right of individual petition for the purposes of A 25 of the Convention took effect. The proceedings were still pending since the final decision on his appeal in cassation had not yet been delivered. Accordingly, the proceedings have lasted so far over six years and five months, out of which five years, five months and 29 days were taken into consideration by the Court. In order to determine the reasonableness of the length of time in question the Court had regard to the state of the case on 1 May 1993. The applicant had a strong economic interest at a time of rampant inflation in the respondent State in securing a definitive adjudication of his claim against the municipality within a reasonable period of time. The subject matter of the litigation was not particularly complex, being concerned with the enforcement of rights and obligations under a straightforward contract. While it was true that the interpretation of the penalty clauses in the contract was rendered complex on account of the evolving nature of the domestic legal system at the relevant time and the uncertainty about the correct approach to be adopted by the courts to this case, it was to be noted that the principal legal issues were clarified by the Supreme Court on 28 January 1994. Therefore, the complexity of the subject matter of the case could not justify the length of the proceedings. Although the applicant may have contributed to some extent to the delay in the proceedings by his conduct, that could not justify the overall length of the proceedings. The delay in the delivery of a final decision on the applicant's action had been caused to a large extent by the legislative changes resulting from the requirements of the transition from a state-controlled to a free-market system and by the complexity of the procedures which surrounded the litigation and which prevented an expeditious decision on the applicant's claim. A 6(1) imposed on Contracting States the duty to organise their judicial systems in such a way that their courts could meet each of its requirements, including the obligation to decide cases within a reasonable time. Therefore the delay in the proceedings had to be mainly attributed to the national authorities. In the particular circumstances of the instant case, the period exceeded a reasonable time.

Non-pecuniary damage (PLN 20,000), costs and expenses not specified.

Cited: Belziuk v PL (25.3.1998), Duclos v F (17.12.1996), Proszak v PL (6.12.1997), Süßmann v D (16.9.1996).

Poiss v Austria (1988) 10 EHRR 231, (1991) 13 EHRR 414 87/7

[Application lodged 25.1.1982; Commission report 24.1.1986; Court Judgment 23.4.1987 (merits), 29.9.1987 (A 50)]

The applicants, Leopold Poiss, who died on 30 April 1984, and his children, Josef and Anna, were Austrian farmers. They complained of consolidation proceedings taken in respect of their land. They lodged various appeals which were unsuccessful. They complained of the length of proceedings. They also complained that the provisional transfer of their land in 1963 interfered with their right of property. They claimed that they had still not received the compensation in land to which they were entitled and that they had suffered loss as a consequence.

Comm found unanimously V 6(1), by majority (11–1) V P1A1.

Court found unanimously V 6(1) as regards reasonable time requirement, no jurisdiction to entertain the other complaints under this provision, V P1A1.

Judges: (merits and A 50) Mr R Ryssdal, President, Mr G Lagergren, Mr F Gölcükü, Mr F Matscher, Mr B Walsh, Sir Vincent Evans, Mr C Russo.

Any decision, whether favourable or unfavourable, by the authorities dealing with the matter affected, or would in the future affect their property rights. The outcome of the proceedings complained of was accordingly 'decisive for private rights and obligations'.

New complaints that hearings before the land reform boards were not held in public, and that the boards were not independent and impartial were not raised as such before the Commission and the Court had no jurisdiction to entertain them.

In civil proceedings, the reasonable time referred to in A 6(1) normally began to run from the moment the action was instituted before the tribunal. The period whose reasonableness fell to be reviewed took in the entirety of the proceedings in issue, including any appeals. That period accordingly extended right up to the decision which disposed of the dispute. The first phase began between 27 and 30 September 1965 when the applicants appealed against the consolidation plan of 1 September 1965. It ended on 23 May 1972, when they received notification of the Constitutional Court's judgment. The proceedings in the Constitutional Court were material, because although that Court had no jurisdiction to rule on the merits, its decision was nonetheless capable of affecting the outcome of the dispute. The first phase therefore lasted six years, seven months and 23 days. The second phase began on 6 September 1974, when the applicants requested the reopening of proceedings. The second phase was still under way; it had already lasted more than twelve and a half years. Consequently, the total length of time to be considered amounted to more than 19 years. The reasonableness of the length of proceedings had to be assessed according to the particular circumstances and having regard to the criteria stated in the case-law of the Court, especially the degree of complexity of the case, the applicants' behaviour and the conduct of the relevant authorities. Any land consolidation was by its nature a complex process, and in this case the application of the law appeared to have raised issues of fact of considerable complexity. Applicants could not be blamed for making full use of the remedies available to them under domestic law. The applicants' behaviour, in itself legitimate, nonetheless constituted an objective fact which could not be attributed to the respondent State and which had to be taken into account for the purpose of determining whether or not the reasonable time referred to in A 6(1) had been exceeded. The competent authorities, who had initiated the consolidation process of their own motion and were responsible for the conduct of it were under a special duty to act expeditiously. There were various unjustified delays attributable to the authorities dealing with the case. As a result of those delays, viewed together and cumulatively, the applicants' case was not heard within a reasonable time as required by A 6(1).

There had indisputably been an interference with the applicants' right of property as guaranteed in P1A1. In authorising a provisional transfer at an early stage of the consolidation process, the intention was to ensure that the land in question could be continuously and economically farmed in the interests of the landowners generally and of the community. Furthermore, although the

applicants lost their land in consequence of the transfer decided on in 1963, they received other land in lieu, even if they were not satisfied with it. The applicable system, however, suffered from a degree of inflexibility: before the entry into force of a consolidation plan, it provided no means of altering the position of landowners or of compensating them for damage they may have sustained in the time up to the final award of the statutory compensation in land. In the circumstances of the present case the necessary balance between protection of the right of property and the requirements of the public interest was lacking: the applicants, who remained uncertain as to the final fate of their property, had been made to bear a disproportionate burden. Accordingly there had been a breach of P1A1.

FS (Republic of Austria to pay the applicants ATS 450,000 compensation and ATS 250,000 in costs) therefore A 50 SO.

Cited: AGOSI v UK (24.10.1986), Bozano v F (18.12.1986), Buchholz v D (6.6.1981), Deumeland v D (29.5.1986), Eckle v D (15.7.1982), Guincho v P (10.7.1984), Marckx v B (13.6.1979), Ringeisen v A (16.7.1971), Sporrong and Lönnroth v S (23.9.1982), Sramek v A (22.10.1984), Zimmermann and Steiner v CH (13.7.1983).

Poitrimol v France (1994) 18 EHRR 130 93/48

[Application lodged 21.4.1988; Commission report 3.9.1992; Court Judgment 23.11.1993]

Mr Bernard Poitrimol married Miss Catherine Bisserier in February 1973 and they were divorced in 1982. There were two children of the marriage. In September 1984, when exercising his right of access to the children, the applicant took his children to Turkey. He failed to return them and on 19 December 1985 he was committed for trial at the Marseilles Criminal Court. Mr Poitrimol did not return to France but was represented at the trial on 3 March 1986 by two counsel. In a judgment delivered after proceedings deemed to be inter partes the court sentenced him on the same day to a year's imprisonment and issued a warrant for his arrest. On 5 March 1986 counsel for Mr Poitrimol lodged an appeal. Although he had been summoned to the hearing on 10 September 1986, the applicant did not appear in person and although his lawyer asked for trial *in absentia* the Aix-en-Provence Court of Appeal ordered that Mr Poitrimol should be summoned again as it considered his presence in court to be necessary. He failed to appear and the court upheld the impugned judgment in its entirety. The applicant appealed on points of law and on 21 December 1987 the Court of Cassation declared the appeal inadmissible on the grounds that a convicted person who had not surrendered to a warrant issued for his arrest was not entitled to instruct counsel to represent him and lodge an appeal on points of law on his behalf against his conviction. He complained that the Aix-en-Provence Court of Appeal had convicted him *in absentia* without his counsel being able to put the case for the defence and of the refusal of access to the Court of Cassation.

Comm found by majority (14–1) V 6(1)+6(3)(c) during the proceedings in the Court of Appeal and V 6(1) at the stage of the proceedings in the Court of Cassation.

Court found by majority (5–4) V 6(1) and 6(3)(c).

Judges: Mr R Ryssdal (jd), President, Mr L-E Pettiti (d), Mr C Russo, Mr S K Martens, Mr I Foighel, Mr R Pekkanen, Mr A N Loizou, Sir John Freeland (jd), Mr M A Lopes Rocha (jd).

As the requirements of A 6(3) were to be seen as particular aspects of the right to a fair trial guaranteed by A 6(1), the Court examined the complaints under both provisions taken together.

Proceedings held in an accused's absence were not in principle incompatible with the Convention if the person concerned could subsequently obtain from a court which had heard him a fresh determination of the merits of the charge, in respect of both law and fact. It was open to question whether that latter requirement applied when the accused had waived his right to appear and to defend himself, but at all events such a waiver had, if it was to be effective for Convention purposes, to be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance. In the present case the applicant had clearly expressed his wish

not to attend the appeal hearings on 10 September 1986 and 4 February 1987 and thus not to defend himself in person. On the other hand, it was apparent from the evidence that he intended to be defended by a lawyer instructed for the purpose, who would attend the hearings. Although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, was one of the fundamental features of a fair trial. A person charged with a criminal offence did not lose the benefit of that right merely on account of not being present at the trial. It was of capital importance that a defendant should appear, both because of his right to a hearing and because of the need to verify the accuracy of his statements and compare them with those of the victim – whose interests needed to be protected – and of the witnesses. The legislature accordingly had to be able to discourage unjustified absences. In the instant case, however, it was unnecessary to decide whether it was permissible in principle to punish such absences by ignoring the right to legal assistance, since at all events the suppression of that right was disproportionate in the circumstances. It deprived the applicant, who was not entitled to apply to the Court of Appeal to set aside its judgment and rehear the case, of his only chance of having arguments of law and fact presented at second instance in respect of the charge against him. The inadmissibility of the appeal on points of law, on grounds connected with the applicant's having absconded, also amounted to a disproportionate sanction, having regard to the signal importance of the rights of the defence and of the principle of the rule of law in a democratic society. Admittedly, the remedy in question was an extraordinary one relating to the application of the law and not to the merits of the case. Nevertheless, in the French system of criminal procedure, whether an accused who did not appear may have arguments of law and fact presented at second instance in respect of the charge against him depended largely on whether he had provided valid excuses for his absence. It was accordingly essential that there should be an opportunity for review of the legal grounds on which a court of appeal had rejected such excuses. There had been a breach of A 6 both in the Court of Appeal and in the Court of Cassation.

Costs and expenses (by majority (8–1) FF 109,000).

Cited: Campbell and Fell v UK (28.6.1984), Colozza v I (12.2.1985), FCB v I (28.8.1991), Goddi v I (9.4.1984), Pfeiffer and Plankl v A (25.2.1992), T v I (12.10.1992).

Polat v Turkey 99/32

[Application lodged 18.11.1993; Commission report 11.12.1997; Court Judgment 8.7.1999]

Mr Edip Polat was a writer. In May 1991 he published a book entitled *Nevrozladik Safaklari* ('We made each dawn a Newroz'). He was prosecuted and in a judgment of 23 December 1992 the National Security Court found the applicant guilty of disseminating separatist propaganda. He was sentenced to 2 years imprisonment and a fine. His appeal to the Court of Cassation was dismissed.

Comm found by majority (31–1) V 10 examined together with 9, unanimously no separate issue under P1A1.

Court unanimously dismissed the Government's preliminary objection, found V 10, not required to examine of its own motion P1A1.

Judges: Mr L Wildhaber, President, Mrs E Palm (jc), Mr A Pastor Ridruejo, Mr G Bonello (c), Mr J Makarczyk, Mr P Kûris, Mr J-P Costa, Mrs F Tulkens (jc), Mrs V Stráznická, Mr M Fischbach (jc), Mr V Butkevych, Mr J Casadevall (jc), Mrs H S Greve (jc), Mr A Baka, Mr R Maruste, Mr K Traja, Mr F Gölcüklü, ad hoc judge.

The applicant did not raise the complaints under A 6(1) and 7 before the Commission and the Court could not entertain them.

The complaint was considered from the standpoint of A 10 alone. The Court, as master of the characterisation to be given in law to the facts of a case, did not consider itself bound by the characterisation given by applicants, governments or the Commission.

An appeal against the interim seizure ordered by the Ankara Court of First Instance would not have had any effect on the events which formed the interference complained of by the applicant,

namely his conviction by the Ankara State Security Court and confiscation of his book. Consequently, such an appeal could not be regarded as adequate and effective. The requirement of exhaustion of domestic remedies was satisfied where an applicant had raised before the national authorities, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law, the complaints he intended to make subsequently in Strasbourg. Before the National Security Court and the Court of Cassation the applicant clearly complained of a restriction of his freedom of expression. The Government's preliminary objection was therefore be dismissed.

The applicant's conviction amounted to an interference with the exercise of his freedom of expression. Such an interference breached A 10 unless it satisfied the requirements of the second paragraph of A 10. The applicant's conviction was based on the Prevention of Terrorism Act and the resulting interference with his right to freedom of expression could be regarded as prescribed by law. Having regard to the sensitivity of the security situation in south-east Turkey and to the need for the authorities to be alert to acts capable of fuelling additional violence, the measures taken against the applicant could be said to have been in furtherance of the aims of protection of national security and territorial integrity and the prevention of disorder and crime.

There was little scope under A 10(2) for restrictions on political speech or on debate on questions of public interest. Furthermore, the limits of permissible criticism were wider with regard to the government than in relation to a private citizen, or even a politician. In a democratic system the actions or omissions of the government had to be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion. Moreover, the dominant position which the government occupied made it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means were available for replying to the unjustified attacks and criticisms of its adversaries. Nevertheless, it remained open to the competent State authorities to adopt, in their capacity as guarantors of public order, measures, even of a criminal-law nature, intended to react appropriately and without excess to such remarks. Where such remarks incited to violence against an individual or a public official or a sector of the population, the State authorities enjoyed a wider margin of appreciation when examining the need for an interference with freedom of expression. The Court would take into account the background to the cases submitted to it, particularly problems linked to the prevention of terrorism. However, the applicant was a private individual who had made his views public by means of a literary work rather than through the mass media, a fact which limited their potential impact on national security, public order and territorial integrity to a substantial degree. Although certain passages in the book criticised the attitude of the Turkish authorities and gave the narrative a hostile tone, they did not constitute an incitement to violence, armed resistance or an uprising; that was a factor which it was essential to take into consideration, especially as the events related happened at a period which was already relatively distant in time. The nature and severity of the penalties imposed were also factors to be taken into account when assessing whether the interference was proportionate to the aims it pursued. The penalty imposed on the applicant was severe and the proceedings against him were persistent. After he had served his prison sentence the applicant was ordered to pay an additional fine following the entry into force of another law. The applicant's conviction was disproportionate to the aims pursued and accordingly not necessary in a democratic society. There had therefore been a violation of A 10.

The applicant did not maintain his complaint under P1A1 before the Court, which saw no reason to examine it of its own motion.

Pecuniary damage (USD 1,415), non-pecuniary damage (FF 40,000), costs and expenses (FF 20,000 less FF 10,446.45)

Cited: Findlay v UK (25.2.1997). Fressoz and Roire v F (21.1.1999), Gautrin and Others v F (20.5.1998), Guerra and Others v I (19.2.1998), Incal v TR (9.6.1998), Wingrove v UK (25.11.1996), Yagci and Sargin v TR (8.6.1995) Zana v TR (25.11.1997).

Portington v Greece 98/76

[Application lodged 11.5.1995; Commission report 10.9.1997; Court Judgment 23.9.1998]

In 1986, while crossing the frontier into Greece, Mr Philip Portington, a British citizen, was arrested and charged with committing a murder in July 1985 on his previous visit to Greece as well as with using and carrying arms. He denied the charges. He was remanded in custody and committed for trial. On 17 February 1988, after a hearing which lasted one day, the Salonika Criminal Court composed of jurors and professional judges convicted the applicant of all the charges. He was sentenced to the death penalty for murder, to life imprisonment for robbery and to five years' imprisonment for carrying and using arms. On 18 February 1988 he appealed against the verdict. His appeal was finally heard on 12 February 1996. The Court of Appeal upheld his conviction but commuted his death sentence to life imprisonment. He complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr Thór Vilhjálmsson, President, Mr C Russo, Mr N Valticos, Mr JM Morenilla, Mr D Gotchev, Mr B Repik, Mr U Lôhmus, Mr P van Dijk, Mr V Butkevych.

The period to be taken into consideration began when the appeal was lodged and ended when the appeal was finally heard and judgment delivered by the Court of Appeal, a period of almost 8 years. The complexity of the issues could not explain the length of the proceedings. It was noteworthy that it took the trial court just one day to hear the case and deliver judgment and the Court of Appeal also one day to dispose of the appeal. Even if the delays attributable to requests for adjournments were made by the applicant, and he could be considered on that account to be responsible for some of the delay, that could not justify the length of periods in between individual hearings and certainly not the total length of the appeal proceedings. There were several periods of inactivity in the appeal proceedings – after the applicant had filed the appeal, the case lay dormant for over one year and seven months until it was listed for first hearing; procedural measures which had to be taken in order to have the case file transferred to the appellate court could not explain such an excessive period of delay. Furthermore, the case was relisted on four occasions, which gave rise to periods of inactivity in between dates set for hearing. The Government's submissions that the length of one of those periods was caused by lawyers' strikes was dismissed; since over five months had elapsed after the end of the strikes and before the case was listed, that delay also attributed to the conduct of national authorities. Those and remaining periods of inactivity could not be excused by the Court of Appeal's volume of work. A 6(1) imposed on Contracting States the duty to organise their judicial systems in such way that their courts could meet each of its requirements. Accordingly, there had been a violation of the reasonable time requirement of A 6(1).

Finding of a violation constituted just satisfaction for any alleged non-pecuniary damage. Costs and expenses (GBP 15,000 less FF 14,549)

Cited: Philis v GR (No 2) (27.6.1997), Zana v TR (25.11.1997).

Powell and Rayner v United Kingdom (1990) 12 EHRR 355 90/3

[Application lodged 31.12.1980; Commission report 19.1.1989; Court Judgment 21.2.1990]

Richard John Powell and Michael Anthony Rayner, who were owners of property near Heathrow airport, complained of the excessive noise levels. They relied on A 6(1), 8 and 13 of the Convention and P1A1. At the admissibility stage, the Commission rejected all the substantive claims of violation for being manifestly ill-founded but declared the case admissible under A 13. The applicants invoked the same arguments before the Court.

Comm found by majority (12–4) V 13 in relation to Mr Rayner's claim under 8 but not in relation to any of the other claims unanimously as regards both applicants' grievances under P1A1 and 6(1), (15–1) NV 8 as regards Mr Powell.

Court found unanimously no jurisdiction regarding claims under 6(1) and 8, unanimously NV 13 in respect of either applicant.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr L-E Pettiti, Sir Vincent Evans, Mr A Spielmann, Mrs E Palm, Mr I Foighel.

The jurisdiction of the Court was delimited by the Commission's decision on admissibility. A 13 required a remedy in domestic law only in respect of grievances which could be regarded as arguable in terms of the Convention. Whatever threshold the Commission had set in its case-law for declaring claims 'manifestly ill-founded' under A 27(2), in principle it should set the same threshold in regard to the parallel notion of 'arguability' under A 13. This did not mean that the Court was bound to hold A 13 inapplicable solely because the Commission had declared the substantive claims of violation manifestly ill-founded. The Court was competent to take cognisance of all questions of fact and law arising in the context of the A 13 complaints referred to it, including the 'arguability' or not of each of the substantive claims. The particular facts and nature of the legal issues raised had to be examined in the light of the Commission's admissibility decision and the reasoning contained therein. A claim was not necessarily rendered arguable because, before rejecting it as inadmissible, the Commission had devoted careful consideration to it and to its underlying facts. The effect of s 76(1) of the Civil Aviation Act 1982 was to exclude liability in nuisance with regard to the flight of aircraft in certain circumstances. To this extent there is no 'civil right' recognised under domestic law to attract the application of A 6(1). A 13 did not guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority. Access to the domestic courts was available to any person who considered that he had a cause of action in nuisance under English law. If a question of the application of s 76(1) arose, it would be for the courts to decide. Whether the case was analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants' rights under A 8(1) or in terms of an interference by a public authority to be justified in accordance with A 8(2), a fair balance had to be struck between the competing interests of the individual and of the community as a whole. The operation of a major international airport pursued a legitimate aim and a consequential negative impact on the environment could not be entirely eliminated. A number of measures had been introduced to control, abate and compensate for aircraft noise. The exclusion of liability in nuisance was not absolute. The Government considered the problems of aircraft noise were better dealt with by taking and enforcing specific regulatory measures than by having the matter settled by the case-law of the courts. This was an area where States enjoyed a wide margin of appreciation. In this case, in view of the foregoing, the UK had not exceeded its margin of appreciation or upset the fair balance to be struck under A 8. No arguable claim of violation of A 8 and no entitlement to a remedy under A 13 have been made out by either applicant as regards noise caused by aircraft flying at a reasonable height and in compliance with air traffic regulations. If the applicants wished to complain about aircraft not satisfying those conditions they could bring their action in nuisance and to that extent had an effective remedy available to them.

Cited: Ashingdane v UK (28.5.1985), Boyle and Rice v UK (27.4.1988), Kamasinki v A (19.12.1989), Leander v S (26.3.1987), Lithgow and Others v UK (8.7.1986), Plattform 'Ärzte Für Das Leben' (21.6.1988), Rees v UK (17.10.1986).

Prager and Oberschlick v Austria (1996) 21 EHRR 1 95/11

[Application lodged 21.12.1989; Commission report 28.2.1994; Court Judgment 26.4.1995]

Mr Michael Prager and Mr Gerhard Oberschlick were journalists; the latter was the publisher of the periodical *Forum*. On 15 March 1987 *Forum* published an article by Mr Prager entitled 'Danger! Harsh judges!' criticising judges sitting in the Austrian criminal courts. On 23 April 1987 Judge J brought an action for defamation. On 11 October 1988 the Eisenstadt Regional Court found Mr Prager guilty of having defamed Judge J. It sentenced him to 120 day fines and imprisonment in the event of non-payment. Mr Oberschlick was ordered to pay Judge J damages and was declared jointly and severally liable with the first applicant in respect of the fine and the legal costs. The

court also ordered the confiscation of the remaining stocks of the relevant issue of *Forum* and the publication of extracts from its judgment. On 26 June 1989 the Vienna Court of Appeal upheld this judgment, but reduced the damages. The applicants complained that their convictions constituted a violation of their right to freedom of expression and that the order confiscating the remaining copies of the periodical amounted to discrimination prohibited under A 14 taken in conjunction with A 10.

Comm found by majority (15–12) NV 10, unanimously NV 14+10.

Court unanimously dismissed the Government's preliminary objection, found by majority (5–4) NV 10, unanimously not necessary to examine 14+10.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti (d), Mr C Russo, Mr SK Martens (d), Mr R Pekkanen (d), Mr F Bigi, Mr J Makarczyk (d).

By 'victim', A 25 meant the person directly affected by the act or omission which was in issue, a violation being conceivable even in the absence of any detriment; the latter was relevant only to the application of A 50. The criminal proceedings were directed at both Mr Prager and Mr Oberschlick. The latter was personally convicted for having published an article in his periodical. He was therefore directly affected by the decisions of the Eisenstadt Regional Court and the Vienna Court of Appeal. He could, accordingly, claim to be a victim of the alleged violation. The Government's preliminary objection of lack of victim status was therefore dismissed.

Mr Prager's conviction for defamation and the other measures of which the applicants complained amounted to an interference with the exercise by them of their freedom of expression. The relevant provisions of the Criminal Code had the characteristics of 'law', as did the Media Act. The uncertainties linked to the application in this instance of these two provisions did not exceed what the applicants could expect, if need be after having sought appropriate advice. The decisions in issue were intended to protect the reputation of others, in this case Judge J, and to maintain the authority of the judiciary, which were legitimate aims for the purposes of A 10(2). The press played a pre-eminent role in a State governed by the rule of law. Although it must not overstep certain bounds set, *inter alia*, for the protection of the reputation of others, it was nevertheless incumbent on it to impart – in a way consistent with its duties and responsibilities – information and ideas on political questions and on other matters of public interest. That undoubtedly included questions concerning the functioning of the system of justice, an institution that was essential for any democratic society. Regard, however, had to be had to the special role of the judiciary in society. As the guarantor of justice, a fundamental value in a law-governed State, it had to enjoy public confidence if it was to be successful in carrying out its duties. It might therefore prove necessary to protect such confidence against destructive attacks that were essentially unfounded, especially in view of the fact that judges who had been criticised were subject to a duty of discretion that precluded them from replying. The assessment of those factors fell in the first place to the national authorities, which enjoyed a certain margin of appreciation in determining the existence and extent of the necessity of an interference with the freedom of expression. Some of the allegations were extremely serious. It was therefore hardly surprising that their author should be expected to explain himself. He had not only damaged their reputation, but also undermined public confidence in the integrity of the judiciary as a whole. The research that Mr Prager had undertaken did not appear adequate to substantiate such serious allegations. It was noteworthy that, on his own admission, the applicant had not attended a single criminal trial before Judge J. Furthermore, he had not given the judge any opportunity to comment on the accusations levelled against him. Freedom of expression was applicable not only to information or ideas that were favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offended, shocked or disturbed the State or any section of the community. In addition, the Court was mindful of the fact that journalistic freedom also covered possible recourse to a degree of exaggeration, or even provocation. However, regard being had to all the circumstances and to the margin of appreciation that was to be left to the Contracting States, the impugned interference did not appear to be disproportionate to the legitimate aim pursued. It could therefore be held to have

been necessary in a democratic society. Therefore no violation of A 10 had been established.

The applicants did not raise their complaint under A 14 and 10 before the Court which did not consider it necessary to examine the issue of its own motion.

Cited: Barfod v DK (22.2.1989), Castells v E (23.4.1992), Groppera Radio AG and Others v CH (28.3.1990), Lingens v A (8.7.1986), Oberschlick v A (23.5.1991), Schwabe v A (28.8.1992), Vereinigung demokratischer Soldaten Österreichs and Gubi v A (19.12.1994).

Pramstaller v Austria 95/37

[Application lodged 18.5.1990; Commission report 19.5.1994; Court Judgment 23.10.1995]

On 17 March 1987 Nußdorf-Debant municipal council granted Mr Johann Pramstaller planning permission for the construction of new commercial premises, subject to various detailed conditions. On 23 July 1987 the council ordered the applicant to suspend the works as an inspection of the site had shown that he had disregarded several conditions of the planning permission. On 10 November 1987 the Lienz district authority served a 'sentence order' on the applicant under the Tyrol Building Regulations Act. He was ordered to pay a fine with imprisonment in default of payment plus costs. An appeal by him to the Tyrol regional government was dismissed on 22 March 1988. He applied to the Constitutional Court which, on 16 September 1988, declined to accept the case for adjudication. On 14 September 1989 the applicant's appeal was dismissed by the Administrative Court. He complained that he had not been unable to bring his case before a tribunal.

Comm found unanimously V 6(1) as regards access to a court, no separate issue regarding failure to hold a hearing.

Court found unanimously 6 applicable, V 6(1) as regards access to a court, not necessary to examine the complaints regarding the lack of a hearing in the Administrative Court.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Mr R Macdonald, Mr SK Martens (so), Mr I Foighel, Mr JM Morenilla, Sir John Freeland, Mr J Makarczyk.

In order to determine whether an offence qualified as 'criminal' for the purposes of the Convention, it was first necessary to ascertain whether or not the provision defining the offence belonged, in the legal system of the respondent State, to criminal law; next, the 'very nature of the offence' and the degree of severity of the penalty risked had to be considered. Although the offences in issue and the procedures followed in the case fell within the administrative sphere, they were nevertheless criminal in nature. That was reflected in the terminology employed. In addition, the fine imposed on the applicant was accompanied by an order for his committal to prison in the event of his defaulting on payment. Those considerations were sufficient to establish that the offence of which the applicant was accused could be classified as 'criminal' for the purposes of the Convention. It followed that A 6 applied.

The applicant based his complaints on A 6, whereas the wording of the Austrian reservation mentioned only A 5 and made express reference solely to measures for the deprivation of liberty. Moreover, the reservation only came into play where both substantive and procedural provisions of one or more of the four specific laws indicated in it had been applied. Here, however, the substantive provisions of a different Act, the Tyrol Building Regulations Act 1978, were applied. The reservation in question did not therefore apply in the instant case.

Decisions taken by administrative authorities which did not themselves satisfy the requirements of A 6(1) had to be subject to subsequent control by a judicial body that had full jurisdiction. The Constitutional Court was not such a body. In the present case it could look at the impugned proceedings only from the point of view of their conformity with the Constitution, and that did not enable it to examine all the relevant facts. It accordingly lacked the powers required under A 6(1). The powers of the Administrative Court had to be assessed in the light of the fact that the court in this case was sitting in proceedings that were of a criminal nature for the purposes of the Convention. It followed that when the compatibility of those powers with A 6(1) was being

gauged, regard had to be had to the complaints raised in that court by the applicant as well as to the defining characteristics of a judicial body that had full jurisdiction. Those included the power to quash in all respects, on questions of fact and law, the decision of the body below. As the Administrative Court lacked that power, it could not be regarded as a tribunal within the meaning of the Convention. It followed that the applicant did not have access to a tribunal. There had accordingly been a violation of A 6 on that point. Having regard to the conclusion above, it was not necessary to examine the complaints regarding the lack of a hearing in the Administrative Court and that court's failure to take evidence from witnesses.

Costs and expenses (ATS 100,000).

Cited: Albert and Le Compte v B (10.2.1983), Chorherr v A (25.8.1993), Demicoli v M (27.8.1991), Fischer v A (26.4.1995), Hauschildt v DK (24.5.1989), Öztürk v D (21.2.1984), Saïdi v F (20.9.1993).

Pressos Compania Naviera SA and Others v Belgium (1996) 21 EHRR 301 95/44

[Application lodged 4.1.1991; Commission report 4.7.1994; Court Judgment 20.11.1995]

The 26 applicants are shipowners, mutual shipping insurance associations and, in one case, an insolvency administrator whose ships were involved in casualties in Belgian or Netherlands territorial waters prior to 17 September 1988. As they considered that these casualties were the result of the negligence of the Belgian pilots on board the ships in question, they instituted legal proceedings, some of them against the Belgian State and Others against a private company offering pilot services. In March 1989 the applicants applied to the Court of Arbitration to have the Act of 30 August 1988 on the piloting of sea-going vessels declared void, in particular on the ground of its retrospective effect. The court dismissed the applications on 5 July 1990. Their appeals to the Court of Cassation were dismissed. They complained that by exempting the organiser of a pilot service from liability for negligence on the part of its staff and limiting the liability of the latter, the 1988 Act imposed on the applicants an excessive burden which upset the fair balance between the demands of the general interest and the requirements of the protection of their right to the peaceful enjoyment of their possessions. In addition, the retrospective effect of the Act deprived the applicants of their claims for compensation in respect of the damage sustained.

Comm found unanimously NV P1A1, by majority (11–6) V 6(1) except as regards the second applicant (14–3) V 6(1) and 12th applicant (16–1) V 6(1).

Court unanimously struck the sixth applicant's complaints out of the list, dismissed the Government's preliminary objection, found by majority (8–1) V P1A1, not necessary to examine 6(1).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson (d), Mr C Russo, Mr J De Meyer (so), Mr R Pekkanen, Mr MA Lopes Rocha, Mr L Wildhaber, Mr D Gotchev, Mr U Lôhmus.

The lawyers appointed by the applicants received no instructions from the sixth applicant and the Court therefore concluded that the sixth applicant did not intend to pursue its complaints. There was no public policy reason for continuing the proceedings in respect of the sixth applicant, whose complaints were similar to those of the other applicants. Accordingly, the complaints lodged by City Corporation were severed from those of the other applicants and struck out of the list.

Under A 26 the only remedies required to be exhausted were those that were effective and capable of redressing the alleged violation. In the Court of Arbitration, the first 24 applicants relied in substance on arguments that were virtually identical to those adduced before the Convention institutions. Regard being had to the rank and authority of the Court of Arbitration in the judicial system of Belgium, it could, in the light of that court's reasoning, be assumed that any other remedy of which the applicants could have availed themselves would have been bound to fail. The Government's preliminary objection of failure to exhaust domestic remedies was accordingly dismissed.

In order to determine whether in this instance there was a 'possession', the Court had regard to the domestic law in force at the time of the alleged interference, as there was nothing to suggest that

that law ran counter to the object and purpose of P1A1. The rules in question were rules of tort, under which claims for compensation came into existence as soon as the damage occurred. A claim of this nature constituted an asset and therefore amounted to a possession within the meaning of the first sentence of P1A1, which was accordingly applicable in the present case. On the basis of the judgments of the Court of Cassation, the applicants could argue that they had a legitimate expectation that their claims deriving from the accidents in question would be determined in accordance with the general law of tort. That was the position with regard to the accidents in issue, which all occurred before 17 September 1988, the date of the entry into force of the 1988 Act. Regarding an interference, the Court recalled its case-law. The 1988 Act exempted the State and other organisers of pilot services from their liability for negligent acts for which they could have been answerable. It resulted in an interference with the exercise of rights deriving from claims for damages which could have been asserted in domestic law up to that point and, accordingly, with the right that everyone, including each of the applicants, had to the peaceful enjoyment of their possessions. In so far as that Act concerned the accidents that occurred before 17 September 1988, the only ones in issue in the present proceedings, that interference amounted to a deprivation of property within the meaning of the second sentence of the first paragraph of P1A1. National authorities enjoyed a certain margin of appreciation in determining what was in the public interest. The notion of 'public interest' was necessarily extensive. An interference with the peaceful enjoyment of possessions had to strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In particular, there had to be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions. Compensation terms under the relevant legislation were material to the assessment whether the contested measure respected the requisite fair balance and, notably, whether it imposed a disproportionate burden on the applicants. In this connection, the taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference and a total lack of compensation could be considered justifiable under P1A1 only in exceptional circumstances. The 1988 Act extinguished, with retrospective effect going back 30 years and without compensation, claims for very high damages that the victims of the pilot accidents could have pursued against the Belgian State or against the private companies concerned, and in some cases even in proceedings that were already pending. The financial considerations cited by the Government and their concern to bring Belgian law into line with the law of neighbouring countries could warrant prospective legislation in this area to derogate from the general law of tort. Such considerations could not justify legislating with retrospective effect with the aim and consequence of depriving the applicants of their claims for compensation. Such a fundamental interference with the applicants' rights was inconsistent with preserving a fair balance between the interests at stake. Therefore, in so far as the 1988 Act concerned events prior to 17 September 1988, the date of its publication and its entry into force, it breached P1A1.

The complaints under A 6(1) overlapped with those raised under P1A1 and having regard to the conclusions in that regard, it was not necessary to examine them separately under A 6.

Costs and expenses (BEF 8,000,000). A 50 as regards pecuniary damage reserved.

Cited: Hauschildt v DK (24.5.1989), Holy Monasteries v GR (9.12.1994), James and Others v UK (21.2.1986), Keegan v IRL (26.5.1994), Pine Valley Developments Ltd and Others v IRL (29.11.1991), Van Marle and Others v NL (26.6.1986).

Pretto and Others v Italy (1984) 6 EHRR 182 83/7

[Application lodged 27.7.1977; Commission report 14.12.1981; Court Judgment 8.12.1983]

Mr Rodolfo Pretto had farmed for more than 40 years with the help of members of his family. The other applicants were his wife Cesira Possia, his son Palmerino Pretto, his daughter-in-law Rita Zordan and his grandsons Andrea and Rodolfo Pretto. On 24 September 1971, Mr Pretto brought an action before the Vicenza Regional Court seeking the re-sale of land to him relying on his right

of pre-emption. The Regional Court gave judgment for him on 21 March 1973. On 7 July 1973, the new owner appealed to the Venice Court of Appeal, which reversed the Regional Court's decision by a judgment of 8 October 1974. On 12 February 1975, Mr Pretto appealed on points of law to the Court of Cassation and the respondent lodged a cross-appeal. On 19 October 1976 the court dismissed Mr Pretto's appeal. The full text of the judgment was made public by being deposited in the Court of Cassation's registry on 5 February 1977. On 24 June 1977, the judgment was served on Mr Pretto by the respondent and thereupon became enforceable. The applicants complained of the fact that the judgment of 19 October 1976 by the Court of Cassation had not been pronounced publicly; they further objected to the length of the proceedings.

Comm found by majority (8–7) NV 6(1) as regards length of the proceedings, (12–3) NV 6(1) as regards public pronouncement of judgment.

Court found unanimously NV 6(1) as regards the absence of public pronouncement of the Court of Cassation's judgment, by majority (14–1) NV 6(1) as regards compliance with the reasonable time requirement.

Judges: Mr G Wiarda, President, Mr R Ryssdal, Mr J Cremona, Mr Thór Vilhjálmsson, Mr W Ganshof van der Meersch (c), Mrs D Bindschedler-Robert, Mr L Liesch, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha (d), Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr R Bernhardt, Mr J Gersing.

The public character of proceedings before the judicial bodies referred to in A 6(1) protected litigants against the administration of justice in secret with no public scrutiny; it was also one of the means whereby confidence in the courts, superior and inferior, could be maintained. By rendering the administration of justice visible, publicity contributed to the achievement of the aim of A 6(1), namely a fair trial, the guarantee of which was one of the fundamental principles of any democratic society. The applicability of A 6 to the present facts was not disputed. Many Member States of the Council of Europe had a long-standing tradition of recourse to other means, besides reading out aloud, for making public the decisions of all or some of their courts, and especially of their courts of cassation, for example deposit in a registry accessible to the public. In each case the form of publicity to be given to the judgment under the domestic law of the respondent State had to be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of A 6(1). In order to determine whether the manner in which the Court of Cassation delivered its judgment met the requirements of A 6(1) account had to be taken of the entirety of the proceedings conducted in the Italian legal order and of the Court of Cassation's role therein. That role was confined to reviewing in law the decision of the Venice Court of Appeal and could dismiss the applicant's appeal or, alternatively, quash the previous judgment and refer the case back to the trial court. The Court of Cassation took its decision after holding public hearings and, although the judgment dismissing the appeal on points of law was not delivered in open court, anyone could consult or obtain a copy of it on application to the court. The object pursued by A 6(1) in that context, namely, to ensure scrutiny of the judiciary by the public with a view to safeguarding the right to a fair trial, was, as regards cassation proceedings, no less achieved by a deposit in the court registry, making the full text of the judgment available to everyone, than by a reading in open court of a decision dismissing an appeal or quashing a previous judgment, such reading sometimes being limited to the operative provisions. The absence of public pronouncement of the Court of Cassation's judgment therefore did not contravene the Convention in the present case.

The relevant period did not begin to run from the institution of proceedings before the Vicenza Regional Court on 24 September 1971 but only as from 1 August 1973, when the recognition by Italy of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after 31 July 1973, account had to be taken of the then state of proceedings. The closing date was 5 February 1977, the day when the judgment of 19 October 1976 was deposited in the registry of the Court of Cassation. The period was three years, six months and five days. The reasonableness of the length of proceedings had to be assessed in each instance according to the particular circumstances and having regard to the criteria enunciated in the Court's case-law. The case was of some complexity. Although no blame could be attached to him, the applicant was

nevertheless responsible to a certain degree for the prolongation of the proceedings. Although the various delays on the part of the judicial authorities could probably have been avoided, they were not sufficiently serious to warrant the conclusion that the total duration of the proceedings was excessive. The permissible limit was therefore not overstepped.

Cited: Adolf v A (26.3.1982), Delcourt v B (17.1.1970), Eckle v D (15.7.1982), Foti and Others v I (10.12.1982), Golder v UK (21.2.1975), Lawless v IRL (14.11.1960), Pakelli v D (25.4.1983), Zimmermann and Steiner v CH (13.7.1983).

Prinz v Austria 00/68

[Application lodged 28.3.1994; Commission report 20.5.1998; Court Judgment 8.2.2000]

On 4 October 1993 the Krems Regional Court ordered that Mr Josef Prinz, the applicant, be detained in an institution for mentally ill offenders. The Regional Court found that the applicant had intimidated numerous persons by threats of murder, but that he could not be held responsible because he was suffering from a mental illness. The applicant, assisted by his official defence counsel, filed a plea of nullity and lodged an appeal. Defence counsel did not file any grounds of appeal, and did not request that the applicant be permitted to attend the Supreme Court hearing. The applicant personally filed submissions with the Supreme Court. According to the applicant, he also unsuccessfully requested the Supreme Court for leave to attend the hearing of his plea of nullity and appeal. On 2 March 1994 the Supreme Court held the hearing on the plea of nullity and the appeal in the absence of the applicant, who was represented by his official defence counsel. The Supreme Court rejected the plea of nullity as well as the appeal. The applicant complained about the failure to allow his presence at the hearing of his plea of nullity and his appeal before the Supreme Court.

Comm found by majority V 6(1) and 6(3)(c).

Court unanimously joined Government's preliminary objection to the merits and found NV 6(1)+6(3)(c).

Judges: Mr J-P Costa, President, Mr P Kûris, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mrs HS Greve, Mr K Traja.

The scope of the case before the Court was determined by the Commission's decision on admissibility which in this case was limited to the complaint that, in criminal proceedings against him, the applicant was not present at the hearing before the Supreme Court.

The Court observed that the Government's arguments regarding non-exhaustion were closely linked to the well-foundedness of the applicant's complaint under A 6(1) and (3)(c). The plea was therefore joined to the merits.

A person charged with a criminal offence should, as a general principle based on the notion of a fair trial, be entitled to be present at the first-instance hearing. However, the personal attendance of the defendant did not necessarily take on the same significance for an appeal hearing. Even where an appellate court had full jurisdiction to review the case on questions both of fact and law, A 6 did not always entail rights to a public hearing and to be present in person. Regard had to be had in assessing this question to, *inter alia*, the special features of the proceedings involved and the manner in which the defence's interests were presented and protected before the appellate court, particularly in the light of the issues to be decided by it and their importance for the applicant. The nullity proceedings were primarily concerned with questions of law and the presence of the accused, who was legally represented, was not generally required. In this case, the applicant's plea of nullity related to procedural and legal matters, such as the dismissal of his requests for the taking of further evidence, as well as the legal reasoning. The applicant was represented by official defence counsel. There were no special circumstances warranting the applicant's personal presence, in particular no indication that the official defence counsel did not effectively ensure the applicant's defence. Accordingly, as far as the plea of nullity was concerned, the applicant's absence from the Supreme Court hearing was not in breach of A 6. With regard to the appeal, the Supreme Court examined whether the conditions for the applicant's placement in an institution for

mentally ill offenders were met. The Supreme Court's task was limited to a review of the findings of the lower instance which had taken two expert psychiatric opinions and had heard the applicant directly. The applicant was not convicted, he was found not criminally responsible on account of his mental illness. As the Public Prosecutor did not appeal, the Supreme Court had no power to convict the applicant and to impose a regular prison sentence on him. Placement in an institution for mentally ill offenders was a preventive measure the necessity for which had to be reviewed at least once yearly. Having regard to the limited jurisdiction of the Supreme Court in the present case and taking into account what was at stake for the applicant, a deprivation of liberty subject to a yearly review in further court proceedings, the Court found that it was not essential to the fairness of the proceedings that the applicant be present at the hearing together with his official defence counsel. Given that the future dangerousness of a mentally ill person largely depended on the assessment by psychiatric experts, the Supreme Court could adequately review the Regional Court's decision on the basis of the case-file, including the two expert psychiatric opinions. The Supreme Court was not under a positive duty to ensure of its own motion the applicant's presence at the hearing to enable him to defend himself in person. The interests of the applicant who was, according to the court's findings, suffering from a mental illness were safeguarded through his legal representation. Having regard to the entirety of the proceedings before the Austrian courts, the nature of the issue before the Supreme Court and its limited jurisdiction in the present case, there were special features justifying the applicant's absence from the hearing of his appeal. Accordingly, there had been no violation of A 6(1) and 6(3)(c).

Cited: Belziuk v PL (25.3.1998), Ekbatani v S (26.5.1988), Helmers v S (29.10.1991), Fusco v I (2.9.1997), Helmers v S (29.10.1991), Kremzow v A (21.9.1993), Megyeri v D (12.5.1992), Stanford v UK (23.2.1994), Winterwerp v NL (24.10.1979).

Privitera v Italy 99/113

[Application lodged 7.11.1997; Court Judgment 14.12.1999]

Mrs Sebastiana Privitera complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mrs M Tsatsa-Nikolovska, Mr A Baka.

The period to be taken into consideration began on 2 February 1981 and ended on 8 April 1997. It had lasted more than 16 years and two months at two levels of jurisdiction. There was in Italy a practice incompatible with the Convention, resulting from an accumulation of breaches of the reasonable time requirement. To the extent that the Court had found such breaches, that accumulation constituted circumstances aggravating the violation of A 6.

Non-pecuniary damage (ITL 44,000,000), costs and expenses (ITL 5,000,000).

Cited: Bottazzi v I (28.7.1999).

Probstmeier v Germany 97/35

[Application lodged 9.6.1992; Commission report 25.6.1996; Court Judgment 1.7.1997]

Mrs Mechthilde Probstmeier was the owner of a plot of land which she leased to the Munich Allotment Garden Association, which, in its turn, sub-let the land to individual tenants. On 20 February 1978 she brought proceedings in the Munich Regional Court seeking an order for possession against the Allotment Garden Association. On 19 April 1978 the Regional Court gave judgment against Mrs Probstmeier, who appealed to the Munich Court of Appeal. Her appeal was dismissed on 12 December 1983 and on 19 December 1983 she appealed to the Federal Court of Justice. On 25 April 1993 the Federal Court of Justice gave judgment against her. She complained of the length of proceedings in the Federal Constitutional Court.

Comm found by majority (24–5) V 6(1).

Court found unanimously V 6.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr I Foighel (c), Mr R Pekkanen, Mr MA Lopes Rocha, Mr L Wildhaber, Mr K Jungwiert, Mr U Lôhmus, Mr J Casadevall.

The relevant criterion for determining whether proceedings before a constitutional court should be taken into account in order to establish whether the overall length of proceedings was reasonable was the question whether the result of those proceedings might influence the outcome of the proceedings in the ordinary courts. The present case concerned only the length of the proceedings in the Federal Constitutional Court. Proceedings came within the scope of A 6(1), even if they were conducted before a constitutional court, where their outcome was decisive for civil rights and obligations. The dispute before the civil courts concerned the applicant's right of property, which was certainly a civil right within the meaning of A 6. The proceedings in the Federal Constitutional Court were closely linked to those in the civil courts; not only was the former's decision directly decisive for the applicant's civil right, but in addition, as the proceedings arose from an application for a preliminary ruling, the Federal Court of Justice was obliged to wait for the Federal Constitutional Court's decision before it could give judgment. Accordingly A 6(1) was applicable to the proceedings.

The period to be taken into consideration was only the time taken for the proceedings in the Federal Constitutional Court, which began on 24 May 1985 when the Federal Court of Justice made its application to the Federal Constitutional Court and ended on 23 September 1992 when the latter gave judgment. It therefore lasted seven years and four months. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of each case and having regard in particular to the complexity of the case and the conduct of the parties and the relevant authorities. The case was undoubtedly complex. The applicant was not responsible for any delay to the proceedings. A 6 imposed on the Contracting States the duty to organise their judicial systems in such a way that their courts could meet each of its requirements, including the obligation to hear cases within a reasonable time. A chronic overload, like the one the Federal Constitutional Court had laboured under since the end of the 1970s, could not justify an excessive length of proceedings. The Federal Court of Justice applied to the Federal Constitutional Court for a ruling in May 1985 and the proceedings remained pending there for more than seven years. Despite the complexity of the case, the length of the constitutional proceedings could not satisfy the reasonable time requirement laid down in A 6(1).

Pecuniary damage (DM 15,000), costs and expenses (DM 8,882.68).

Cited: Martins Moreira v P (26.10.1988), Ruiz-Mateos v E (23.6.1993), Silva Pontes v P (23.3.1994), Süßmann v D (16.9.1996), Unión Alimentaria Sanders SA v E (7.7.1989), Zander v S (25.11.1993).

Procaccini v Italy 00/111

[Application lodged 13.3.1996; Commission report 23.4.1998; Court Judgment 30.3.2000]

Mrs Rina Procaccini was employed as a caretaker at a State school under fixed term contracts. She sought a declaration that there was an employment relationship of unlimited duration, continuation of the employment after the expiry of her current contract and payment of the difference between the remuneration received and that to which she claimed she was entitled. The Administrative Court rejected her claims in a judgment deposited with the registry in November 1997. She complained of the length of proceedings.

Comm found by majority (22–6) NV 6(1).

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr L Ferrari Bravo, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mr V Butkevych, Mr J Hedigan.

In order to determine the applicability of A 6(1) to public servants, whether established or employed under contract, a functional criterion should be adopted based on the nature of the

person's duties and responsibilities and to ascertain if the post entailed direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities. In this case the duties performed by the applicant as a caretaker had not entailed participation in the exercise of powers conferred by public law. A 6 was therefore applicable.

The period to be taken into consideration began on 2 March 1990 and ended on 24 November 1997. It had lasted more than seven years and eight months at one level of jurisdiction. That length could not be considered reasonable.

Non-pecuniary damage (ITL 16,000,000), costs and expenses (ITL 6,000,000).

Cited: Bottazzi v I (28.7.1999), Pellegrin v F (8.12.1999).

Procola v Luxembourg (1996) 22 EHRR 193 95/32

[Application lodged 22.11.1988; Commission report 6.7.1994; Court Judgment 28.9.1995]

Procola (the Agricultural Association for the Promotion of Milk Marketing) was a dairy constituted as an agricultural association under Luxembourg law. Following the introduction of the milk quota system in the Member States of the European Community, reference quantities for milk purchases were allocated. The applicant association appealed to the Judicial Committee of the Conseil d'Etat against the decisions fixing the reference quantities. In a judgment of 6 July 1988, the Judicial Committee dismissed the appeal. Four of the five members of the Judicial Committee had previously taken part in drawing up the Conseil d'Etat's opinion on the draft regulation and in framing the bill in issue. The applicant association complained that the Judicial Committee of the Conseil d'Etat was not an independent and impartial tribunal.

Comm found by majority (9–6) NV 6.

Court found unanimously A 6 applicable, V 6(1).

Judges: Mr R Ryssdal, President, Mr A Spielmann, Mr J De Meyer, Mr R Pekkanen, Mr JM Morenilla, Mr F Bigi, Mr G Mifsud Bonnici, Mr D Gotchev, Mr P Kûris.

Within the meaning of A 6, there was without any doubt a dispute concerning the determination of a right. A 6(1) was applicable where an action was 'pecuniary' in nature and was founded on an alleged infringement of rights which were likewise pecuniary rights, notwithstanding the origin of the dispute and the fact that the administrative courts had jurisdiction. Having regard to the close connection between the proceedings brought by Procola and the consequences that their outcome might have had for one of its pecuniary rights, and for its economic activities in general, the right in question was a civil one. A 6(1) was applicable in the case.

It was not necessary to determine whether the Judicial Committee was an independent tribunal. The applicant association did not put in doubt the method of appointing the Conseil d'Etat's members and the length of their terms of office or question that there were safeguards against extraneous pressure. The only issue to be determined was whether the Judicial Committee satisfied the impartiality requirement of A 6, regard being had to the fact that four of its five members had to rule on the lawfulness of a regulation which they had previously scrutinised in their advisory capacity. Four members of the Conseil d'Etat carried out both advisory and judicial functions in the same case. In the context of an institution such as Luxembourg's Conseil d'Etat, the mere fact that certain persons successively performed these two types of function in respect of the same decisions was capable of casting doubt on the institution's structural impartiality. In the instant case, Procola had legitimate grounds for fearing that the members of the Judicial Committee had felt bound by the opinion previously given. That doubt in itself, however slight its justification, was sufficient to vitiate the impartiality of the tribunal in question, and that made it unnecessary for the Court to look into the other aspects of the complaint. It followed that there had been a breach of A 6(1).

No causal link between breach of A 6(1) and dismissal of Procola's application by the Conseil d'Etat.

Costs and expenses (LUF 350,000).

Cited: Beaumartin v F (24.11.1994), Editions Périscope v F (26.3.1992), Neves e Silva v P (27.4.1989), Ortenberg v A (25.11.1994), Van de Hurk v NL (19.4.1994).

Proszak v Poland 97/94

[Application lodged 28.4.1994; Commission report 4.9.1996; Court Judgment 16.12.1997]

On 20 December 1988 Mrs Bronislawa Proszak was attacked and struck by her neighbour, Mr RT. On 29 November 1989 the Stalowa Wola District Court (Criminal Division) sentenced him to six months' imprisonment for assault and causing actual bodily harm. Mrs Proszak had not joined the proceedings as a civil party. On 25 October 1990 she brought a civil action against Mr RT in the Stalowa Wola District Court (Civil) seeking damages for injury resulting from the attack. She complained of the length of the civil proceedings.

Comm found unanimously V 6(1).

Court found by majority (6–3) NV 6(1).

Judges: Mr Thór Vilhjálmsson (d), President, Mr J De Meyer, Mr AN Loizou, Sir John Freeland (d), Mr G Mifsud Bonnici (d), Mr J Makarczyk, Mr D Gotchev, Mr B Repik, Mr E Levits.

The period to be taken into consideration began not on 25 October 1990, when the application was made to the Stalowa Wola District Court, but only on 1 May 1993, when the declaration whereby Poland recognised the right of individual petition for the purposes of A 25 took effect. The period ended on 19 February 1997, when the appeal on points of law was dismissed by the Tarnobrzeg Regional Court. It therefore lasted about three years, nine months and two weeks. In order to determine the reasonableness of the length of time in question, regard had to be had, however, to the state of the case on 1 May 1993. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. In respect of the facts, the case was to some extent a complex one. Only delays attributable to the State could justify a finding of failure to comply with the reasonable time requirement. The applicant groundlessly challenged the reporting judge on three occasions, once even after judgment had been given at first instance. Her failures to attend the hearings and her refusal to attend for the third psychiatric examination contributed decisively to slowing down the proceedings. The applicant and her counsel seemed to have co-ordinated their actions poorly. The applicant's conduct was scarcely consistent with the diligence which had to be shown by the plaintiff in civil proceedings. Nor could the authorities dealing with the case be blamed for the lapse of more than one month between the lodging of the appeal on points of law and its dismissal for want of any legal basis. Almost the whole period falling within the court's jurisdiction *ratione temporis* was essentially taken up with the search for an expert with sufficient specialist qualifications. Experts worked in the context of judicial proceedings supervised by a judge, who remained responsible for the preparation and speedy conduct of proceedings. In the present case it was reasonable to take the view that a third opinion on the applicant's mental health was necessary. The District Court did everything possible to obtain it. The length of time complained of might at first sight seem excessive, but the evidence did not disclose any significant period of inactivity. The District Court even went so far as to offer to take evidence from the applicant at her home in view of her bad health. Furthermore, once the expert was appointed, the applicant refused to undergo examination on 23 January 1996 despite being requested to do so. Regard being had to all the circumstances of the case and, more particularly, to the part played by the applicant in the conduct of the proceedings, the length of time complained of could not be regarded as unreasonable. There had therefore not been a breach of A 6(1).

Cited: Billi v I (26.2.1993), Ciricosta and Viola v I (4.12.1995), Vernillo v F (20.2.1991), Zappia v I (26.9.1996).

Protopapa and Marangou v Greece 00/107

[Application lodged 17.10.1997; Court Judgment 28.3.2000]

Mrs Patra Protopapa and Mrs Anna Marangou were the owners of a 50% share in a plot of land situated in Rhodes. On 8 November 1971 the Ministers of Finance and Culture and Sciences decided to expropriate the plot in question considering that it was of archaeological interest. The applicants lodged an application for judicial review. They complained that the length of the proceedings they instituted before the Council of State on 16 August 1993 gave rise to a violation of A 6(1).

Court found unanimously V 6(1).

Judges: Sir Nicolas Bratza, President, Mr C Rozakis, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mrs HS Greve, Mr K Traja.

In its admissibility decision the Court found that the proceedings in question involved a determination of the applicants' civil rights and obligations within the meaning of A 6(1).

The proceedings began on 16 August 1993, when the applicants lodged their application for judicial review, and were still pending. They had therefore lasted nearly six years and seven months. The reasonableness of proceedings had to be assessed in the light of the particular circumstances of the case and with the help of the following criteria: the complexity of the case, the conduct of the parties and the conduct of the authorities dealing with the case. The case was not particularly complex and the applicants did not cause any delays. However, the Council of State decided to adjourn the examination of the case on several occasions. The Government had not provided any explanation for the seven month delay that resulted from those adjournments. The lawyers' strike to which both parties referred had ended in April 1993, ie, before the institution of the proceedings in question. There was a period of inactivity between the hearing of the applicant's judicial review application and the hearing before the European Court which had exceeded five years and eight months. The only explanation offered by the Government for that period of inactivity was the Council of State's case-load. It was for Contracting States to organise their legal systems in such a way that their courts could guarantee the right of everyone to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time. The length of the proceedings failed to meet the reasonable time requirement and accordingly there had been a violation of A 6(1).

Non-pecuniary damage (GRD 2,000,000), costs and expenses (GRD 500,000).

Cited: Vernillo v F (20.2.1991), Vocaturo v I (24.5.1991).

Prötsch v Austria 96/53

[Application lodged 12.6.1989; Commission report 5.4.1995; Court Judgment 15.11.1996]

Mr Ludwig and Mrs Maria Prötsch owned a farm. Agricultural land-consolidation proceedings were instituted by the Gmunden District Agricultural Authority in 1972. On 7 October 1980 the District Authority ordered the provisional transfer of the compensatory parcels on the basis of a draft consolidation scheme. The applicants appealed unsuccessfully against that order. On 26 January 1988 they applied for financial compensation in respect of the damage allegedly caused to them by the fact that they had received insufficient compensatory parcels by the provisional transfer. The District Authority rejected their claim. Their appeals to the Upper Austria Board, the Administrative Court and the Constitutional Court were all dismissed. They complained that their inability to obtain financial compensation for the loss of yield from the compensatory parcels provisionally allocated to them was in violation of P1A1.

Comm found by majority (9–2) V P1A1.

Court found unanimously NV P1A1.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr F Matscher, Mr I Foighel, Sir John Freeland, Mr MA Lopes Rocha, Mr L Wildhaber, Mr B Repik, Mr P Jambrek.

The Court referred to its long-established case-law. The transfer of land, whose lawfulness the applicants contested, could not amount, by the very essence of its provisional nature, to a 'deprivation of possessions', within the meaning of the second sentence of the first paragraph of P1A1. The provisional transfer was essentially designed not to restrict or control the use of the land (second paragraph of A 1) but to achieve an early restructuring of the consolidation area with a view to improved, rational farming by the 'provisional owners'. The transfer therefore had to be considered under the first sentence of the first paragraph of P1A1. The Court had to inquire whether a proper balance had been struck between the demands of the community's general interest and the requirements of protecting the fundamental rights of the individual. In that respect a temporary disadvantage sustained by an individual by reason of a measure taken in accordance with domestic law might in principle be justified in the general interest, if it was not disproportionate to the aim sought to be achieved by that measure. According to the relevant legislation, the purpose of consolidation was to improve the infrastructure and the pattern of agricultural holdings, by redistributing the land and providing communal facilities. As to the alleged inadequacy of those procedures which, in the applicants' submission, resulted in a decreased productivity of the compensatory parcels allocated to them and ensuing financial damage, it was open to the applicants to contest the lawfulness of that allocation once the consolidation scheme was published. In fact the applicants had appealed, although their complaints were rejected by the Upper Austria Board. Concerning the length of the consolidation proceedings, following an appeal by the applicants, a final scheme – including some improvement in respect of the applicants – came into force three years later. The status of provisional transfer was therefore maintained for a total of six years. In those circumstances, having regard to the statutory aim of the provisional transfer, a period of six years could not be considered, in itself, to be unreasonably long. The domestic authorities were able to examine the applicants' allegations of damage resulting from the provisional allocation of land which essentially corresponded to the situation arising from the consolidation. Their conclusion was invariably that the applicants had suffered no damage as a result of the consolidation measures. Having regard to all the circumstances, the interference with the applicants' right of property could not be held to be disproportionate to the demands of the general interest involved in the consolidation proceedings. Accordingly, no violation of P1A1 had been established.

Cited: Erkner and Hofauer v A (23.4.1987), Poiss v A (23.4.1987), Pressos Compania Naviera SA and Others v B (20.11.1995), Wiesinger v A (30.10.1991).

Pudas v Sweden (1988) 10 EHRR 380 87/21

[Application lodged 30.3.1983; Commission report 4.12.1985; Court Judgment 27.10 1987]

Mr Bengt Pudas was granted by the County Administrative Board of Norrbotten in 1980 a taxi traffic licence and a licence to carry passengers and their goods on specified interurban routes. The licences were expressed to be valid until further notice. He commenced his combined taxi and interurban traffic business on 20 May 1980 with a Peugeot 505 and a seven-seater Citroën. On 2 April 1981, the County Traffic Company of Norrbotten filed an application with the County Administrative Board for a licence to provide interurban transport on routes including those covered by Mr. Pudas' second licence. The County Traffic Company at the same time requested that that licence be revoked, as well as a licence held by another individual. The applicant opposed the revocation of his licence. On 17 August 1981, the County Administrative Board granted the County Traffic Company a licence to provide interurban transport of passengers and goods on the routes indicated in its request and revoked the applicant's and the other individual's licences for interurban traffic. The applicant lodged an appeal with the Board of Transport which was rejected on 14 May 1982. He lodged a further appeal with the Government (Ministry of Transport and Communications) which was dismissed on 21 October 1982. He complained that the revocation of his licence violated P1A1 and that he did not have an effective remedy.

Comm found unanimously V 6(1), no separate issue under A 13.

Court found unanimously V 6(1), not necessary to examine A 13 or P1A1.

Judges: Mr R Ryssdal, President, Mr G Lagergren, Mr B Walsh, Mr R Macdonald, Mr C Russo, Mr J Gersing, Mr J De Meyer (so).

A 6(1) extended only to disputes over civil rights and obligations which could be said, at least on arguable grounds, to be recognised under domestic law; it did not in itself guarantee any particular content for civil rights and obligations in the substantive law of the Contracting States. On being granted a licence, the applicant acquired certain consequential rights. The licence conferred a 'right' on the applicant in the form of an authorisation to carry out a transport service in accordance with the conditions prescribed in it and laid down by domestic law. The applicant challenged not only the wisdom of the revocation as a matter of policy but also its lawfulness. The proceedings complained of were capable of leading – and did in the event lead – to confirmation of the decision being challenged, namely the revocation by the County Administrative Board of the applicant's licence; they were therefore directly decisive for the right at issue. The features of public law did not suffice to exclude from the category of civil rights under A 6(1) the rights conferred on the applicant by virtue of the licence. The dispute between the applicant and the Swedish authorities concerned a 'civil right'. A 6(1) was therefore applicable to the present case.

The Court had to ascertain whether the applicant enjoyed the guaranteed 'right to a court'. The dispute in question was determined by the Government (Ministry of Transport and Communications) in its capacity as authority of final instance. The Government's decision rejecting the applicant's appeals against the revocation of his licence by the County Administrative Board was not open to review as to its lawfulness by either the ordinary courts or the administrative courts, or by any other body which could be considered to be a 'tribunal' for the purposes of A 6(1). Holders of an interurban traffic licence could challenge the lawfulness of a revocation by requesting the Supreme Administrative Court to re-open the proceedings. However, that extraordinary remedy did not meet the requirements of A 6(1). There was accordingly a violation of A 6(1).

The Court found it unnecessary to examine the case under A 13 as its requirements are less strict than, and were here absorbed by, those of A 6(1).

The Court considered it was not called upon to examine whether there was jurisdiction or violation concerning a complaint under P1A1.

Non-pecuniary damage (20,000 SEK), costs and expenses (56,100 SEK less 2,720 FF).

Cited: Baraona (8.7.1987), Benthem v NL (23.10.1985), Deumeland (29.5.1986), Golder v UK (21.2.1975), Sporrong and Lönnroth (23.9.1982), Van Marle and Others (26.6.1986), W v UK (8.7.1987).

Pugliese v Italy (1992) 14 EHRR 413 91/10

[Application lodged 14.10.1985; Commission report 5.12.1989; Court Judgment 19.2.1991]

Mr Vincenzo Pugliese was a journalist. He was also the sole director of a company, SOGELAI, entrusted by the municipal council with the task of constructing a ski-lift as part of a tourist complex. The company fixed and marked out the boundaries of the land and, after unsuccessfully summoning the previous contractor company to remove from the land the materials it had placed there, removed them itself at the beginning of September 1981. On 17 September 1981 the previous contractor company lodged a complaint for trespass on its land against those who had marked out the boundaries and removed the materials. On 27 April 1982 the Borbona magistrates' sent the applicant a judicial notification informing him that criminal proceedings had been opened against him for the above-mentioned offences. On 5 October 1985 the magistrates' court sentenced the applicant to a fine and ordered him to pay damages. The applicant appealed and on 10 July 1987 the Rieti District Court pronounced an amnesty in application of the President of the Republic's decree of 16 December 1986. The applicant complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Sir Vincent Evans, Mr C Russo, Mr J De Meyer, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla.

The period to be taken into consideration began on 27 April 1982, the date on which the judicial notification was sent to the applicant. It ended on 10 July 1987 when the Rieti Court pronounced the amnesty. The reasonableness of the length of proceedings was to be assessed in the light of the particular circumstances of the case. The case was very simple. The applicant's conduct gave rise to hardly any delay and there were long periods of stagnation in the proceedings both at first instance and on appeal. The Court could not regard as reasonable in the instant case a lapse of time of more than five years and two months. There had therefore been a violation of A 6(1).

Present judgment constituted sufficient just satisfaction for A 50.

Cited: Obermeier v A (28.6.1990).

Pugliese (No 2) v Italy 91/31

[Application lodged 29.6.1985; Commission report 6.3.1990; Court Judgment 24.5.1991]

Mr Vincenzo Pugliese was a journalist. On 6 February 1984 he obtained from the President of the Rome District Court an order for payment against SOGELAI in respect of expenses incurred by him as a director of that company. He served the order on the company on 8 March 1984. On 26 March the company applied for the order to be set aside and summoned the applicant to appear before the Rome District Court on 25 June 1984. A Mrs F intervened in the case and put forward her own claim to the sum demanded by the applicant, maintaining that she had purchased his shares in the company. The judge fixed the hearing for 21 April 1987. The District Court declared the disputed order void and upheld Mrs F's claim to the sum in question. Accordingly, it ordered the company to pay it to Mrs F. The judgment was adopted on 22 May 1987 and filed with the registry on 10 July 1987. The judgment became final one year after it was pronounced, ie, on 10 July 1988. The applicant complained of the length of the civil proceedings brought against him by SOGELAI.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjälmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Sir Vincent Evans, Mr C Russo, Mr SK Martens, Mr JM Morenilla.

The period to be taken into consideration began on 6 February 1984, the date of the order to pay, and ended on 10 July 1988 when the Rome District Court's judgment became final. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and of the criteria laid down in the Court's case-law. Mrs F's intervention did not give rise to any special complexity. It was for the Contracting States to organise their legal systems in such a way that their courts could meet the reasonable time requirement. The time taken for the investigative stage did not appear excessive but the same could not be said of the period of almost two years (22 May 1985 to 21 April 1987) which then elapsed until the hearing before the trial court. There had therefore been a violation of A 6(1).

Claim for just satisfaction dismissed (no causal link between the violation found and either the alleged damage or any costs relating to the domestic proceedings. Regarding costs referable to the Court's proceedings, in which the applicant took no part, he had not specified any figure).

Cited: H v F (24.10.1989), Santilli v I (19.2.1991).

Pullar v United Kingdom (1996) 22 EHRR 391 96/22

[Application lodged 26.5.1993; Commission report 11.1.1995; Court Judgment 10.6.1996]

Mr Robert Pullar had been an elected member of Tayside Regional Council. On 13 July 1992 he and another member of the Council were brought before the Perth Sheriff Court for trial on a charge under the Public Bodies Corrupt Practices Act 1889. It was alleged that they had offered, in

exchange for money, to vote for and to use their influence on the Council in favour of an application for planning permission made by Mr John McLaren, a partner in a firm of architects, and Mr Alastair Cormack, a partner in a firm of quantity surveyors. The latter two were the key prosecution witnesses. One of the members of the public selected for the jury at Mr Pullar's trial was Mr Brian Forsyth, a junior employee in Mr McLaren's firm. He had started working there on 30 April 1990 and had been given notice of redundancy on 10 July 1992 to take effect on 7 August 1992. On 17 July 1992 both defendants were convicted by a majority of the 15 jurors. On 6 August 1992 they were sentenced to 12 months' imprisonment and found incapable of holding any public office for five years from the date of conviction. Mr Pullar's lawyers became aware of the connection between Mr Forsyth and Mr McLaren after the verdict and appealed. The High Court of Justiciary dismissed the appeal on 26 February 1993. The applicant complained that his case was not heard by an independent and impartial tribunal and also that a statement of Mr McLaren prepared by the prosecution before the hearing of the appeal, was produced to the High Court of Justiciary without his being afforded the opportunity to test its veracity by examination or cross-examination.

Comm found unanimously V 6(1), by majority (12–1) not necessary to consider 6(3)(d).

Court found by majority (5–4) NV 6(1) in relation to the composition of the jury, unanimously NV 6(1)+6(3)(d) in relation to the witness evidence produced to the High Court of Justiciary.

Judges: Mr R Ryssdal (pd), President, Mr F Gölcüklü, Mr A Spielmann (pd), Mr N Valticos, Sir John Freeland, Mr MA Lopes Rocha (pd), Mr L Wildhaber, Mr J Makarczyk (pd), Mr K Jungwiert.

The case concerned the determination of a 'criminal charge', and A 6(1) was therefore applicable. The jury which convicted the applicant formed part of a tribunal within the meaning of A 6(1). There were two aspects to the requirement of impartiality in A 6(1): first, the tribunal had to be subjectively impartial, that is, no member of the tribunal should hold any personal prejudice or bias. Personal impartiality was to be presumed unless there was evidence to the contrary. Secondly, the tribunal also had to be impartial from an objective viewpoint, that is, it had to offer sufficient guarantees to exclude any legitimate doubt in that respect. The view taken by the accused with regard to the impartiality of the tribunal could not be regarded as conclusive. What was decisive was whether his doubts could be held to be objectively justified. The principle of impartiality was an important element in support of the confidence which the courts must inspire in a democratic society. However, it did not necessarily follow from the fact that a member of a tribunal had some personal knowledge of one of the witnesses in a case that he would be prejudiced in favour of that person's testimony. In each individual case it had to be decided whether the familiarity in question was of such a nature and degree as to indicate a lack of impartiality on the part of the tribunal. On the facts (juror was a junior employee, had not worked on the project which was subject to the accusations and had been given notice of redundancy three days before the start of the trial), it was not clear that an objective observer would conclude that the juror would have been more inclined to believe Mr McLaren rather than the witnesses for the defence. In addition, the tribunal offered a number of important safeguards. Mr Forsyth was only one of 15 jurors, all of whom were selected at random from amongst the local population. The sheriff gave the jury directions to the effect that they should dispassionately assess the credibility of all the witnesses before them, and all of the jurors took an oath to a similar effect. Against that background, the applicant's misgivings about the impartiality of the tribunal which tried him could not be regarded as being objectively justified. There had therefore been no violation of A 6(1) in that regard.

The guarantees in A 6(3) were specific aspects of the right to a fair trial set forth in A 6(1). For that reason, it was appropriate to examine that complaint under the two provisions taken together. Although the High Court did not hear Mr McLaren in person, he should, for the purposes of A 6(3)(d), be regarded as a witness – a term to be given an autonomous interpretation – because his written statement was produced to the court, which took account of it. Mr McLaren's statement was not taken by the prosecuting authorities with the intention of placing it before the High Court. That step was only taken when it became apparent that the

information contained in it might be helpful to the judges hearing the applicant's appeal. A number of courses of action were open to the applicant's counsel when the statement was produced. However, his counsel chose, at the material time, not to take any step to prevent the statement being accepted at face value by the High Court. In those circumstances, it could not be said that the applicant was denied his rights under A 6(3)(d) as a consequence of the manner in which the appeal hearing was conducted. Accordingly, there had been no violation of A 6(1) and (3)(d) taken together.

Cited: Artner v A (28.8.1992), Fey v A (24.2.1993), Holm v S (25.11.1993), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Remli v F (23.4.1996), Sramek v A (22.10.1984), Stanford v UK (23.2.1994).

Punzelt v Czech Republic 00/129

[Application lodged 25.3.1993; Court Judgment 25.4.2000]

Mr Siegfried Punzelt, a German national, was wanted in Germany for fraud and forgery. On 10 December 1992 the Czech authorities took the applicant into custody with a view to his extradition to Germany. In April 1993, he was charged by the Czech authorities with fraud and remanded in custody. His detention was prolonged and his requests for release were rejected. On 10 January 1995 the City Court convicted the applicant of fraud and sentenced him to eight years' imprisonment and to expulsion from the Czech Republic. He appealed, and on 15 March 1995 the Court of Cassation quashed the conviction. On 16 January 1996 the City Court delivered a new judgment in which it again convicted the applicant of fraud. Having regard to the applicant's age and state of health, the City Court reduced the prison sentence and ordered the applicant's deportation from the Czech Republic. The applicant complained of the length of detention on remand.

Court found unanimously V 5(3) on account of the length of the applicant's detention on remand, NV 5(3) on account of the refusal to release the applicant on bail, NV 6(1).

Judges: Mr J-P Costa, President, Mr L Loucaides, Mr P Kûris, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mrs HS Greve.

The applicant's detention lasted from 23 April 1993, when he was remanded in custody, to 10 January 1995, the delivery of the first City Court's judgment. However, the Court could also examine the applicant's detention on remand between 15 March 1995 when the Court of Cassation quashed the first judgment delivered by the City Court and 16 January 1996, when the City Court delivered its second judgment. Accordingly, the detention to be taken into consideration lasted 2 years, 6 months and 18 days. The reasonableness of the length of detention had to be assessed in each case according to its special features. Continued detention might be justified in a given case only if there were clear indications of a genuine public interest which, notwithstanding the presumption of innocence, outweighed the right to liberty. It fell in the first place to the national judicial authorities to examine the circumstances for or against the existence of such an imperative interest, and to set them out in their decisions on the applications for release. It was essentially on the basis of the reasons given in those decisions, and of the facts established by the applicant in his appeals, that the Court was called upon to decide whether or not there had been a violation of A 5(3). The domestic courts relied on the seriousness of the charges, the danger that the proceedings would be obstructed if the applicant were released owing to his probable extradition to Germany in connection with other criminal proceedings, and the risk of his absconding and committing further offences as grounds for his continued detention. The Czech courts noted, in particular, that the applicant had earlier absconded from the criminal proceedings in Germany, that he had numerous business contacts abroad and that he risked a relatively heavy penalty. That reasoning was sufficient and relevant and outweighed the arguments put forward by the applicant. It was not therefore necessary to examine the other grounds for the applicant's detention relied on by the domestic courts. However, in the light of the delays and adjournment by the City Court, special diligence was not displayed in the conduct of the proceedings. Accordingly, there had been a violation of A 5 (3) as a result of the length of the applicant's detention on remand.

Neither the repeated refusal of release on bail nor the eventual imposition of a security of CZK 30,000,000, given the scale of the applicant's financial transactions, infringed the applicant's rights under A 5(3). If the applicant had been granted bail, he would in any case have been redetained pending his extradition to Germany, any security paid would have had to be returned to him, and he could not have been extradited before the Czech proceedings had ended. Against that background, there had been no violation of A 5(3) as a result of the refusal to release the applicant on bail.

The criminal proceedings against the applicant were brought on 14 April 1993, when he was accused of fraud, and ended on 31 July 1996, when the Court of Cassation delivered the final decision. Accordingly, the period to be taken into consideration lasted three years, three months and 17 days. The reasonableness of the length of proceedings was to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities. The case was not particularly complex. The applicant contributed to the length of the proceedings. There was no substantial period of inactivity for which the authorities could be held responsible. During the period under consideration, the case was examined twice by courts at two levels of jurisdiction. The hearings were held at reasonable intervals and adjourned only when it was necessary to obtain further evidence. The reasonable time requirement set out in A 6(1) and that contained in A 5(3) were to be distinguished from each other. Having regard to the circumstances of the case as a whole, the proceedings did not last an unreasonably long time. Accordingly, there had been no violation of A 6(1).

Non-pecuniary damage (DM 10,000), costs and expenses (DM 10,000).

Cited: Assenov v BG (28.10.1998), B v A (28.3.1990), Muller v F (17.3.1997), Neumeister v A (27.6.1968), Nikolova v BG (25.3.1999), Pélissier and Sassi v F (25.3.1999), Stögmüller v A (10.11.1969), W v CH (26.1.1993).

Pupillo v Italy 00/63

[Application lodged 3.5.1994; Court Judgment 8.2.2000]

Mr Vittorio Pupillo complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mrs E Palm, President, Mr B Conforti, Mr L Ferrari Bravo, Mr Gaukur Jörundsson, Mr B Zupancic, Mr T Pantîru, Mr R Maruste.

The period to be taken into consideration began on 15 June 1983 and ended on 20 April 1995. It had lasted more than 11 years and 10 months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage, costs and expenses (ITL 13,000,000).

Cited: Bottazzi v I (28.7.1999).

Putz v Austria 96/10

[Application lodged 23.9.1991; Commission report 11.10.1994; Court Judgment 22.2.1996]

Mr Wilhelm Putz, who was the manager of several commercial companies, was prosecuted in 1985 for, among other things, bankruptcy. During the proceedings the Wels Regional Court imposed several pecuniary penalties on him for disrupting court proceedings. His appeal to the Linz Court of Appeal was declared inadmissible as no appeal lay against the imposition of pecuniary penalties. On 25 February 1992 an appeal brought by the applicant against the Linz Court of Appeal's decision was declared inadmissible by the Supreme Court. He complained that he had had neither a fair hearing by an impartial tribunal nor any effective remedy in respect of the decisions of the Austrian courts whereby pecuniary penalties had been imposed on him for disrupting court proceedings.

Comm found by majority (10–6) V 6(1) and 6(3), unanimously not necessary to consider 13.

Court found by majority (7–2) A 6 not applicable to pecuniary penalties imposed on the applicant and accordingly NV 6, 13 NA and accordingly no breach of it.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr F Gölcüklü, Mr F Matscher, Mr J De Meyer (d), Mr AN Loizou, Mr D Gotchev, Mr K Jungwiert (d), Mr P Kûris.

In order to determine whether A 6 was applicable under its 'criminal' head, the Court had regard to the three alternative criteria laid down in its case-law. Regarding the legal classification of the offence in Austrian law, there was nothing to show that in the national legal system the provisions covering disruptions of court proceedings belonged to criminal law. Regarding the nature of the offence, the kind of proscribed conduct for which the applicant was fined in principle fell outside the ambit of A 6. The courts might need to respond to such conduct even if it was neither necessary nor practicable to bring a criminal charge against the person concerned. Regarding the nature and degree of severity of the penalty, the Code of Criminal Procedure concerning responsibility for keeping order at hearings provided for the imposition of a fine not exceeding ATS 10,000 or, where essential for maintaining order, a custodial sentence not exceeding eight days. The applicant was sentenced to pay fines of ATS 5,000, 7,500 and 10,000. Two of them were converted into prison sentences, but after payment the applicant did not have to serve these. Under the law, the fines were not entered in the criminal record, the court could only convert them into prison sentences if they were unpaid, and an appeal lay against such decisions, as it did against immediate custodial sentences, the term of imprisonment into which a fine could be converted could not exceed ten days. The penalties were designed to enable the courts to ensure the proper conduct of court proceedings. What was at stake for the applicant was not sufficiently important to warrant classifying the offences as 'criminal'. Therefore A 6 did not apply to the matters complained of and there had therefore been no breach of it.

A 13 guaranteed the availability of a remedy at national level to allege non-compliance with the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. In the present case, however, the Court had held that there was no 'criminal charge' and, accordingly, that A 6 did not apply. The applicant therefore could not claim to be the victim of a breach of rights protected by that provision. Consequently, his complaint lay outside the ambit of A 13.

Cited: Boyle and Rice v UK (27.4.1988), Demicoli v M (27.8.1991), Engel and Others v NL (8.6.1976), Ravnsborg v S (23.3.1994), Schmautzer v A, 23.10.1995, Weber v CH (22.5.1990).

Q

Quadrelli v Italy 00/2

[Application lodged 10.5.1995; Commission report 9.9.1998; Court Judgment 11.1.2000]

Mr Tonino Quadrelli, the applicant, was an employee of the Italian Chamber of Commerce in Madrid. He was dismissed on 29 February 1980. He challenged his dismissal first before the Spanish courts. He then challenged it before the Italian courts. He was unsuccessful and his subsequent appeals were also dismissed. He lodged an appeal on points of law and was later advised that State Counsel had submitted that it was inadmissible. He filed a submission in response but his appeal on points of law was ruled inadmissible for being lodged after the expiry of the time-limit, no reference was made to the arguments in his pleadings.

Comm found by majority (15–2) V 6(1).

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr L Ferrari Bravo, Mr G Bonello (pd), Mrs V Stráznická, Mr P Lorenzen, Mr A Baka, Mr E Levits.

The case related to a challenge to a conciliation award regarding dismissal and A 6 therefore applied. The applicant's appeal on points of law was not limited to a procedural question but also attacked the lawfulness of the decision rejecting the appeal. Even if the proceedings had been limited to a preliminary question that would not have been enough to exclude the applicability of A 6. The applicant had the right to file a pleading for the purposes of the proceedings. It did not appear that the Court of Cassation had considered the applicant's pleadings. Taking into account what was at stake for the applicant in the proceedings and the nature of the State Counsel's submissions, the failure to examine the applicant's pleading was an infringement of his right to *inter partes* proceedings. In principle, this included the right of the parties to have any documents and observations which were submitted to the court with a view to influencing its decision produced and discussed. There had therefore been a violation of A 6.

Judgment constituted sufficient just satisfaction for non-pecuniary damage (by majority 6–1), costs and expenses (unanimously ITL 10,000,000).

Cited: Artico v I (13.5.1980), JJ v NL (27.3.1998), Kraska v CH (19.4.1993), Serre v F (29.9.1999).

Quaranta v Switzerland 91/30

[Application lodged 18.12.1986; Commission report 12.2.1990; Court Judgment 24.5.1991]

Mr Claudio Quaranta, an Italian national, was born in 1962 and arrived in Switzerland at a very young age, with his parents. He was an assistant plumber. Between 1975 and 1978 he was placed in various homes for juveniles. On 10 March 1985 the applicant appeared before an investigating judge in respect of drug offences. His request for free legal assistance was rejected. On 23 August 1985 he was committed for trial. On 17 October 1985 he repeated his request for free legal assistance, but on 30 October the President of the Criminal Court refused it. The hearing began on 12 November 1985 at 2.30 pm; it lasted only 25 minutes. The applicant appeared in person without the assistance of a lawyer. No representative of the public prosecutor's office participated in the court proceedings. The main documents in the file were read out, including the committal order. The applicant answered the President's questions and added a few words in his defence. The court found the applicant guilty of taking drugs and drug trafficking and sentenced him to six months' imprisonment. In addition, as he was on probation for offences committed in 1982, the court revoked the previous order and ordered the activation of the previous sentence. Through a lawyer, whose services he paid for himself, the applicant appealed to the Court of Criminal Cassation of the Vaud Cantonal Court. On 27 January 1986 the Criminal Court of Cassation dismissed the appeal. The applicant then lodged a public-law appeal with the Federal Court and sought free legal assistance in the proceedings before that court. On 5 December 1986 the Federal Court allowed his request for free legal assistance, but dismissed the appeal. On 21 July 1987 the applicant went to prison to serve his sentence, but the High Council of the Canton of Vaud

accorded him a partial pardon by a decree of 18 November 1987. He complained that he had been the victim of A 6(3)(c).

Comm found unanimously V 6(3)(c).

Court found unanimously V 6(3)(c).

Judges: Mr R Ryssdal, President, Mrs D Bindschedler-Robert, Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr R Bernhardt, Mrs E Palm, Mr AN Loizou, Mr JM Morenilla.

The right of an accused to be given, in certain circumstances, free legal assistance constituted one aspect of the notion of a fair trial in criminal proceedings. Sub-paragraph (c) attached two conditions to that right. The lack of sufficient means to pay for legal assistance was not in dispute in the present case. On the other hand, it was necessary to determine whether the interests of justice required that the applicant be granted such assistance. Contracting States enjoyed considerable freedom in the choice of the means of ensuring that their legal system satisfied the requirements of A 6. The task of the Court was to determine whether the method chosen by them led to results which were consistent with the requirements of the Convention. In order to determine whether the interests of justice required that the applicant receive free legal assistance, the Court had regard to various criteria. Consideration had to be given to the seriousness of the offence of which the applicant was accused and the severity of the sentence which he risked. The applicant was accused of use of and traffic in narcotics and was liable to imprisonment or a fine. Under the Swiss Criminal Code, the maximum sentence was three years' imprisonment, free legal assistance should have been afforded by reason of the mere fact that so much was at stake. An additional factor was the complexity of the case. The case did not raise special difficulties as regards the establishment of the facts, which the applicant had moreover admitted immediately. However, the outcome of the trial was of considerable importance for the applicant since the alleged offence had occurred during the probationary period to which he was previously made subject. The Criminal Court therefore had both to rule on the possibility of activating the suspended sentence and to decide on a new sentence. The participation of a lawyer at the trial would have created the best conditions for the accused's defence, in particular in view of the fact that a wide range of measures was available to the Court. Such questions, which were complicated in themselves, were even more so for the applicant on account of his personal situation: a young adult of foreign origin from an underprivileged background, without a real occupational training and with a long criminal record. He had taken drugs since and, at the material time, was living with his family on social security benefit. In the circumstances of the case, his appearance in person before the investigating judge, and then before the Criminal Court, without the assistance of a lawyer, did not enable him to present his case in an adequate manner. The defect was not cured either in the Criminal Court of Cassation of the Canton of Vaud, despite the presence of a lawyer paid by the applicant, or in the Federal Court, although he was accorded free legal assistance before that court, because of the limits on the scope of the review which could be carried out by those two courts. There had therefore been a violation of A 6(3)(c).

Non-pecuniary damage (CHF 3,000), costs and expenses (CHF 7,000 less FF 10,441).

Cited: Artico v I (13.5.1980), Weber v CH (22.5.1990).

Quinci v Italy 00/47

[Application lodged 3.12.1996; Court Judgment 8.2.2000]

Mr Vincenzo Quinci complained about the length of civil proceedings which began on 6 June 1970 and finished on 14 May 1996.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr B Conforti, Mr G Ress, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mrs N Vajic.

A period of 25 years and 11 months at one level of jurisdiction, of which 22 years and nine months were after the coming into force of Italy's recognition of the right of individual petition, was not reasonable.

Non-pecuniary damage (ITL 81,000,000).

Cited: Bottazzi v I (28.7.1999).

Quinn v France (1996) 21 EHRR 529 95/8

[Application lodged 17.7.1991; Commission report 22.10.1993; Court Judgment 22.3.1995]

Mr Thomas Quinn was an American national living in Paris. He was arrested on 1 August 1988 and remanded in detention, charged with fraud, offences under the legislation on the issuing of securities and forgery of administrative documents. On 29 November, the investigating judge added to the initial charges the aggravating circumstance of fraud by a person having solicited the public for a savings scheme. His detention on remand was extended. He appealed to the Indictment Division of the Paris Court of Appeal against the order of 20 July 1989 extending his detention on remand. After holding a hearing on 2 August 1989, the Indictment Division set aside the contested order by a decision delivered in the applicant's absence at 9 am on 4 August. It directed that he should be 'released forthwith if he [was] not detained on other grounds'. The applicant was not released, however. His release was subject to the decision being notified by the public prosecutor responsible for its execution and to completion of the relevant formalities. Towards 5.30 pm on the same day, a Geneva investigating judge sent by fax to the Paris public prosecutor's office a request for the applicant's provisional arrest with a view to his extradition. It was accompanied by an international warrant issued by a Swiss judge for his arrest on charges of professional fraud and forging securities estimated at over USD 10 million. The Paris public prosecutor ordered the applicant's provisional arrest. The applicant, who was still detained in the prison, was arrested there. He was questioned by the prosecutor at around 8 pm and placed in detention with a view to extradition. His applications for release were all dismissed. He appeared before the Paris Criminal Court while in detention with a view to extradition. On 10 July 1991 he was found guilty and sentenced to imprisonment and fined. On appeal, the Paris Court of Appeal reduced his sentence. He was extradited to Switzerland on 24 September 1992 after having completed his sentence. He complained of the unlawfulness and length of his detention.

Comm found unanimously V 5(1) on account of the applicant's detention on 4 August 1989 from 9 am to 8 pm, by majority (13–4) V 5(1) on account of his detention with a view to extradition, unanimously NV 5(3).

Court found unanimously V 5(1) on account of the applicant's continued detention on 4 August 1989 and by reason of the length of the applicant's detention with a view to extradition, NV 5(3), not necessary to examine 18.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr L-E Pettiti, Mr R Macdonald, Mr SK Martens, Mr R Pekkanen, Mr AB Baka, Mr L Wildhaber, Mr B Repik.

The list of exceptions to the right to liberty secured in A 5(1) was an exhaustive one and only a narrow interpretation of those exceptions was consistent with the aim and purpose of A 5(1), namely to ensure that no one was arbitrarily deprived of his or her liberty. Some delay in executing a decision ordering the release of a detainee was understandable. However, in the instant case, the applicant remained in detention for 11 hours after the Indictment Division's decision directing that he be released 'forthwith', without that decision being notified to him or any move being made to commence its execution. His continued detention on 4 August 1989 was not covered by A 5(1)(c) and did not fall within the scope of any other of the sub-paragraphs of that provision. There had accordingly been a breach of A 5(1).

The detention with a view to extradition was in principle justified under sub-para (f) of A 5(1). A 5(1) required that the detention be 'lawful', which included the condition of compliance with a procedure prescribed by law. The national courts found that the contested detention was lawful in its initial stage and as regards its purpose. They could legitimately take account of the

requirements of international mutual assistance in the judicial field. There was no evidence to suggest that the detention pending extradition pursued an aim other than that for which it was ordered and that it was pre-trial detention in disguise. The applicant's detention with a view to extradition was unusually long. He was detained in connection with the extradition proceedings from 4 August 1989 to 10 July 1991, almost two years. Thereafter he served the sentence imposed by the Paris Court of Appeal until 24 September 1992, on which date he was surrendered to the Swiss authorities pursuant to the order. The deprivation of liberty under this A 5(1)(f) would be justified only for as long as extradition proceedings were being conducted. It followed that if such proceedings were not being prosecuted with due diligence, the detention would cease to be justified under A 5(1)(f). At the different stages of the extradition proceedings, there were delays of sufficient length to render the total duration of those proceedings excessive. The detention with a view to extradition continued until 10 July 1991, well after the adoption of the extradition order, as the applicant's surrender to the Swiss authorities was postponed, on account of the criminal proceedings conducted in France at the same time. It was not the Court's role to determine what measures the national authorities should have taken in those circumstances to ensure that the detention pending extradition, which had already exceeded a reasonable time by 24 January 1991 (the date the Prime Minister granted the Swiss authorities' request for the extradition), did not last even longer, especially in view of the fact that such detention could not be deducted from the sentence imposed in France. There had accordingly been a violation of A 5(1) on this point too.

A 5(3) referred only to para 1(c) of A 5. It did not therefore apply to detention with a view to extradition within the meaning of A 5(1)(f). The position was different with regard to the applicant's detention on remand in connection with the French proceedings from 1 August 1988 to 4 August 1989, a period of one year. In the light of the circumstances of the case, the period was not excessive. In particular, there was no negligence on the part of the authorities, who acted with the necessary promptness. There had therefore been no violation of A 5(3).

Having found there was no evidence to substantiate the claim of an abuse of procedure, the Court did not consider it necessary to examine the same facts from the point of view of A 18.

Non-pecuniary damage (FF 60,000), costs and expenses (FF 150,000).

Cited: De Wilde, Ooms and Versyp v B (18.6.1971), Van der Leer v NL (21.2.1990), Wassink v NL (27.9.1990).

R

R v Italy 99/111

[Application lodged 13.11.1997; Court Judgment 14.12.1999]

The applicant complained of the length of civil proceedings which had started on 2 October 1992 and finished on 21 May 1998.

Court found by majority V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mrs M Tsatsa-Nikolovska, Mr A Baka.

The proceedings had lasted more than five years and seven months at one level of jurisdiction and could not be considered to be reasonable.

Non-pecuniary damage (ITL 3,000,000), costs and expenses (ITL 1,841,840).

Cited: Bottazzi v I (28.7.1999).

R v Italy 00/36

[Application lodged 19.11.1997; Court Judgment 25.1.2000]

The applicant complained of the length of civil proceedings, which commenced on 6 February 1982 and continued to 28 January 1999.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The proceedings had lasted 16 years and 11 months at one level of jurisdiction and could not be considered to be reasonable.

Pecuniary and non-pecuniary damage (ITL 50,000,000), costs and expenses (ITL 3,500,000).

Cited: Bottazzi v I (28.7.1999).

R v United Kingdom (1988) 10 EHRR 74 87/16

[Application lodged 28.4.1983; Commission report 4.12.1985; Court Judgment 8.7.1987 (merits), 9.6.1988 (A 50)]

The applicant, had two children, A, born on 29 August 1979, and J, born on 9 October 1980. Following assaults from her partner, Mr B, her child A was put on an 'at-risk register' in 1979. Because of the violent and criminal conduct of Mr B and her circumstances, the applicant, on the advice of the Social Services, placed A in voluntary care with short-term foster parents employed by its Social Services Department. A was returned home in November, but the situation with Mr B did not improve. During a period in hospital in February 1981, the applicant and Mr B decided that since he was incapable of looking after the children, they should be put into the voluntary care of the local authority, which placed them with foster parents. The applicant moved into a women's refuge. Following a case conference held in March 1981, in the absence of the applicant, who had not been informed of the meeting, the Authority decided to place J, in addition to A, on the 'at-risk register' in view of the uncertainty of the family's position. On 26 March, A and J were discharged from care and went to live with the applicant at the refuge. During a discussion on 2 April 1981, the two social workers responsible for the case agreed that an application should be made to assume the applicant's parental rights. The applicant was not contacted by the authority in respect of this discussion. On 10 August 1981, Mr B got drunk and broke into a safe in a hospital where he and the applicant had started voluntary work. They were both subsequently arrested and charged. On 14 September the applicant was sentenced to six months' imprisonment which, on 9 October, following an appeal to the Crown Court, was reduced to probation. Mr B was imprisoned until June 1982, and there was no further contact between him and the applicant. At a case conference on 25 August 1981, the authority took the contingent decision that if the parental rights resolution

did not lapse, because the applicant either withdrew her objection or failed in challenging it before the juvenile court, her access to A and J would be stopped and they would be placed for adoption with long-term foster parents. The applicant was not notified of the conference or its outcome and the fact that this decision was taken was only revealed subsequently. On 29 September 1981 she withdrew her objection to the parental rights resolution. On her release from prison on 9 October, the applicant asked to see her children but was refused. The children were placed with long-term foster parents in December. The applicant, who had last seen A and J on 13 September 1981, did not see them again until April 1986. Her further application to the juvenile court for the discharge of the parental rights resolution was rejected and her appeal to the High Court was dismissed. The applicant complained about various aspects of the Authority's decisions concerning A and J and the absence of any remedy for challenging those decisions before a court.

Comm found by majority (12–3) V 6(1) in that the applicant was denied access to court for the determination of her civil right of access to A and J, unanimously V 8 in that the procedures which were applied in reaching the decisions to terminate the applicant's access to A and J did not respect her family life, by majority (12–2 with one abstention) no separate issue under 13.

Court found unanimously V 8, V 6(1), not necessary to examine 13.

Judges (merits and A 50 (unanimous)): Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr G Lagergren (jo), Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha (jo), Mr L-E Pettiti (jo), Mr B Walsh, Sir Vincent Evans, Mr R Macdonald (jo), Mr C Russo, Mr R Bernhardt, Mr J Gersing (c), Mr A Spielmann, Mr J De Meyer (jo/so), Mr N Valticos (jo).

The present judgment was not concerned with the merits of the judicial or local authority decisions regarding the applicant's children. The scope of the case before the Court was delimited by the Commission's decision on admissibility. The Court was not in the circumstances competent to examine or comment on the justification for such matters as the taking of the children into public care or the restriction or termination of the applicant's access to them.

The exercise of parental rights and the mutual enjoyment by parent and child of each other's company constituted fundamental elements of family life. The natural family relationship was not terminated by reason of the fact that the child was taken into public care. The Authority's decisions resulting from the procedures at issue amounted to interferences with the applicant's right to respect for her family life. The Authority's decisions were in accordance with the law and pursued a legitimate aim, namely the protection of health or of the rights and freedoms of others. The authorities were allowed a measure of discretion in this area. Predominant in the consideration of the case had to be the fact that the decisions might prove to be irreversible. The relevant considerations to be weighed by a local authority in reaching decisions on children in its care had to include the views and interests of the natural parents. What had to be determined was whether, having regard to the particular circumstances of the case and the serious nature of the decisions to be taken, the parents had been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests. If they had not, there would have been a failure to respect their family life and the interference resulting from the decision would not be capable of being regarded as 'necessary' within the meaning of A 8. The evidence revealed an insufficient involvement of the applicant in the authority's decision-making process. The decisions of April and of August 1981 were crucial for the future of A and J, in that the former altered the whole basis of the relationship between them, their mother and the authority and the latter could have been a stepping-stone on the road to the children's possible adoption. They were thus decisions in which the applicant should have been closely involved if she was to be afforded the requisite consideration of her views and protection of her interests. There was no reason for not involving the applicant more closely in the April 1981 decision. With regard to the decision of August 1981, she had been involved in the incident concerning the theft from the hospital safe, although she had been released on bail. In addition the decision was only contingent, depending on the outcome of the applicant's challenge to the parental rights resolution. There had been a delay in advising her of the decision which could have affected the decision on whether to

withdraw her objection to the resolution. The delays in the subsequent court proceedings were relevant but subsidiary, factors. In the circumstances and notwithstanding the UK's margin of appreciation in this area, there had been a violation of A 8.

Regarding the applicability of A 6, it could be said, at least on arguable grounds, that even after the adoption of the parental rights resolution the applicant could claim a right in regard to her access to A and J. There was clearly a dispute between the applicant and the authority on the access question. The parental right of access was a civil right. A 6(1) was therefore applicable in the present case. There would be no possibility of a determination in accordance with the requirements of A 6(1) of the parent's right in regard to access, unless he or she could have the local authority's decision reviewed by a tribunal having jurisdiction to examine the merits of the matter. It did not appear from the material supplied by the Government (applying for judicial review or of instituting wardship proceedings) or otherwise available to the Court that the powers of the English courts were of sufficient scope to satisfy fully this requirement during the currency of the parental rights resolution. There was accordingly a violation of A 6(1).

Having regard to the decision on A 6(1) it was not necessary to examine the case under A 13 as its requirements were less strict than, and were here absorbed by, those of A 6(1).

Non-pecuniary damage (GBP 8,000). Claim for costs and expenses struck out of list following friendly settlement between the Government and applicant (GBP 6,007.91 less amounts received from Council of Europe by way of legal aid).

Cited: Gillow v UK (24.11.1986), Johnston and Others v IRL (18.12.1986), Leander v S (26.3.1987), Lithgow and Others v UK (8.7.1986), Malone v UK (2.8.1984), Marckx v B (13.6.1979), Sporrong and Lönnroth v S (23.9.1982).

RMD v Switzerland (1999) 28 EHRR 224 97/74

[Application lodged 26.3.1992; Commission report 11.4.1996; Court Judgment 26.9.1997]

Mr RMD, the applicant, was arrested at the request of the Willisau district authority (Canton of Lucerne) and held in custody at Uster (Canton of Zürich) on 13 January 1992. Being suspected of having committed offences in several cantons, he was successively detained in the cantons of Zürich, Lucerne, Berne, Glarus, St Gall, Schwyz, Zürich, Aargau and Zürich again in connection with the procedure for 'amalgamation' of judicial investigations, before ultimately being released on 13 March 1992. His counsel made a number of unsuccessful applications to the various cantons for his release. On 23 January 1992 his counsel appealed to the Lucerne Court of Appeal against the detention order issued on 17 January and applied for his client's immediate release. On 27 January 1992 the Lucerne Court of Appeal struck out the appeal on the ground that it had become devoid of purpose because, as the applicant had been transferred on 21 January to Aarwangen and on 24 January to Glarus, the detention order made on 17 January had lapsed. On 31 January 1992 his counsel lodged a public-law appeal with the Swiss Federal Court against the judgment of the Lucerne Court of Appeal. That appeal was dismissed on 12 February 1992 as, when the applicant had lodged his appeal, he was no longer in detention in the Canton of Lucerne. The applicant complained that the failure by the Lucerne Court of Appeal and the Swiss Federal Court to consider the merits of his appeal against detention pending trial had infringed A 5(4).

Comm found unanimously V 5(4).

Court unanimously dismissed the Government's preliminary objection, found V 5(4).

Judges: Mr R Bernhardt, President, Mr L-E Pettiti (c), Mr N Valticos (c), Mrs E Palm, Mr I Foighel, Mr AB Baka, Mr MA Lopes Rocha, Mr L Wildhaber, Mr K Jungwiert.

The Government's preliminary objection of exhaustion of domestic remedies and the merits of the applicant's complaint under A 5(4) were closely linked and consequently were joined in the Court's consideration of the case.

The question whether a person's right under A 5(4) to obtain a speedy court decision on the lawfulness of his detention has been respected has to be determined in the light of the circumstances of each case. The applicant had been detained for two months in seven different

cantons. The Lucerne Court of Appeal had struck out the appeal and the Federal Court had dismissed the applicant's appeal. The applicant was unable in those proceedings to obtain a decision on the lawfulness of his detention. He had therefore exhausted domestic remedies since, in the appeal to the Federal Court, his counsel referred to A 5(4) and asked the Federal Court to direct the Lucerne Court of Appeal to order his client's immediate release. The applicant could not be criticised for failing to take all possible steps he had not already taken in the various cantons where he was held in order to obtain a ruling on his pre-trial detention. In that connection, realistic account had to be taken not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the context in which they operated and the personal circumstances of the applicant. The applicant was in a position of great legal uncertainty. In the light of the procedure for 'amalgamating' the proceedings against him, he had to expect to be transferred from one canton to another at any moment, in which eventuality the courts of the transferring canton no longer had jurisdiction to decide the lawfulness of his detention; that rendered any remedy ineffective. He could have applied for release in the cantons of Glarus, St Gall and Aargau, where he was detained for 11, 18 and 10 days respectively. However, he was at that time still waiting for the judgment of the Lucerne Court of Appeal and of the Federal Court, and he was expecting to be transferred to another canton at any moment. Regard being had to the time that such applications took, to the practical difficulties that persons held in custody might encounter in arranging effective representation and to the resulting feeling of helplessness, the applicant could not be blamed for failing to avail himself of those remedies. With regard to the Government's submission of pursuing an action in damages, the right to a speedy decision on the lawfulness of detention was to be distinguished from the right to receive compensation for such detention. The problem was not that remedies were unavailable in each of the cantons, but that they were ineffective in the applicant's particular situation. Having been successively transferred from one canton to another, he was unable, owing to the limits of the cantonal courts' jurisdiction, to obtain a decision on his detention from a court, as he was entitled to do under A 5(4). The explanation lay in the federal structure of the Swiss Confederation, in which each canton had its own code of criminal procedure, and it was not for the Court to express a view on the system as such. However, those circumstances could not justify the applicant being deprived of his rights under A 5(4). Where a detained person was continually transferred from one canton to another, it was for the State to organise its judicial system in such a way as to enable its courts to comply with the requirements of that Article. Therefore the Government's preliminary objection was dismissed and on the merits there had been a violation of A 5(4).

Non-pecuniary damage (CHF 5,000), costs and expenses (CHF 15,000).

Cited: Artico v I (13.5.1980), Beis v GR (20.3.1997), Navarra v F (23.11.1993), Sanchez-Reisse v CH (21.10.1986).

Radio ABC v Austria (1998) 25 EHRR 185 97/78

[Application lodged 30.12.1991; Commission report 11.4.1996; Court Judgment 20.10.1997]

Radio ABC was a non-profit-making association whose registered address was in Vienna. On 28 August 1989 it applied to the Post and Telecommunications Regional Head Office for Vienna, Lower Austria and Burgenland for a licence to set up and operate a radio station and for allocation of a frequency on which it could broadcast programmes to the Vienna region. On 9 January 1990 the Regional Head Office refused the application as activities of that type had to be authorised by federal legislation, and such legislation had been enacted only in respect of the Austrian Broadcasting Corporation. The National Head Office dismissed his appeal on 25 September 1990 and the Constitutional Court refused to consider the application. After the entry into force, on 1 January 1994, of the Regional Broadcasting Law, the applicant association lodged further applications which were also refused. The applicant association complained that the refusal to grant it an operating licence constituted an unjustified interference with its right to impart information and was in breach of A 10 of the Convention.

Comm found unanimously V 10.

Court found unanimously V 10.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr N Valticos, Sir John Freeland, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr K Jungwiert, Mr P Kûris.

The restriction complained of amounted to an 'interference' with the applicant association's exercise of its freedom to impart information and ideas. The interference complained of was prescribed by law. Its aim had already been held by the Court to be a legitimate one; through the supervisory powers over the media it conferred on the authorities, the monopoly system operated in Austria was capable of contributing to the quality and balance of programmes and was consistent with the third sentence of para 1 of A 10. In assessing the need for an interference, the Contracting States enjoyed a margin of appreciation, but that margin went hand in hand with European supervision. In the first period (from the application to the Post and Telecommunications Regional Head Office on 28 August 1989 to the entry into force of the Regional Broadcasting Law on 1 January 1994) there was no legal basis whereby an operating licence could be granted to any station other than the Austrian Broadcasting Corporation. Accordingly, there was a breach of A 10 during the period in question. In the second period (from the entry into force of the Regional Broadcasting Law on 1 January 1994 to the Constitutional Court's judgment declaring certain provisions of that Law null and void on 27 September 1995), the judgment had put the applicant association back in the legal situation which had obtained before the law's entry into force, thus prolonging the violation of A 10 already found in connection with the first period. In the third period (from the Constitutional Court's judgment on 27 September 1995 to the entry into force of the amendments to the new Regional Broadcasting Law on 1 May 1997), the judgment not only invalidated the decisions refusing the applicant association's applications, it also prevented any further application of the Regional Broadcasting Law pending the entry into force of the amendments. Accordingly, the violation of A 10 already found in connection with the first two periods continued during the third. Regarding the fourth period (since the entry into force of the amendments to the Regional Broadcasting Law on 1 May 1997), as the amended version of the Regional Broadcasting Law had not yet been applied to the applicant association, which had not submitted a licence application either, the Court was not required to rule on that fourth period. In conclusion, there had been a breach of A 10.

Pecuniary damage not awarded on grounds of being speculative. Costs and expenses (ATS 200,000).

Cited: Informationsverein Lentia and Others v A (24.11.1993), Nideröst-Huber v CH (18.2.1997), Observer and Guardian v UK (26.11.1991), Silver and Others v UK (25.3.1983).

Raglione v Italy 00/51

[Application lodged 25.2.1997; Court Judgment 8.2.2000]

Mr Giulio Raglione complained of the length of proceedings before the Audit Court.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska.

The proceedings had lasted 16 years and seven months at one level of jurisdiction and could not be considered to be reasonable.

Pecuniary and non-pecuniary damage (ITL 52,500,000), costs and expenses (ITL 4,000,000).

Cited: Bottazzi v I (28.7.1999).

Raimondo v Italy (1994) 18 EHRR 237 94/3

[Application lodged 23.4.1987; Commission report 21.10.1992; Court Judgment 22.2.1994]

Mr Giuseppe Raimondo was a building entrepreneur. Criminal proceedings were brought against him as he was suspected of belonging to a mafia-type organisation operating in the Soverato region. On 24 July 1984 the Catanzaro Public Prosecutor issued a warrant for his arrest, he gave

himself up to the authorities on 7 November 1984 and was immediately remanded in custody. The investigation was closed on 24 July 1985 and he was committed for trial in the District Court. His detention on remand was replaced by house arrest. On 30 January 1986 the District Court acquitted the applicant on the ground of insufficient evidence and revoked the order placing him under house arrest. Following appeal, on 16 January 1987 the Catanzaro Court of Appeal acquitted the applicant on the ground that the material facts of the offence had not been established. At the same time various preventive measures were taken concerning him. On 16 January 1985 the Catanzaro Public Prosecutor applied to the District Court for an order placing the applicant under special police supervision and for the preventive seizure of a number of assets with a view to their possible confiscation. On 13 May 1985 the District Court ordered the seizure of 16 items of real property (10 plots of land and six buildings) and of six vehicles, all of which appeared to be at the applicant's disposal. The measure was entered in the relevant public registers on 15 May 1985. On 16 October the District Court revoked the seizure of certain property belonging to third parties but ordered the confiscation of some of the buildings seized and four vehicles. The confiscation was recorded in the register on 9 November 1985. The applicant was placed under special police supervision, which however did not become effective until 30 January 1986, the day on which he was acquitted by the District Court; he had to provide security in respect of supervision conditions. On an appeal by the applicant, the Catanzaro Court of Appeal on 4 July 1986 annulled the special supervision measure and ordered the restitution of the security and the property seized and confiscated. The decision was filed with the registry on 2 December 1986 and signed by the relevant official of the prosecuting authority on 10 December. The applicant was informed on 20 December. The decision became final on 31 December 1986. The revocation of the seizure of the real property and of the confiscation of the vehicles was entered in the relevant registers on 2 February (real property), 10 February (two cars and a van) and 10 July 1987 (a lorry). The security was returned to the applicant on 24 April 1987. Regarding the real property that had been confiscated, the applications for the entry in the register of the revocation of the measure were dated 9 August 1991. The applicant complained, *inter alia*, of the length of various proceedings concerning him, an interference with his property resulting from the seizure and confiscation of certain of his possessions and the fact that he had been deprived of his right to freedom of movement.

Comm found by majority NV P1A1 with regard to the seizure (18–1) and the confiscation (16–3) of the applicant's property up to 31 December 1986 and on account of the damage occasioned by the administration of the seized and confiscated assets until that date (18–1), unanimously V P1A1 in so far as the confiscation of nine items of real property and one lorry had continued to take effect after 31 December 1986, unanimously V P4A2 inasmuch as the applicant had been deprived of his right to freedom of movement from 4 July to 20 December 1986, NV 6(1) as regards the length of the proceedings relating to the seizure and confiscation.

Court found unanimously NV P1A1 either in respect of the seizure and confiscation of the applicant's property up to 31 December 1986 or in respect of the damage occasioned by those measures, V P1A1 inasmuch as the confiscation, on 16 October 1985, of a lorry and nine items of real property remained entered in the relevant registers after 31 December 1986, NV P1A1 in respect of other matters, V P4A2 in so far as the special police supervision of the applicant continued after 2 December 1986, 6 not applicable to the special supervision, NV 6 as regards the length of the confiscation proceedings.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr F Matscher, Mr C Russo, Mrs E Palm, Mr I Foighel, Mr F Bigi, Mr L Wildhaber, Mr D Gotchev.

There had been an interference with the applicant's right to peaceful enjoyment of his possessions. The seizure was provided for in legislation and did not purport to deprive the applicant of his possessions, but only to prevent him from using them. It was therefore the second paragraph of P1A1 which was relevant. Seizure under relevant domestic measure was a provisional measure intended to ensure that property which appeared to be the fruit of unlawful activities carried out to the detriment of the community could subsequently be confiscated if necessary. The measure was therefore justified by the general interest and, in view of the extremely dangerous economic power of an organisation like the Mafia, it could not be said that taking it at that stage of the

proceedings was disproportionate to the aim pursued. Accordingly no violation of P1A1 had been established on that point.

The confiscation pursued an aim that was in the general interest, namely, it sought to ensure that the use of the property in question did not procure for the applicant, or the criminal organisation, advantages to the detriment of the community. Confiscation, which was designed to block movements of suspect capital, was an effective and necessary weapon in the combat against crime. It therefore appeared proportionate to the aim pursued, all the more so as it entailed no additional restriction in relation to seizure. The preventive purpose of confiscation justified its immediate application notwithstanding any appeal. The respondent State did not therefore overstep the margin of appreciation left to it under the second paragraph of P1A1. Any seizure or confiscation inevitably entailed damage. The applicant's allegations did not provide a sufficiently clear basis for examining whether the actual damage sustained in the present case exceeded such inevitable damage. Therefore no violation of P1A1 had been established.

The possessions in question were returned to the applicant on 2 February 1987, two months after the Court of Appeal's decision was filed with the registry. No interference occurred in relation to the real property seized on 13 May 1985 and three of the vehicles confiscated on 16 October 1985, as the requisite entries were made rapidly, on 2 and 10 February 1987. However, there was an interference as regards the lorry and the nine items of real property confiscated on 16 October 1985 inasmuch as the entry concerning the lorry was not made until 10 July 1987 and that concerning the real property not until after 9 August 1991. It was not for the Court to determine who should have taken the appropriate steps in this case, however the responsibility of the public authorities was engaged. There had been delays of more than seven months and of four years and eight months before regularising the legal status of some of the applicant's possessions. That interference was neither provided for by law nor necessary to control the use of property in accordance with the general interest within the meaning of P1A1. Accordingly, there had been a violation of that provision.

The special police supervision did not amount to a deprivation of liberty within the meaning of A 5. The restrictions on the liberty of movement resulting from special supervision fell to be dealt P4A2. In view of the threat posed by the Mafia to democratic society, the measure was necessary for the maintenance of public order and for the prevention of crime. It was in particular proportionate to the aim pursued, up to the moment at which the Catanzaro Court of Appeal decided, on 4 July 1986, to revoke it. Even if the decision could not acquire legal force until it was filed with the registry, there was a delay of nearly five months in drafting the grounds for a decision which was immediately enforceable and concerned a fundamental right, namely the applicant's freedom to come and go as he pleased and the applicant was moreover not informed of the revocation for 18 days. Therefore, at least from 2 to 20 December 1986, the interference in issue was neither provided for by law nor necessary. There had accordingly been a violation of P4A2.

With regard to the length of the proceedings relating to the appeal against the confiscation and the special supervision, the period to be taken into consideration began on 16 October 1985, the date on which the Catanzaro District Court ordered the measures in question and ended on 31 December 1986, when the decision of the Court of Appeal became final. It therefore lasted one year, two months and two weeks. Special supervision was not comparable to a criminal sanction because it was designed to prevent the commission of offences. It followed that proceedings concerning it did not involve 'the determination of a criminal charge'. Regarding the confiscation, A 6 applied to any action whose subject matter was pecuniary in nature and which was founded on an alleged infringement of rights that were likewise of a pecuniary character. That was the position in the instant case. Having regard to the fact that the case came before two domestic courts, the Court did not consider the total length of the proceedings to have been unreasonable. It followed that there had been no violation of A 6.

Non-pecuniary damage (ITL 10,000,000), costs and expenses (ITL 5,000,000).

Cited: AGOSI v UK (24.10.1986), Editions Périscope v F (26.3.1992), Guzzardi v I [6.11.1980], Handyside v UK (7.12.1976), Salerno v I (12.10.1992).

Rando v Italy 00/80

[Application lodged 20.1.1997; Commission report 27.10.1998; Court Judgment 15.2.2000]

Mr Rosario Rando complained of the length of civil proceedings. The Committee of Ministers had already found a violation of A 6(1) in a previous case in respect of the period from 26 November 1982 to 29 October 1994. The proceedings in this case began on 30 October 1994 and continued to 15 March 1999.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr L Ferrari Bravo, Mr G Bonello, Mrs M Tsatsa-Nikolovska, Mr P Lorenzen, Mr AB Baka, Mr E Levits.

The proceedings had lasted four years and four months at one level of jurisdiction and could not be considered to be reasonable.

Non-pecuniary damage (ITL 12,000,000), costs and expenses (ITL 2,619,500).

Cited: Bottazzi v I (28.7.1999)

Raninen v Finland (1998) 26 EHRR 563 97/76

[Application lodged 11.11.1992; Commission report 24.10.1996; Court Judgment 16.12.1997]

Mr Kaj Raninen was called up for military service but objected to performing any kind of military or substitute civilian service. As a consequence he was arrested, detained on remand, prosecuted and sentenced to imprisonment on several occasions. On 5 October 1992 he was discharged from his military service for one year. On 16 February 1993 the applicant lodged a petition with the Parliamentary Ombudsman complaining in particular about the deprivation of his liberty and his handcuffing while being transported to the prison. The Ombudsman considered that the applicant's arrest on 18 June 1992 had lacked a legal basis. He complained of the deprivation of his liberty and treatment by the authorities.

Comm found by majority (20–10) V 3, (23–7) no separate issue under 8, unanimously V 5(1) and no separate issue under 5(2).

Court by majority (6–3) dismissed the Government's preliminary objection, found unanimously V 5(1), not necessary to examine 5(2), NV 3, by majority (7–2) NV 8.

Judges: Mr R Bernhardt President, Mr Thór Vilhjálmsson, Mr I Foighel (pd), Mr R Pekkanen (pd), Mr A N Loizou, Mr J M Morenilla (jpd), Mr M A Lopes Rocha, Mr J Makarczyk (jpd), Mr K Jungwiert (jpd).

The rule of exhaustion of domestic remedies in A 26 required an applicant to have normal recourse to remedies within the national legal system which were available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question had to be sufficiently certain not only in theory but in practice, failing which they would lack the requisite accessibility and effectiveness. There was no obligation to have recourse to remedies which were inadequate or ineffective. The Government had not demonstrated that either a criminal prosecution or an action for damages would in the specific circumstances of the case have offered reasonable prospects of success. Accordingly, the Government's preliminary objection of non-exhaustion was dismissed.

The applicant's arrest and detention during his transportation by the military police from the prison to the Pori barracks on 18 June 1992 was contrary to national law. Accordingly his deprivation of liberty was not lawful under A 5(1). It was not established that the applicant was unlawfully deprived of his liberty following his arrival at the barracks, in breach of A 5(1).

In view of the conclusion that the applicant's arrest failed to comply with Finnish law and thus gave rise to a breach of A 5(1), it was not necessary to examine the complaint under A 5(2).

A 3 prohibited in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct. In order to fall within the scope of A 3, the ill-treatment had to attain a minimum level of severity, the assessment of which depended on all the circumstances of

the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc. In considering whether a punishment or treatment was degrading within the meaning of A 3, the Court would have regard to whether its object was to humiliate and debase the person concerned and whether, as far as the consequences were concerned, it adversely affected his or her personality in a manner incompatible with A 3. The public nature of the punishment or treatment might be a relevant factor. However, the absence of publicity would not necessarily prevent a given treatment from falling into that category: it may well suffice that the victim was humiliated in his or her own eyes, even if not in the eyes of others. Handcuffing did not normally give rise to an issue under A 3 where the measure had been imposed in connection with lawful arrest or detention and did not entail use of force, or public exposure, exceeding what was reasonably considered necessary in the circumstances. In that regard, it was of importance for instance whether there was reason to believe that the person concerned would resist arrest or abscond, cause injury or damage or suppress evidence. The handcuffing of the applicant had not been made necessary by his own conduct. Apart from the fact that the measure was itself unjustified, it had been imposed in the context of unlawful arrest and detention. In addition, he had, albeit only briefly, been visible to the public on his entering the military police vehicle outside the prison gate. He claimed that he had felt humiliated by appearing handcuffed in front of members of his support group. Those considerations were no doubt relevant for the purposes of determining whether the contested treatment was degrading within the meaning of A 3. However, the Court was not convinced by the applicant's allegation that the event of 18 June 1992 had adversely affected his mental state. There was nothing in the evidence to suggest that a causal link existed between the impugned treatment and his undefined psychosocial problem. Nor had the applicant made out his allegation that the handcuffing was aimed at debasing or humiliating him and it had not been contended that the handcuffing had affected the applicant physically. Therefore, it was not established that the treatment in issue attained the minimum level of severity required by A 3. There had accordingly been no violation of that provision.

The notion of private life was a broad one and was not susceptible to exhaustive definition; it might, depending on the circumstances, cover the moral and physical integrity of the person. Those aspects of the concept extended to situations of deprivation of liberty. Moreover, it did not exclude the possibility that there might be circumstances in which A 8 could be regarded as affording a protection in relation to conditions during detention which did not attain the level of severity required by A 3. The applicant based his complaint under A 8 on the same facts as that under A 3, which the Court had considered and found not to have been established in essential aspects. The Court did not consider that there were sufficient elements enabling it to find that the treatment complained of entailed such adverse effects on his physical or moral integrity as to constitute an interference with the applicant's right to respect for private life as guaranteed by A 8. Accordingly, there was no violation of this provision either.

Non-pecuniary damage (FIM 10,000), legal costs and expenses (FIM 50,000 less FF 23,699).

Cited: Albert and Le Compte v B (10.2.1983), Andronicou and Constantinou v CY (9.10.1997), Costello-Roberts v UK (25.3.1993), Ireland v UK (18.1.1978), Niemietz v D (16.12.1992), Tyrer v UK (25.4.1978), X and Y v NL (26.3.1985), Z v SF (25.2.1997).

Rasmussen v Denmark (1985) 7 EHRR 371 84/15

[Application lodged 21.5.1979; Commission report 5.7.1983; Court Judgment 28.11.1984]

Mr Per Krohn Rasmussen worked as a clerk. He was married in 1966. During the marriage, two children were born, a boy in 1966 and a girl, Pernille, on 20 January 1971. The applicant had grounds, even before the latter's birth, for assuming that another man might be the father; however, in order to save the marriage, he took no steps to have paternity determined. In June 1973, he and his wife applied for a separation, which they obtained on 9 August. Mrs Rasmussen retained custody of the children and the applicant paid for maintenance. In June 1975, the applicant and his wife applied for a divorce, which was granted on 16 July. On 27 January 1976 the

applicant sought leave from the Eastern Court of Appeal to institute proceedings out of time to determine the paternity of the girl. The Court of Appeal refused the application on 12 April 1976, for the reason that the statutory conditions for granting leave at that time were not satisfied. The applicant did not appeal against the decision within the statutory time-limit. However, on 27 July 1976, he petitioned the Ministry of Justice for leave to appeal out of time to the Supreme Court but this was refused on 3 September 1976. On 20 November 1978, the applicant applied again to the Court of Appeal for leave to institute paternity proceedings. His former wife opposed the application, on the ground that such proceedings would have a detrimental effect on the child. By a decision of 11 December 1978, the Court of Appeal refused the application for the reason that the applicant had not brought the action contesting paternity within the time-limits provided. A similar decision was given by the Supreme Court on 12 January 1979. The applicant complained that he had been subjected to discrimination based on sex in that his right to contest his paternity of a child born during the marriage was subject to time-limits, whereas his former wife was entitled to institute paternity proceedings at any time.

Comm found by majority (8–5) V 14+6 and 14+8.

Court unanimously found NV 14+6, NV 14+8.

Judges: Mr G Wiarda, President, Mr W Ganshof van der Meersch, Mrs D Bindschedler-Robert, Mr F Matscher, Mr R Macdonald, Mr C Russo, Mr J Gersing (so).

A 14 complemented the other substantive provisions of the Convention and the Protocols. It had no independent existence since it had effect solely in relation to the enjoyment of the rights and freedoms safeguarded by those provisions. Although the application of A 14 did not necessarily presuppose a breach of those provisions, there could be no room for its application unless the facts at issue fell within the ambit of one or more of the latter. An action contesting paternity was a matter of family law; on that account alone, it was civil in character and A 6 was applicable. Even though the paternity proceedings which the applicant wished to institute were aimed at the dissolution of existing family ties, the determination of his legal relations with Pernille concerned his private life. The facts of the case accordingly also fell within A 8.

Under the 1960 Act, the husband, unlike the child, its guardian or the mother, had to institute paternity proceedings within prescribed time-limits. There was a difference of treatment as between the applicant and his former wife as regards the possibility of instituting proceedings to contest the former's paternity. There was no need to determine on what ground this difference was based, the list of grounds appearing in A 14 not being exhaustive. A 14 safeguarded individuals who were placed in analogous situations against discriminatory differences of treatment. The Court assumed that the difference was made between persons placed in analogous situations. A difference of treatment was discriminatory if it had no objective and reasonable justification, that is, if it did not pursue a legitimate aim or if there was not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Contracting States enjoyed a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justified a different treatment in law. The scope of the margin of appreciation would vary according to the circumstances, the subject-matter and its background; in this respect, one of the relevant factors may be the existence or non-existence of common ground between the laws of the Contracting States. Examination showed no such common ground between the States. The authorities were entitled to think that the introduction of time-limits for the institution of paternity proceedings was justified by the desire to ensure legal certainty and to protect the interests of the child. In that respect, the legislation complained of did not differ substantially from that of most other Contracting States or from that currently in force in Denmark. The difference of treatment between husbands and wives was based on the notion that such time-limits were less necessary for wives than for husbands since the mother's interests usually coincided with those of the child, she being awarded custody in most cases of divorce or separation. The rules in force were modified by the Danish Parliament in 1982 because it considered that the thinking underlying the 1960 Act was no longer consistent with the

developments in society. The competent authorities were entitled to think that as regards the husband the aim sought to be realised would be most satisfactorily achieved by the enactment of a statutory rule, whereas as regards the mother it was sufficient to leave the matter to be decided by the courts on a case-by-case basis. Accordingly, having regard to their margin of appreciation, the authorities also did not transgress the principle of proportionality. The difference of treatment complained of was not discriminatory within the meaning of A 14.

Cited: 'Belgian Linguistic' case (23.7.1968), Engel and Others v D (8.6.1976), Golder v UK (21.2.1975), Ireland v UK (18.1.1978), Marckx v B (13.6.1979), National Union of Belgian Police v B (27.10.1975), Sunday Times v UK (26.4.1979), Swedish Engine Drivers' Union v S (6.2.1976), Van der Mussele v B (23.11.1983).

Ravnsborg v Sweden (1994) 18 EHRR 38 94/10

[Application lodged 2.7.1988; Commission report 10.12.1992; Court Judgment 23.3.1994]

Mr Göran Ravnsborg was a university lecturer in law. He held a power of attorney from his adoptive mother and was appointed administrator for her friend. They were both in a nursing home which charged them for medical care and the applicant effected the relevant payments. A dispute arose between the applicant and the nursing home and the latter brought a court action. On 6 April 1987, while the proceedings were pending, the Board of the Principal Guardian asked the District Court to appoint an administrator for the applicant's adoptive mother. The applicant filed a counter-claim and sought the immediate dismissal of the members of the Board. Referring to A 6(1), he asked for a public hearing. On three occasions in the course of the ensuing proceedings the applicant was ordered by the relevant courts, under the Code of Judicial Procedure, to pay fines for improper statements made in his written observations. The orders were made in the form of decisions and made without oral proceedings. His appeals to the Supreme Court were refused. He complained, *inter alia*, that in the proceedings relating to the fines he had been refused an oral hearing.

Comm found by majority (11–7) 6 NA and therefore NV 6.

Court found unanimously 6 NA and therefore NV 6.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr F Matscher, Mrs E Palm, Mr AN Loizou, Sir John Freeland, Mr J Makarczyk, Mr D Gotchev.

The Court would only deal with the complaint declared admissible by the Commission, namely that the absence of an oral hearing in any of the proceedings relating to the fines violated A 6.

In order to determine whether A 6 was applicable under its 'criminal' head, the Court had regard to the three alternative criteria laid down in its case-law. With regard to the legal classification of the offence under Swedish law, the formal classification under Swedish law was open to differing interpretations. On the evidence, the Court could not find it established that the provisions concerning sanctions against disturbance of the good order of court proceedings belonged to criminal law under the domestic legal system. With regard to the nature of the offence, rules enabled a court to sanction disorderly conduct in proceedings before it derived from the indispensable power of a court to ensure the proper and orderly functioning of its own proceedings. Measures ordered by courts under such rules were more akin to the exercise of disciplinary powers than to the imposition of a punishment for commission of a criminal offence. It was open to States to bring what were considered to be more serious examples of disorderly conduct within the sphere of criminal law, but that had not been shown to be the case in the present instance as regards the fines imposed on the applicant. The proscribed conduct for which the applicant was fined in principle therefore fell outside the ambit of A 6. With regard to the nature and degree of severity of the penalty, a fine imposed in respect of the measure could amount to SEK 1,000 and actually did so in all three instances in the present case. Moreover, the fine was convertible under Swedish law into a term of imprisonment. However, the possible amount of each fine did not attain a level such as to make it a 'criminal' sanction. Unlike ordinary fines, the kind at issue was not to be entered on the police register. A decision to convert the fines could only be taken by the District Court in limited circumstances and it would then have been

necessary to summon the applicant to appear before the District Court for an oral hearing in separate proceedings. Accordingly, what was at stake for the applicant was not sufficiently important to warrant classifying the offences as 'criminal'. Therefore A 6 did not apply to the matters complained of and had therefore not been violated in the present case.

Cited: Margareta and Roger Andersson v S (25.2.1992), Demicoli v M (27.8.1991), Engel and Others v NL (8.6.1976), Helmers v S (29.10.1991), Lutz v D (25.8.1987) Van der Leer v NL (21.2.1990), Weber v CH (22.5.1990).

Rees v United Kingdom (1987) 9 EHRR 56 86/9

[Application lodged 18.4.1979; Commission report 12.12.1984; Court Judgment 17.10.1986]

Mr Mark Rees was born with all the physical and biological characteristics of a child of the female sex and was consequently recorded in the register of births as a female, under the name Brenda Margaret Rees. However, from a tender age the child started to exhibit masculine behaviour and was ambiguous in appearance. He changed his name to Brendan Mark Rees and subsequently, in September 1977, to Mark Nicholas Alban Rees. He had been living as a male ever since. Surgical treatment for physical sexual conversion began in May 1974 on the National Health Service. He complained primarily of the constraints upon his full integration into social life which were a result of the failure of the Government to provide measures that would legally constitute him as a male. In particular, he complained of the practice of issuing him with a birth certificate on which his sex continued to be recorded as female so causing him embarrassment and humiliation whenever social practices required its production.

Comm found unanimously V 8, NV 12.

Court found by majority (12–3) NV 8, unanimously NV 12.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert (d), Mr G Lagergren, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr C Russo (d), Mr R Bernhardt, Mr J Gersing (d), Mr A Spielmann, Mr A M Donner.

Although the essential object of A 8 was to protect the individual against arbitrary interference by the public authorities, there might in addition be positive obligations inherent in an effective respect for private life, albeit subject to the State's margin of appreciation. In the present case it was the existence and scope of such positive obligations which had to be determined. The mere refusal to alter the register of births or to issue birth certificates whose contents and nature differed from those of the birth register could not be considered as interferences. The notion of 'respect' was not clear-cut, especially as far as those positive obligations were concerned. There was at present little common ground between the Contracting States in the area of giving transsexuals the option of changing their personal status to fit their newly-gained identity and, generally speaking, the law appeared to be in a transitional stage. Accordingly, it was an area in which the Contracting Parties enjoyed a wide margin of appreciation. In determining whether or not a positive obligation existed, regard had to be had to the fair balance that had to be struck between the general interest of the community and the interests of the individual. Transsexuals were free to change their first names and surnames at will. Similarly, they could be issued with official documents bearing their chosen first names and surnames and indicating, if their sex was mentioned at all, their preferred sex by the relevant prefix. However, such persons had on occasion to establish their identity by means of a birth certificate which mentioned the biological sex which the individuals had at the time of their birth. The United Kingdom did not recognise the applicant as a man for all social purposes (he would be regarded as a woman, *inter alia*, as far as marriage, pension rights and certain employments were concerned). The United Kingdom, albeit with delay and some misgivings on the part of the authorities, had endeavoured to meet the applicant's demands to the fullest extent that its system allowed. The alleged lack of respect therefore appeared to come down to a refusal to establish a type of documentation showing, and constituting proof of, current civil status. The introduction of such a system had not hitherto been considered necessary in the United

Kingdom. It would have important administrative consequences and would impose new duties on the rest of the population. The governing authorities in the United Kingdom were fully entitled, in the exercise of their margin of appreciation, to take account of the requirements of the situation pertaining there in determining what measures to adopt. While the requirement of striking a fair balance might possibly, in the interests of persons in the applicant's situation, call for incidental adjustments to the existing system, it could not give rise to any direct obligation on the United Kingdom to alter the very basis thereof. The additions at present permitted to the register as regards adoption and legitimation concerned events occurring after birth. However, they recorded facts of legal significance and were designed to ensure that the register fulfilled its purpose of providing an authoritative record for the establishment of family ties in connection with succession, legitimate descent and the distribution of property. The annotation being requested by the applicant would, on the other hand, establish only that the person concerned henceforth belonged to the other sex. Furthermore, the change so recorded could not mean the acquisition of all the biological characteristics of the other sex. In any event, the annotation could not, without more, constitute an effective safeguard for ensuring the integrity of the applicant's private life, as it would reveal his change of sexual identity. The applicant had also asked that the change, and the corresponding annotation, be kept secret from third parties. However, such secrecy could not be achieved without first modifying fundamentally the present system for keeping the register of births, so as to prohibit public access to entries made before the annotation. Secrecy could also have considerable unintended results and could prejudice the purpose and function of the birth register by complicating factual issues arising in, *inter alia*, the fields of family and succession law. Furthermore, no account would be taken of the position of third parties, including public authorities or private bodies (eg life insurance companies) in that they would be deprived of information which they had a legitimate interest to receive. Having regard to the wide margin of appreciation to be afforded the State in this area and to the relevance of protecting the interests of others in striking the requisite balance, the positive obligations arising from A 8 could not be held to extend that far. That conclusion was not affected by the fact that the United Kingdom co-operated in the applicant's medical treatment. Accordingly, there was no breach of A 8. The Court was conscious of the seriousness of the problems affecting those persons and the distress they suffered. The Convention had always to be interpreted and applied in the light of current circumstances. The need for appropriate legal measures therefore had to be kept under review having regard particularly to scientific and societal developments.

The right to marry guaranteed by A 12 referred to the traditional marriage between persons of opposite biological sex. Furthermore, A 12 laid down that the exercise of that right should be subject to the national laws of the Contracting States. The limitations thereby introduced should not restrict or reduce the right in such a way or to such an extent that the very essence of the right was impaired. However, the legal impediment in the United Kingdom on the marriage of persons who were not of the opposite biological sex could not be said to have an effect of that kind. There was accordingly no violation of A 12.

Cited: Abdulaziz, Cabales and Balkandali v UK (28.5.1985), Dudgeon v UK (22.10.1981), James and Others v UK (21.2.1986), Marckx v B (13.6.1979), Sporrong and Lönnroth v S (23.9.1982).

Reinhardt and Slimane-Kaïd v France (1999) 28 EHRR 59 98/21

[Applications lodged 7.9.1993, 11.9.1993; Commission report 26.11.1996; Court Judgment 31.3.1998]

Mr Mohamed Slimane-Kaïd was formerly the chairman of two public limited companies engaged, in particular, in buying equipment for export and in industrial coachbuilding. On 26 January 1982 he had also formed with Mrs Françoise Reinhardt a private company, whose registered office was at the latter's home address and main activity the hire and sale of equipment of all types both in France and overseas. On 1 July 1982 Mr Slimane-Kaïd had replaced Mrs Reinhardt as manager of that company. On 2 October 1984 Mr Slimane-Kaïd was questioned and later charged with misappropriation and procuring the issue of administrative documents by means of false

information, certificates or statements and other offences of forgery, and remanded in custody. Between 9 October 1984 and 27 March 1985 the authorities carried out a number of searches and seizures at Mr Slimane-Kaïd's home address and on the premises of one of his companies; they also carried out searches and seizures on 16 October 1984 at Mrs Reinhardt's home (the registered office of the private company) – while she was in custody – and on 18 October 1984 in a house rented by the private company. On 14 November 1984 Mrs Reinhardt was questioned by a police investigator. She was arrested on 6 February 1985 and charged on the following day with aiding and abetting the misappropriation of company assets and of handling misappropriated company assets. Investigations continued, proceedings were joined and on 14 December 1989 the court made a committal order in respect of both applicants to the criminal court. On 14 November 1990 both applicants were found guilty and they appealed to the Versailles Court of Appeal. On 2 April 1992 the Versailles Court of Appeal acquitted Mr Slimane-Kaïd in respect of some of the counts, upheld the guilty verdict on others, and confirmed the sentence. It increased Mrs Reinhardt's sentence. Both applicants appealed on points of law to the Court of Cassation and lodged pleadings. The reporting judge filed his report on 20 November 1992 and the advocate-general was appointed on 30 November. The hearing of the Court of Cassation on 15 March 1993 took place without the applicant's representatives being present, the reporting judge addressed the court and oral submissions were made by the advocate-general. In a decision delivered on 15 March 1993, the Court of Cassation, relying on the reporting judge's report, the parties' pleadings and the submissions of the advocate-general, dismissed the appeals. The applicants complained, *inter alia*, of the length and fairness of the proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1) with regard to reasonable time by majority (19–2), V 6(1) with regard to fair hearing in the Court of Cassation.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson (pd), Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti (c), Mr B Walsh, Mr C Russo, Mr J De Meyer (pd), Mr I Foighel (pd), Mr R Pekkanen, Mr JM Morenilla, Sir John Freeland, Mr AB Baka, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr D Gotchev, Mr B Repik, Mr U Lôhmus, Mr M Voicu, Mr V Butkevych.

The scope of the case before the Court was determined by the Commission's decision on admissibility.

The period to be taken into consideration when ruling on the applicants' two complaints had ended on 15 March 1993 when the Court of Cassation had delivered judgment. With regard to when that period had started, Mr Slimane-Kaïd was not implicated until the period of police custody which ended with his being charged with misappropriation and procuring the issue of administrative documents by means of false information, certificates or statements. In his case, the period to be taken into consideration therefore began on 2 October 1984 and the proceedings lasted eight years, five months and almost two weeks. Mrs Reinhardt was taken into police custody on 16 October 1984 in connection with a preliminary inquiry concerning Mr Slimane-Kaïd. As Mrs Reinhardt's home was the registered office of one of the companies managed by Mr Slimane-Kaïd, it was probable that through the search that was carried out there that same day it was intended to obtain evidence of the offences of which the latter was suspected. Neither measure was therefore an 'official notification' to Mrs Reinhardt of an 'allegation' that she had committed a criminal offence. In her case, the relevant date was, at the latest, 6 February 1985 when the period of police custody that ended in her being charged began; the proceedings consequently lasted eight years, one month and just over a week. The reasonableness of the length of proceedings was to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and that of the competent authorities. The case was of some complexity. No blame could be attached to the applicants conduct. There was no criticism of the trial and appeal courts for their handling of the case. However, the length of the proceedings was largely a result of the investigation not being carried out expeditiously. Accordingly the proceedings lasted more than a reasonable time and there had therefore been a violation of A 6(1).

Before the hearing the advocate-general had received the report and draft judgment that had been prepared by the reporting judge. The report was in two parts: the first contained a description of the facts, procedure and grounds of appeal and the second a legal analysis of the case and an opinion on the merits of the appeal. Those documents were not communicated to either the applicants or their lawyers. The applicants' lawyers could have made oral submissions if they had so requested, which would have meant that they would have been able to hear the first part of his report and to comment on it. The second part of the report and the draft judgment, which were legitimately privileged from disclosure as forming part of the deliberations, could not in any event be communicated to them. Conversely, the entire report and the draft judgment were communicated to the advocate-general, who was not a member of the court hearing the appeal. His role was to ensure that the law was correctly applied when it was clear and correctly construed when ambiguous. He 'advised' the judges on the solution in each individual case and, through the authority of his office, he could influence their decision in a way that was either favourable or run counter to the case put forward by appellants. Given the importance of the reporting judge's report (particularly the second part), the advocate-general's role and the consequences of the outcome of the proceedings for the applicants, the imbalance thus created by the failure to give like disclosure of the report to the applicants' advisers was not reconcilable with the requirements of a fair trial. The fact that the advocate-general's submissions were not communicated to the applicants was likewise questionable. Consequently, there had been a violation of A 6(1).

JS for non-pecuniary damage (by majority (20–1). JS for remainder of claim. Costs and expenses not quantified or detailed and therefore dismissed.

Cited: Eckle v D (15.7.1982), Kemmache v F (Nos 1 and 2) (27.11.1991), Van Orshoven v B (25.6.1997).

Rekvényi v Hungary 99/24

[Application lodged 20.4.1994; Commission report 9.7.1998; Court Judgment 20.5.1999]

Mr László Rekvényi, the applicant, was a police officer and the Secretary General of the Police Independent Trade Union. On 24 December 1993 an Act was published in the Hungarian Official Gazette which amended the Constitution to the effect that, as from 1 January 1994, members of the armed forces, the police and security services were prohibited from joining any political party and from engaging in any political activity. In a circular letter dated 28 January 1994, the Head of the National Police demanded, in view of the forthcoming parliamentary elections, that police officers refrain from political activities. He referred to the new legislation and indicated that those who wished to pursue political activities would have to leave the police. In a second circular letter he declared that no exemption could be given from the prohibition contained in the legislation. On 9 March 1994 the Police Independent Trade Union filed a constitutional complaint with the Constitutional Court claiming that the new legislation infringed constitutional rights of career members of the police, was contrary to the generally recognised rules of international law and had been adopted by Parliament unconstitutionally. On 11 April 1994 the Constitutional Court dismissed the constitutional complaint, holding that it had no competence to annul a provision of the Constitution itself. The applicant complained that the prohibitions contained in the Constitution infringed his rights under A 10 and 11 of the Convention taken either alone or together with A 14.

Comm found by majority (21–9) V 10, NV 11, (25–5) not necessary to examine 14+10, (22–8) NV 14+11.

Court found unanimously NV 10, by majority (16–1) NV 11, unanimously NV 14+10, NV 14+11. that there had been no violation of 14 of the Convention taken in conjunction with 10 or 11.

Judges: Mr L Wildhaber, President, Mrs E Palm, Sir Nicolas Bratza, Mr A Pastor Ridruejo, Mr G Bonello, Mr J Makarczyk, Mr P Kûris, Mr R Türmen, Mrs F Tulkens, Mrs V Stráznická, Mr M Fischbach (pd), Mr V Butkevych, Mr J Casadevall, Mrs HS Greve, Mr A Baka, Mr R Maruste, Mrs S Botoucharova.

The pursuit of activities of a political nature came within the ambit of A 10 in so far as freedom of political debate constituted a particular aspect of freedom of expression. The guarantees contained in A 10 extended to military personnel and civil servants and police officers. The prohibition, by

curtailing the applicant's involvement in political activities, interfered with the exercise of his right to freedom of expression. The interference was prescribed by law for the purposes of A 10(2) and pursued legitimate aims, namely the protection of national security and public safety and the prevention of disorder. The Court had to determine whether a fair balance had been struck between the fundamental right of the individual to freedom of expression and the legitimate interest of a democratic State in ensuring that its civil service properly furthered the purposes enumerated in A 10(2). In carrying out that review, the Court bore in mind that whenever civil servants' right to freedom of expression was in issue, the duties and responsibilities referred to in A 10(2) assumed a special significance, which justified leaving to the national authorities a certain margin of appreciation in determining whether the impugned interference was proportionate to the legitimate aim in question. Such considerations applied equally to police officers. Bearing in mind the role of the police in society, it was a legitimate aim in any democratic society to have a politically neutral police force. Regard being had to the margin of appreciation left to the national authorities in this area, and especially against the historical background, the relevant measures taken in Hungary in order to protect the police force from the direct influence of party politics could be seen as answering a pressing social need in a democratic society. The relevant laws did not impose an absolute ban; police officers remained entitled to undertake some activities enabling them to articulate their political opinions and preferences (such as expounding election programmes, promoting and nominating candidates, organising election campaign meetings, voting in and standing for elections to Parliament, local authorities and the office of mayor, participating in referenda, joining trade unions, associations and other organisations, participating in peaceful assemblies, make statements to the press, appear on radio or television programmes or publish works on politics). In those circumstances the scope and the effect of the impugned restrictions on the applicant's exercise of his freedom of expression did not appear excessive. The means employed in order to achieve the legitimate aims pursued were not disproportionate. Accordingly, the impugned interference with the applicant's freedom of expression was not in violation of A 10.

In the present case A 11 had to be considered in the light of A 10. The protection of personal opinions, secured by A 10, was one of the objectives of the freedoms of assembly and association as enshrined in A 11. The last sentence of A 11(2) entitled States to impose lawful restrictions on the exercise of the right to freedom of association by members of the police. The concept of lawfulness in the Convention, apart from positing conformity with domestic law, also implied qualitative requirements in the domestic law such as foreseeability and, generally, an absence of arbitrariness. It was primarily for the national authorities to interpret and apply domestic law, especially if there was a need to elucidate doubtful points. In the present case, the legal position was sufficiently clear to enable the applicant to regulate his conduct and the requirement of foreseeability was accordingly satisfied. There was no evidence of arbitrariness. The contested restriction was consequently lawful within the meaning of A 11(2). It was not necessary in the present case to settle the disputed issue of the extent to which the interference in question was, by virtue of the second sentence of A 11(2), excluded from being subject to the conditions other than lawfulness enumerated in the first sentence of that paragraph. For the reasons previously given in relation to A 10 the interference with the applicant's freedom of association satisfied the conditions in A 11. The interference could be regarded as justified under A 11(2). Accordingly, there had been no violation of A 11 either.

The considerations underlying the Court's conclusions that the interferences with the applicant's freedoms of expression and association were justified under A 10(2) and 11(2), had already taken into account the applicant's special status as a police officer. Those considerations were equally valid in the context of A 14 and, even assuming that police officers could be taken to be in a comparable position to ordinary citizens, justified the difference of treatment complained of. There had accordingly been no violation of A 14 taken in conjunction with A 10 or 11.

Cited: 'Belgian Linguistic' case (23.7.1968), Cantoni v F (15.11.1996). Chorherr v A (25.8.1993) Engel and Others v NL (8.6.1976), Kokkinakis v GR (25.5.1993), Lingens v A (8.7.1986), Sunday Times v UK (No 1) (26.4.1979), Vogt v D (26.9.1995).

Remli v France (1996) 22 EHRR 253 96/17

[Application lodged 16.5.1990; Commission report 30.11.1994; Court Judgment 23.4.1996]

Mr Saïd André Remli was a French national of Algerian origin. On 16 April 1985, while attempting to escape from Lyons-Montluc Prison, the applicant and a fellow prisoner of Algerian nationality, Mr Boumédienne Merdji, knocked out a warder, who died four months later as a result of the blows he had received. The two prisoners were charged with intentional homicide and were committed for trial at the Rhône Assize Court. The trial at the Assize Court took place on 12 to 14 April 1989. A jury was empanelled and the hearing of witnesses began. On 13 April 1989 the applicant's counsel submitted that a remark had been made by one of the jurors and overheard by a third person, Mrs M. That remark was 'What's more, I'm a racist.' The Court refused the application made to it for formal note to be taken. On 14 April 1989 the Assize Court sentenced Mr Remli to life imprisonment and Mr Merdji to a twenty-year term. The applicant's appeal was dismissed by the Court of Cassation on 22 November 1989. He complained that he had not had a hearing by an impartial tribunal and that he had also suffered discrimination on the ground of racial origin.

Comm found by majority (7–4) V 6(1).

Court dismissed by majority (7–2) the Government's preliminary objection based on non-exhaustion of domestic remedies in respect of the complaint under 6, found unanimously that as domestic remedies had not been exhausted it could not entertain the complaint under 14+6, dismissed unanimously the Government's preliminary objection based on failure to comply with the six-month time-limit, found by majority (5–4) V 6(1).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson (d), Mr L-E Pettiti (d), Mr B Walsh, Mr R Pekkanen, Mr M A Lopes Rocha (d), Mr L Wildhaber, Mr G Mifsud Bonnici (d), Mr B. Repik.

The purpose of A 26 was to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations were submitted to the Convention institutions. Thus the complaint to be submitted to the Commission had first to have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits. Nevertheless, the only remedies that had to be exhausted were those that were effective and capable of redressing the alleged violation. In the instant case the application for formal note to be taken was an effective remedy. An application for transfer of a trial on the ground of reasonable suspicion of bias could only be made in respect of a whole court. Where the impartiality of a given member of a court was in issue, only the procedure of a challenge was available. In the case of members of the jury, however, a challenge could only be made when the names of the jurors were being drawn by lot, so that it was too late to make one in the circumstances of the instant case. The objection therefore failed.

The Government maintained that in the national courts the applicant had not complained of discrimination on the ground of race or national origin. Having regard to the purpose of the requirement that domestic remedies had to be exhausted, the Court allowed the Government's objection as to the admissibility of the complaint based on A 14 taken together with A 6.

An appeal to the Court of Cassation was one of the remedies that should in principle be exhausted in order to comply with A 26. Even supposing that it was probably bound to fail in this specific case, the filing of the appeal was thus not a futile step. It had the effect at the very least of postponing the beginning of the six-month period. The objection that the application was out of time therefore had to be dismissed.

The Court recalled its case-law concerning the independence and impartiality of tribunals, which applied to jurors as they did to professional and lay judges. When it was being decided whether in a given case there was a legitimate reason to fear that a particular judge lacked impartiality, the standpoint of the accused was important but not decisive. What was decisive was whether the fear could be held to be objectively justified. The Rhône Assize Court had to try Mr Remli and his co-defendant, both of them of North African origin, and a third person, Mrs M, certified in writing

that she had heard one of the jurors say: 'What's more, I'm a racist.' A 6(1) imposed an obligation on every national court to check whether, as constituted, it was an impartial tribunal within the meaning of that provision where, as in the instant case, that was disputed on a ground that did not immediately appear to be manifestly devoid of merit. The Rhône Assize Court did not make any such check, thereby depriving the applicant of the possibility of remedying, if it proved necessary, a situation contrary to the requirements of the Convention. That finding, regard being had to the confidence which the courts had to inspire in those subject to their jurisdiction, sufficed for the Court to hold that there has been a breach of A 6(1).

Judgment constituted sufficient just satisfaction in respect of the alleged damage. Costs and expenses (by majority (8–1) FF 60,000).

Cited: A v F (23.11.1993), Hentrich v F (22.9.1994), Holm v S (25.11.1993), Padovani v I (26.2.1993), Pressos Compania SA and Others v B (20.11.1995), Saïdi v F (20.9.1993), Saraiva de Carvalho v P (22.4.1994).

Ribitsch v Austria (1996) 21 EHRR 573 95/50

[Application lodged 5.8.1991; Commission report 4.7.1994; Court Judgment 4.12.1995]

On 21 May 1988, following the deaths of two people from heroin and information given to the police, officers questioned Mr Ronald Ribitsch, the applicant, and searched his home, although they had no warrant. He was held in detention in police custody from 31 May 1988 to 2 June 1988. He alleged that the officers questioning him grossly insulted him and then assaulted him repeatedly in order to wring a confession from him. Criminal proceedings brought against the police officers in the Vienna District Criminal Court for assault occasioning bodily harm resulted in Police Officer Markl being found guilty of assault occasioning bodily harm and being sentenced him to suspended imprisonment and probation and ordered to pay compensation to the applicant. The other two police officers were acquitted. Officer Markl appealed successfully to the Vienna Regional Criminal Court. The applicant's application to the Constitutional Court was declared inadmissible. He complained that he had undergone inhuman and degrading treatment during his detention in police custody.

Comm found by majority (10–6) V 3.

Court found by majority (6–3) V 3.

Judges: Mr R Ryssdal (jd), President, Mr F Matscher (jd), Mr J De Meyer, Mr I Foighel, Mr J M Morenilla, Sir John Freeland, Mr B Repik, Mr P Jambrek (jd), Mr P Kûris.

The establishment and verification of the facts was primarily a matter for the Commission. The Court was not, however, bound by the Commission's findings of fact and remained free to make its own appreciation in the light of all the material before it. In principle it was not the Court's task to substitute its own assessment of the facts for that of the domestic courts, but it was not bound by the domestic courts' findings any more than it was by those of the Commission. Its scrutiny had to be particularly thorough where the Commission had reached conclusions at variance with those of the courts concerned. Its vigilance had to be heightened when dealing with rights such as those set forth in A 3. A 3 made no provision for exceptions and, under A 15(2), there could be no derogation therefrom even in the event of a public emergency threatening the life of the nation. The applicant's injuries were sustained during his detention in police custody, which was in any case unlawful, while he was entirely under the control of police officers. Police Officer Markl's acquittal in the criminal proceedings by a court bound by the principle of presumption of innocence did not absolve Austria from its responsibility under the Convention. The Government were accordingly under an obligation to provide a plausible explanation of how the applicant's injuries were caused. Significant weight was given to the explanation that the injuries were caused by a fall against a car door. The Court found that explanation unconvincing; even if the applicant had fallen while he was being moved under escort, that could only have provided a very incomplete, and therefore insufficient, explanation of the injuries concerned. On the basis of all the material placed before it, the Court concluded that the Government had not satisfactorily established that the applicant's

injuries were caused otherwise than – entirely, mainly, or partly – by the treatment he underwent while in police custody. In respect of a person deprived of his liberty, any recourse to physical force which had not been made strictly necessary by his own conduct diminished human dignity and was in principle an infringement of the right set forth in A 3. The requirements of an investigation and the undeniable difficulties inherent in the fight against crime could not justify placing limits on the protection to be afforded in respect of the physical integrity of individuals. The injuries suffered by the applicant showed that he underwent ill-treatment which amounted to both inhuman and degrading treatment. Accordingly, there had been a breach of A 3.

Non-pecuniary damage (ATS 100,000), costs and expenses (ATS 200,000 less FF 18,576).

Cited: Ireland v UK (18.1.1978), Klaas v D (22.9.1993), Tomasi v F (27.8.1992).

Richard v France 98/25

[Application lodged 2.10.1996; Commission report 16.9.1997; Court Judgment 22.4.1998]

Mr Michel Richard, a postmaster, was a haemophiliac who had received numerous blood transfusions. A test carried out in November 1985 showed that the applicant had been infected with HIV. On 27 December 1989 the applicant submitted a preliminary application for compensation to the Minister for Solidarity, Health and Social Protection. His application was rejected on 30 March 1990 and he commenced proceedings. On 9 May 1995 he lodged an application with the European Commission of Human Rights. On 23 January 1996, having declared the application admissible, the Commission adopted a report noting that the parties had reached agreement on a friendly. The applicant's appeal in respect of his compensation claim continued in the domestic courts. On 2 October 1996 he lodged a further application with the Commission. On 21 February 1997 the Conseil d'Etat gave judgment remitted the case to the Paris Administrative Court of Appeal for reconsideration. The applicant complained of the length of time it had taken for his application for compensation from the State to be considered.

Comm found unanimously V 6(1).

Court unanimously dismissed the Government's preliminary objection, found V 6(1).

Judges: Mr Thór Vilhjálmsson, President, Mr L-E Pettiti, Mr I Foighel, Mr R Pekkanen, Mr L Wildhaber, Mr B Repik, Mr P Jambrek, Mr J Casadevall, Mr P van Dijk.

The wording of the declaration between the applicant and the State referred to the domestic proceedings up to the point they had reached when the friendly settlement was agreed and excluded any subsequent proceedings. It was highly unlikely that the applicant would have accepted a friendly settlement proposal that allowed the outcome of the proceedings to be delayed with impunity. The waiver of a right guaranteed by the Convention had to be established in an unequivocal manner. Those requirements were not fulfilled in the present case. The preliminary objection therefore had to be dismissed.

The present case, as referred to the Court, concerned the proceedings subsequent to the friendly settlement being reached. The starting-point therefore had to be 24 January 1996, that being the day after the Commission adopted its report noting that a settlement had been agreed. The proceedings before the domestic courts were not yet over, as an appeal was pending before the Court of Appeal. The proceedings in issue had therefore already lasted two years and one month to date. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what was at stake for the applicant in the litigation had to be taken into account. Even though the case was of some complexity, that fact alone could not justify the length of the proceedings in question as the information needed to determine the State's liability had been available for a long time. The applicant sought on 30 November 1995 to expedite the proceedings, but without success. What was at stake in the proceedings was of crucial importance to the applicant in view of the disease from which he is suffering. He was infected in 1985 and was

classified in 1991 as having reached stage 2 on the scale of infection. Exceptional diligence was called for, notwithstanding the number of cases to be dealt with, in particular as the facts of the controversy had been known to the Government for several years and its seriousness must have been obvious to them. There had been delays in the proceedings. Having regard to all the circumstances of the case and in particular to the applicant's situation, the time taken in the present case could not be considered to have been reasonable. There had been a violation of A 6(1).

Non-pecuniary damage (FF 200,000), costs and expenses (FF 42,210).

Cited: Karakaya v F (26.8.1994), Pfeifer and Plankl v A (25.2.1992), X v F (31.3.1992), Vallée v F (26.4.1994).

Ridi v Italy 92/13

[Application lodged 12.10.1985; Commission report 15.1.1991; Court Judgment 27.2.1992]

Mr Antonio Ridi filed a writ in the Belluno District Court on 4 May 1976 against a Mr Z, seeking compensation for the damage arising from the unlawful widening of a cart track which crossed the land jointly owned by them, and its restoration to its original condition. On 8 May 1985 the court delivered judgment finding for the applicant. The text of the judgment was lodged with the registry on 8 October 1985. On 18 September 1986 Mr Z appealed against the court's decision. The proceedings before the Venice Court of Appeal ended with the hearing on 15 March 1988 when the appeal court delivered judgment, finding that the applicant and the other joint owners had sold the land in question on 17 December 1976 to purchasers who had transferred it to Mr Z on 11 September 1986. Thus the Court of Appeal was required to rule on the damage sustained by the plaintiffs up to 17 December 1976. The text of the decision was lodged with the registry of the Court of Appeal on 2 May 1988. The applicant complained of the length of the civil proceedings brought by him.

Comm found by majority V 6(1).

Court found by majority V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 4 May 1976 when the proceedings were instituted against Mr Z in the Belluno District Court. It ended, at the latest, on 2 May 1989, when the judgment of the Venice Court of Appeal became final. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The case was a simple one, yet it took nearly six years to conduct the investigation and there was a long period of stagnation in the proceedings before the competent chamber of the District Court. As regards the first of these periods, the experts were acting in the context of judicial proceedings supervised by the judge who remained responsible for the preparation of the case and for the speedy conduct of the trial. The second period was also excessive. A 6(1) imposed on the Contracting States the duty to organise their legal system in such a way that their courts could meet each of its requirements. There was some delay on the part of the applicant but the lapse of time in the present case could not be regarded as reasonable. There had therefore been a violation of A 6(1).

Judgment constituted sufficient just satisfaction for non-pecuniary damage. No causal connection between costs claimed and length of proceedings.

Cited: Capuano v I (25.6.1987), Pugliese (No 2) v I (24.5.1991), Vocaturo v I (24.5.1991).

Rieme v Sweden (1993) 16 EHRR 155 92/46

[Application lodged 28.7.1986; Commission report 2.10.1990; Court Judgment 22.4.1992]

Mr Antero Rieme, a Finnish citizen resident in Sweden, was a metal worker by profession. He had a daughter, Susanne, together with Mrs J, with whom he cohabited from January 1976 until March 1977. The latter had legal custody of Susanne from the time of her birth on 28 October 1976. On 26

September 1977, when Susanne was 11 months old, the Social District Council decided that she should be taken into public care because of her mother's alcohol problems. Shortly afterwards, she was placed in a foster home. In January 1978 the applicant applied to the District Court for legal custody of Susanne. In a custody report to the court, dated 21 September 1978, the social welfare authorities opposed his request, observing, *inter alia*, that the applicant had been reported several times for offences of drunkenness. It also noted that Susanne had become completely integrated into the foster family. The applicant withdrew his request but applied again on 30 November 1981. On 17 March 1982, the court dismissed his request. By judgment of 28 September 1983, the court ordered that the custody of Susanne be transferred to the applicant. Mrs J appealed to the Svea Court of Appeal which, however, confirmed the transfer of custody. On 11 October 1983, the applicant had asked the Social Council, first, to terminate the public care of Susanne and, secondly, to grant him access to her at regular intervals. The social welfare officers granted the care claim but did not determine the access claim and decided to prohibit the applicant from removing Susanne from the foster home. The applicant lodged an appeal with the County Administrative Court in Stockholm against the prohibition on removal. The appeal was dismissed. The Administrative Court of Appeal dismissed his subsequent appeal. Leave to appeal to the Supreme Administrative Court was refused on 26 March 1986. On 1 September 1989 the applicant again asked the Social Council to lift the prohibition on removal. At that time, Susanne had been staying with him since school started in August. On 20 November 1989 the Social Council terminated the prohibition on removal. Around Christmas 1989 Susanne returned to the foster family home, where at her own wish she has been living ever since. The applicant complained that the Swedish authorities had hindered his reunion with his daughter in violation of A 8.

Comm found by majority (8–5) V 8.

Court unanimously dismissed the Government's preliminary plea, found NV 8.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr B Walsh, Mr A Spielmann, Mr N Valticos, Mrs E Palm, Mr I Foighel, Mr AN Loizou.

The applicant did not complain of an isolated act but rather of a situation in which he had been for some time and which would continue until it was ended by a decision to lift the prohibition on removal. The prohibition applied until further notice and, apart from the passage of time, there were no significant new facts which could justify fresh proceedings to have it quashed. Were A 26 to make mandatory the taking of such steps, which by their very nature might be repeated an indefinite number of times, it might create a permanent barrier to bringing matters before the Convention institutions. While the Court's jurisdiction was determined by the Commission's decision on admissibility, it was competent, in the interests of economy of proceedings, to take into account facts occurring during the course of the proceedings in so far as they constituted a continuation of the facts underlying the complaints declared admissible. Therefore the Government's preliminary objection regarding the scope of the case was rejected.

The mutual enjoyment by parent and child of each other's company constituted a fundamental element of family life, and the natural family relationship was not terminated by reason of the fact that the child was taken into public care. The implementation of the public care order, the subsequent prohibition on removal and its maintenance in force constituted an interference with the applicant's right to respect for family life. The interference was in accordance with the law. The interference had legitimate aims under A 8(2), namely protecting the health and the rights and freedoms of the child. The notion of necessity implied that the interference had to be proportionate to the legitimate aim pursued. In addition, a father's right to respect for family life included a right to the taking of measures with a view to his being reunited with the child. The reasons of the Social Council were relevant and sufficient and provided a valid justification for the prohibition on removal and its maintenance in force, at least up to 26 March 1986, when the Supreme Administrative Court refused leave to appeal. In particular, having regard to the Swedish authorities' margin of appreciation, the interference complained of was not disproportionate to the legitimate aims pursued. From May 1986, Susanne had spent weekends and spent several holidays

with the applicant and his new wife. In view of her age and maturity, the relationship with her father was to evolve at her own pace. There was no ground for criticising the social welfare authorities' conduct. The Swedish authorities had acted within the law and having regard to their margin of appreciation, they could not be said not to have had relevant and sufficient reasons for keeping the child in the foster home during the period in question. Consequently, the prohibition on removal did not last for longer than could reasonably be thought necessary. Accordingly, there had been no violation of A 8.

Cited: Margareta and Roger Andersson v S (25.2.1992), Eriksson v S (22.6.1989), Guzzardi v I (6.11.1980), Olsson v S (24.3.1988).

Riera Blume and Others v Spain 99/63

[Application lodged 25.8.1997; Court Judgment 14.10.1999]

Ms Elena Riera Blume, Ms Concepción Riera Blume, Ms Maria Luz Casado Perez, Ms Daria Amelia Casado Perez, Ms Maria Teresa Sales Aige and Mr Javier Bruna Reverter, were born in 1954, 1952, 1950, 1950, 1951 and 1957 respectively. In 1983 the Public Safety Department of Catalonia received through *Pro Juventud* ('Pro Youth'), an association formed to fight against sects, a request for help from several people who alleged that members of their families had been ensnared by a group known by the name of *CEIS (Centro Esotérico de Investigaciones).* The Barcelona investigating court opened a preliminary investigation and on 20 June 1984 ordered searches of the homes of members of the *CEIS*, including the applicants. The applicants were arrested. The duty judge decided to release the applicants but gave oral instructions, later confirmed in writing, to the police that they should be handed over to their families, to whom it should be suggested that it would be as well to have them interned in a psychiatric centre, on a voluntary basis as regards the persons of full age, in order for them to recover their psychological balance. On the orders of the Director-General of Public Safety, the applicants were transferred to the premises of the Public Safety Department and on 21 June 1984, they were taken by members of the Catalan police in official vehicles to a hotel near Barcelona, where they were handed over to their families with a view to their recovering their psychological balance. At the hotel they were taken to individual rooms, not allowed to leave their rooms for the first three days, the windows were firmly closed and they were kept under constant supervision. They were subjected to 'deprogramming' by a psychologist and a psychiatrist at the request of *Pro Juventud*. On 29 and 30 June 1984, after being informed of their rights, they were questioned by the Assistant Director-General of Public Safety in the presence of a lawyer not appointed by them. On 30 June 1984 the applicants left the hotel. They lodged a criminal complaint alleging, *inter alia*, false imprisonment against the Director-General, Acting Director-General and official of the Public Safety Department. In a judgment of 7 March 1990 the Barcelona Audiencia provincial acquitted the accused, holding that the acts complained of had been prompted by a philanthropic, legitimate and well-intentioned motive and that there had been no intention of depriving the applicants of their liberty, so that the offence of false imprisonment was not made out. The prosecution and the applicants lodged appeals on points of law, which were dismissed by the Supreme Court on 23 March 1993. The applicants lodged an appeal with the Constitutional Court which was dismissed on 10 March 1997. They complained that their deprivation of liberty from 20 to 30 June 1984 had given rise to a violation of A 5(1).

Court found unanimously V 5(1), not necessary to examine 9.

Judges: Mr M Pellonpää, President, Mr G Ress, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mr I Cabral Barreto, Mrs N Vajic.

The applicants' transfer to the hotel by the Catalan police and their subsequent confinement to the hotel for ten days amounted in fact, on account of the restrictions placed on the applicants, to a deprivation of liberty. There was no legal basis for the deprivation of liberty. It was therefore necessary to consider the part played by the Catalan authorities in the deprivation of liberty complained of by the applicants and to determine its extent. In other words, it had to be ascertained whether, as the applicants maintained, the contribution of the Catalan police had been

so decisive that without it the deprivation of liberty would not have occurred. The national authorities at all times acquiesced in the applicants' loss of liberty. While it was true that it was the applicants' families and the *Pro Juventud* association that bore the direct and immediate responsibility for the supervision of the applicants during their ten days' loss of liberty, it was equally true that without the active cooperation of the Catalan authorities the deprivation of liberty could not have taken place. As the ultimate responsibility for the matter complained of thus lay with the authorities in question, the Court concluded that there has been a violation of A 5(1).

In view of the finding under A 5(1) it was not necessary to undertake a separate examination of the case under A 9.

Non-pecuniary damage (ESP 250,000 to each of the applicants), costs and expenses (ESP 500,000 to the applicants jointly).

Cited: Amuur v F (25.6.1996), Engel and Others v NL (8.6.1976), Guzzardi v I (6.11.1980), Tsirlis and Kouloumpas v GR (29.5.1997), Van der Leer v NL (21.2.1990).

Ringeisen v Austria (1979-80) 1 EHRR 455, 504, 513 71/2

[Application lodged 3.7.1965; Commission report 19.3.1970; Court Judgment 16.7.1971 (merits), 22.6.1972 (A 50), 23.6.1973 (interpretation)]

Mr Michael Ringeisen was, from 1958 to 1963, in business as an insurance agent in Linz, Austria, he also negotiated loans and dealt in real estate. On 6 February 1962, the applicant made a contract with Mr and Mrs Roth for the purchase of property. The District Commission refused to approve the contract for sale. His appeals to the Regional Commission and Constitutional Court were rejected. Subsequently charges of fraud were laid against him and he was remanded in custody. He was convicted and following appeal the sentence was fixed at five years' severe imprisonment with the additional punishment of fasting and sleeping hard once every three months. The court took into account the time the applicant had spent in custody on remand. He also faced charges of fraudulent bankruptcy. He complained of his detention on remand from 5 August to 23 December 1963 and from 15 March 1965 to 20 March 1967. His numerous applications for release and appeals were dismissed. He complained of his detention and the proceedings against him.

Comm found by majority (11–1) V 5(3), NV 6(1) regarding the length of the proceedings (unanimously in the fraud case and by majority (11–1) in the bankruptcy case), (7–5) NV 6(1) in respect of the proceedings for approval of the contracts for sale.

Court dismissed by majority (6–1) Government's preliminary objection regarding non-exhaustion of domestic remedies, found unanimously 6 applicable to proceedings, NV 6(1), found by majority (5–2) V 5(3) in respect of detention of applicant from 14 May 1965 to 14 January 1966, (4–3) V 5(3) for period 14 January 1966 to 20 March 1967, unanimously NV 6(1) in respect of length of proceedings.

Judges: (merits) Mr H Rolin, President, Mr ÅEV Holmbäck (so), Mr A Verdross (so), Mr T Wold (jso), Mr M Zekia, Mr A Favre, Mr S Sigurjónsson (jso).

Judges: (A 50) Mr H Rolin, President, Mr ÅEV Holmbäck (declaration), Mr A Verdross (declaration), Mr T Wold (declaration), Mr M Zekia (declaration), Mr A Favre, Mr S Sigurjónsson (jso).

Judges: (A 50 interpretation) Sir Humphrey Waldock, President, Mr R Cassin, Mr ÅEV Holmbäck, Mr A Verdross (so), Mr E Rodenbourg, Mr M Zekia (so), Mr A Favre.

The Court had jurisdiction to consider the complaint. It would be going too far and contrary to the spirit of the rule of exhaustion of domestic remedies to allow that a person might properly lodge an application with the Commission before exercising any domestic remedies. However, in various circumstances there was a need for a certain flexibility in the application of the rule. Documents were often submitted after the original applications. There was no reason why supplements to the initial application should not relate in particular to the proof that the applicant had complied with the conditions of A 26, even if he had done so after the lodging of the application. Thus, while the applicant was, as a rule, in duty bound to exercise the different domestic remedies before he applied to the Commission, it had to be left open to the Commission to accept the fact that the last stage of such remedies might be reached shortly after the lodging of the application but before the

Commission was called upon to pronounce itself on admissibility. Applications often came from laymen who addressed themselves to the Commission without legal assistance. A formalistic interpretation of A 26 would therefore lead to unfair consequences. The applicant exercised, before he lodged his application with the Commission, every domestic remedy which was available to him. No legitimate interest of the respondent State could have been prejudiced in the present case through the fact that the application was lodged and registered a short while before the final decision of the Constitutional Court. Therefore the Government's preliminary objection of non-exhaustion was dismissed.

For A 6(1) to be applicable to a case it was not necessary that both parties to the proceedings should be private persons. The character of the legislation which governed how the matter was to be determined (civil, commercial, administrative law, etc) and that of the authority which was invested with jurisdiction in the matter (ordinary court, administrative body, etc) were therefore of little consequence. Although it was applying rules of administrative law, the Regional Commission's decision was to be decisive for the relations in civil law between the applicant and the Roth couple. That was enough to make it necessary for the Court to decide whether or not the proceedings in the case complied with the requirements of A 6(1).

The Court did not find any facts to prove that the applicant was not given a fair hearing of his case. The Regional Commission was a tribunal within the meaning of A 6(1), it was independent of the executive and also of the parties, its members were appointed for a term of five years and the proceedings before it afforded the necessary guarantees. The applicant accused six members of the Regional Commission of bias. Even if the applicant's assertions were true they would not support the conclusion that there was bias on the part of the Regional Commission. In the case of such a board with mixed membership comprising, under the presidency of a judge, civil servants and representatives of interested bodies, the complaint made against individual members could not be said to bear out a charge of bias. The Austrian reservation did not refer expressly to administrative proceedings but only to civil and criminal cases. Yet it had to be accepted that the reservation covered a fortiori proceedings before administrative authorities where their subject matter was the determination of civil rights and where, therefore, the said authorities were considered to be tribunals within the meaning of A 6(1). That was the case of the proceedings commenced by the applicant's request for approval on 30 March 1962. Therefore there was no violation of A 6(1) in the proceedings relating to that request.

A 5(3): The applicant was detained in connection with two separate prosecutions, the first for fraud and fraudulent conversion, the second for fraudulent bankruptcy. The detention of the applicant in the two cases lasted in all nearly two years and five months. The four and a half months of the first detention (5 August to 23 December 1963) had to be added to the periods which followed for the purpose of assessing the reasonableness of the whole period of detention on remand in the fraud case. The second period of detention (15 March 1965 to 20 March 1967) occurred entirely in the context of the proceedings for fraudulent bankruptcy, while the new detention ordered in the course of the prosecution for fraud lasted for only part of this time (12 May 1965 to 15 March 1967). The reasons invoked in the second case were danger of collusion and danger of committing further offences. The first reason did not stand up to examination as the inquiries into the acts of fraudulent bankruptcy had begun before the applicant had been examined and while he remained at liberty. If he had wished to tamper with witnesses he could have done so in the intervening period. As to the danger of committing further offences, a provisional receiver had been appointed on 23 March 1965 and the applicant was adjudged bankrupt on 14 May 1965 from which time the administration of his property was outside his power and no debt due could be paid validly to him, if he had any other debtors. The detention in the fraudulent bankruptcy case exceeded the reasonable limit at least as from 14 May 1965. The same was true of his detention in the fraud case for the greater part of this period. The cases were interconnected. The decisions to detain him again and to keep him in custody, taken after 12 May 1965, invoked the dangers of his absconding and of his committing further offences but no precise information was given as to any circumstances arising after 12 May 1965 which caused such dangers to appear or to reappear. The new detention,

which was ordered on 12 May 1965 and lasted until 15 March 1967 in the fraud case, fell entirely within the limits of the remand in custody in the fraudulent bankruptcy case which was ordered on 15 March 1965 and finished only on 20 March 1967. The new detention could be explained only by the other detention. The conviction of the applicant on 14 January 1966 did not change that situation. Having held that the detention in the fraudulent bankruptcy case exceeded the reasonable time provided for in A 5(3), the Court considered that that finding applied to the whole of the applicant's detention up to 20 March 1967, the date of his release.

A 6(1): The length of the fraud proceedings – preliminary investigations were opened on 21 February 1963 and the final decision was taken on 24 April 1968 – resulted from both the complexity of the case and the innumerable requests and appeals made by the applicant not merely for his release, but also challenging most of the competent judges and for the transfer of the proceedings to different court areas. That also applied, to a large extent, to the proceedings for fraudulent bankruptcy, at least as regards the investigation prior to the filing of the indictment on 24 March 1966. Even for the subsequent period, it was understandable that the public prosecutor thought it wise, by reason of the clear connection between the facts relevant in this case and the facts supporting the prosecution for fraud, to wait until there was a final conviction and sentence in the fraud case before withdrawing the prosecution. That explained why the fraudulent bankruptcy proceedings were allowed to stagnate. Therefore there was no violation of A 6(1).

Damages (DM 20,000).

Interpretation of A 50 judgment of 22.6.1972: Court found by majority (6–1) that the judgment of 22 June 1972 meant that the compensation in the sum of DM 20,000 afforded to the applicant should be paid to him in that currency and in the Federal Republic of Germany, (5–2) the compensation was to be paid to the applicant personally and free from attachment.

Cited: De Wilde, Ooms and Versyp v B (18.6.1971), Neumeister v A (27.6.1968).

Robins v United Kingdom (1998) 26 EHRR 563 97/68

[Application lodged 14.3.1993; Commission report 4.7.1996; Court Judgment 23.9.1997]

Mr Geoffrey Robins and Mrs Margaret Robins were in a dispute with their neighbours, Mr and Mrs T, over sewerage. On 1 May 1991 judgment was given against the applicants. Their appeal was subsequently dismissed by the Court of Appeal. Thereafter followed the costs proceedings. The hearing was held on 12 to 13 November 1992 after which the judge ordered the applicants to pay the costs of the successful party. The applicants appealed and on 19 June 1995, the Court of Appeal confirmed the judgment of 13 November 1992 and dismissed the appeal. They complained, *inter alia*, of the length of proceedings.

Comm found by majority (16–9) NV 6(1).

Court found unanimously V 6(1).

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr I Foighel, Mr A N Loizou, Sir John Freeland, Mr AB Baka, Mr L Wildhaber, Mr D Gotchev, Mr U Lôhmus.

A 6(1) required that all stages of legal proceedings for the determination of civil rights and obligations, not excluding stages subsequent to judgment on the merits, be resolved within a reasonable time. The legal costs which formed the subject matter of the proceedings in question were incurred during the resolution of a dispute between neighbours which undoubtedly involved the determination of civil rights and obligations. Whether the proceedings in question were for the determination of the applicants' liability to pay their neighbours' costs or were limited to an investigation into the applicants' financial circumstances and the size of the contribution it was reasonable for them to pay, the costs proceedings, even though separately decided, had to be seen as a continuation of the substantive litigation and accordingly as part of a determination of civil rights and obligations. It followed that A 6(1) was applicable.

The relevant period began on 1 May 1991 when the Judge determined the substantive dispute and ended on 19 June 1995, with the Court of Appeal's dismissal of the applicants' appeal against the

judgment on costs. The reasonableness of the length of proceedings was to be assessed in the light of the circumstances of the case, having regard in particular to the complexity of the case and the conduct of the parties to the dispute and the relevant authorities. It took over four years to resolve what might be regarded as a relatively straightforward dispute over costs. The State authorities could not be held responsible for the totality of the delays in the case. Nonetheless, 10 months were wasted between February and November 1992 because of the Department of Social Security's mistaken belief that the applicants had separated. In addition, there was a period of approximately 16 months, between the application for an extension of time for the filing of notice of appeal in January 1993 and the registrar's directions in April 1994, when it would seem that the court authorities were totally inactive. Basing itself on those two periods, in the context of the overall length of the proceedings, the Court concluded that there was an unreasonable delay in dealing with the applicants' case. There had accordingly been a violation of A 6(1) in that the applicants' civil rights and obligations were not determined within a reasonable time.

Violation constituted sufficient just satisfaction for the non-pecuniary damage alleged by the applicants (no causal link in respect of pecuniary damage). Costs and expenses (GBP 2,700).

Cited: Di Pede v I (26.9.1996), Duclos v F (17.12.1996), Findlay v UK (25.2.1997), Hornsby v GR (19.3.1997), Silva Pontes v P (23.3.1994), Zappia v I (26.9.1996).

Rodrigues Carolino v Portugal 00/6

[Application lodged 11.6.1997; Court Judgment 11.1.2000]

Mr José Rodrigues Carolino complained of the length of civil proceedings which began on 14 June 1994 and were still pending.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mr I Cabral Barreto, Mr V Butkevych, Mrs N Vajic.

The proceedings had lasted approximately five years and six months and the length could not be considered to be reasonable.

Non-pecuniary damage (PTE 600,000), costs and expenses (PTE 250,000).

Ronzulli v Italy 00/16

[Application lodged 23.10.1997; Court Judgment 25.1.2000]

Mr Michele and Mr Luciano Ronzulli complained of the length of proceedings which began on 6 June 1989 and were still pending on 18 October 1999.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The proceedings had lasted more than 10 years 4 months at one level of jurisdiction. The length of proceedings could not be considered reasonable.

Non-pecuniary damage (ITL 28,000,000 to each of the applicants), costs and expenses (ITL 3,000,000).

Roselli v Italy 00/72

[Application lodged 29.8.1996; Commission report 27.10.1998; Court Judgment 15.2.2000]

Mr Italo Roselli complained of the length of civil proceedings which commenced in March 1982 and were still pending.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr L Ferrari Bravo, Mr P Kûris, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The proceedings had lasted more than 17 years, 10 months. The length of proceedings could not be considered reasonable.

Non-pecuniary damage (ITL 45,000,000), costs and expenses (ITL 5,000,000).

Rotaru v Romania 00/145

(Application lodged 22.2.1995; Commission report 1.3.1999; Court Judgment 4.5.2000]

Mr Aurel Rotaru was a lawyer by profession. In 1946, after the communist regime had been established, the applicant, who was then a student, was refused permission by the prefect of the county of Vaslui to publish two pamphlets, 'Student Soul' and 'Protests', on the ground that they expressed anti-Government sentiments. Dissatisfied with that refusal, the applicant wrote two letters to the prefect in which he protested against the abolition of freedom of expression by the new people's regime. As a result of those letters, he was arrested on 7 July 1948. On 20 September 1948 the Vaslui People's Court convicted the applicant on a charge of insulting behaviour and sentenced him to one year's imprisonment. In 1989, after the communist regime had been overthrown, the new Government passed Legislative Decree No 118/1990, which granted certain rights to those who had been persecuted by the communist regime and who had not engaged in Fascist activities. On 30 July 1990 the applicant brought proceedings in the Bârlad Court of First Instance against the Ministry of the Interior, the Ministry of Defence and the Vaslui County Employment Department in respect of his prison sentence. The court gave judgment for the applicant on 11 January 1993 and awarded him compensation. As part of its defence in those proceedings, the Ministry of the Interior submitted to the court a letter of 19 December 1990 that it had received from the Romanian Intelligence Service (RIS) which contained information about the applicant's political activities between 1946 and 1948, alleging that he had been a member of a right wing legionnaire movement. The applicant brought proceedings against the RIS, stating that some of the information in its letter was false and defamatory and claiming damages from the RIS for the non-pecuniary damage he had sustained. He also sought an order that the RIS should amend or destroy the file containing the information on his supposed legionnaire past. The Bucharest Court of First Instance dismissed the applicant's application. On appeal, the Bucharest County Court found on 18 January 1994 that the information that the applicant had been a legionnaire was false but nevertheless dismissed the appeal on the ground that the RIS had not been negligent. On 15 December 1994 the Bucharest Court of Appeal dismissed an appeal by the applicant. Following further checks, the Director of the RIS informed the Minister of Justice on 6 July 1997 that the information about being a member of the legionnaire movement referred not to the applicant but to another person with the same name. In the light of that letter, the applicant sought a review of the Court of Appeal's decision of 15 December 1994. In a final decision of 25 November 1997, the Bucharest Court of Appeal quashed the decision of 15 December 1994 and allowed the applicant's action without making any order as to damages or costs. The applicant alleged a violation of his right to respect for his private life on account of the holding and use by the Romanian Intelligence Service of a file containing personal information and an infringement of his right of access to a court and his right to a remedy before a national authority that could rule on his application to have the file amended or destroyed.

Comm found V 8, V 13.

Court unanimously dismissed the Government's preliminary objection that the applicant was no longer a victim, joined to the merits the Government's preliminary objection of failure to exhaust domestic remedies and dismissed it after consideration of the merits, found by majority (16–1) V 8, unanimously V 13, V 6(1).

Judges: Mr L Wildhaber (c), President, Mrs E Palm, Mr A Pastor Ridruejo, Mr G Bonello (pd), Mr J Makarczyk (jc), Mr R Türmen (jc), Mr J-P Costa (jc), Mrs F Tulkens (jc), Mrs V Stráznická, Mr P Lorenzen, Mr M Fischbach, Mr V Butkevych, Mr J Casadevall (jc), Mr AB Baka, Mr R Maruste, Mrs S Botoucharova, Mrs R Weber (jc), ad hoc judge (so).

An individual could, under certain conditions, claim to be the victim of a violation occasioned by the mere existence of secret measures or of legislation permitting secret measures, without having to allege that such measures were in fact applied to him. Furthermore, a decision or measure favourable to an applicant was not in principle sufficient to deprive him of his status as a victim unless the national authorities had acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention. The applicant complained of the holding of a secret register containing information about him, whose existence was publicly revealed during judicial proceedings. He could on that account claim to be the victim of a violation of the Convention. As to the Bucharest Court of Appeal judgment of 25 November 1997, assuming that it could be considered that it did, to some extent, afford the applicant redress for the existence in his file of information that proved false, the Court took the view that such redress was only partial and that at all events it was insufficient under the case-law to deprive him of his status of victim. The applicant could claim to be a victim for the purposes of A 34. The objection was therefore dismissed. There was a close connection between the Government's argument on the exhaustion of domestic remedies and the merits of the complaints made by the applicant under A 13 of the Convention and accordingly that objection was joined to the merits.

The storing of information relating to an individual's private life in a secret register and the release of such information came within the scope of A 8(1). Public information could fall within the scope of private life where it was systematically collected and stored in files held by the authorities. That was all the truer where such information concerned a person's distant past. The RIS's letter of 19 December 1990 contained various pieces of information about the applicant's life, in particular his studies, his political activities and his criminal record, some of which had been gathered more than 50 years earlier. Such information, when systematically collected and stored in a file held by agents of the State, fell within the scope of private life for the purposes of A 8(1). That was all the more so in the instant case as some of the information has been declared false and was likely to injure the applicant's reputation. A 8 consequently applied.

Both the storing by a public authority of information relating to an individual's private life and the use of it and the refusal to allow an opportunity for it to be refuted amounted to interference with the right to respect for private life secured in A 8(1). Paragraph 2 of A 8 was to be interpreted narrowly. While intelligence services might legitimately exist in a democratic society, powers of secret surveillance of citizens were tolerable under the Convention only in so far as strictly necessary for safeguarding the democratic institutions. If it was not to contravene A 8, such interference had to have been in accordance with the law, pursue a legitimate aim under para 2 and, furthermore, be necessary in a democratic society in order to achieve that aim. The expression 'in accordance with the law' not only required that the impugned measure should have some basis in domestic law, but also referred to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects. The Bucharest Court of Appeal confirmed that it was lawful for the RIS to hold the information as depositary of the archives of the former security services. That being so, the Court could conclude that the storing of information about the applicant's private life had a basis in Romanian law. The law was accessible, having been published in Romania's Official Gazette. Regarding foreseeability, a rule was foreseeable if it was formulated with sufficient precision to enable any individual, if need be with appropriate advice, to regulate his conduct. No provision of domestic law laid down any limits on the exercise of those powers. Thus, for instance, domestic law did not define the kind of information that could be recorded, the categories of people against whom surveillance measures such as gathering and keeping information could be taken, the circumstances in which such measures could be taken or the procedure to be followed. Similarly, the law did not lay down limits on the age of information held or the length of time for which it may be kept. Section 45 empowered the RIS to take over for storage and use the archives that belonged to the former intelligence services operating on Romanian territory and allowed inspection of RIS documents with the Director's consent. However, the section contained no explicit, detailed provision concerning the persons authorised

to consult the files, the nature of the files, the procedure to be followed or the use that could be made of the information thus obtained. Although s 2 of the Law empowered the relevant authorities to permit interferences necessary to prevent and counteract threats to national security, the ground allowing such interferences was not laid down with sufficient precision. The Romanian system for gathering and archiving information did not provide any safeguards and no supervision procedure, whether while the measure ordered was in force or afterwards. Therefore, domestic law did not indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities. The Court concluded that the holding and use by the RIS of information on the applicant's private life was not in accordance with the law, a fact that sufficed to constitute a violation of A 8. That fact prevented the Court from reviewing the legitimacy of the aim pursued by the measures ordered and determining whether they were necessary in a democratic society. There had consequently been a violation of A 8.

Regarding the Government's preliminary objection, A 54 of the Romanian Decree provided for a general action in the courts, designed to protect non-pecuniary rights that had been unlawfully infringed. The Bucharest Court of Appeal, however, indicated in its judgment of 25 November 1997 that the RIS was empowered by domestic law to hold information on the applicant that came from the files of the former intelligence services. The Government had not established the existence of any domestic decision that had set a precedent in the matter. It had therefore not been shown that such a remedy would have been effective. That being so, the preliminary objection by the Government had to be dismissed.

Neither the provisions relied on by the respondent Government nor any other provisions of the relevant law made it possible to challenge the holding, by agents of the State, of information on a person's private life or the truth of such information. The supervisory machinery established by ss 15 and 16 related only to the disclosure of information about the identity of some of the Securitate's collaborators and agents. The Court had not been informed of any other provision of Romanian law that made it possible to challenge the holding, by the intelligence services, of information on the applicant's private life or to refute the truth of such information. Therefore the applicant had been the victim of a violation of A 13.

The applicant's claim for compensation for non-pecuniary damage and costs was a civil one within the meaning of A 6(1) and the Bucharest Court of Appeal had jurisdiction to deal with it. The Court of Appeal's failure to consider the claim infringed the applicant's right to a fair hearing within the meaning of A 6(1). There had therefore been a violation of A 6(1).

Non-pecuniary damage (FF 50,000), costs and expenses (FF 13,450 less FF 9,759.72).

Cited: Amann v CH (16.2.2000), Amuur v F (25.6.1996), Çakici v TR (8.7.1999), Dalban v RO (28.9.1999), De Wilde, Ooms and Versyp v B (10.3.1972) (A 50), Halford v UK (25.6.1997), Klass and Others v D (6.9.1978), Kopp v CH (25.3.1998), Leander v S (26.3.1987), Malone v UK (2.8.1984), Niemietz v D (16.12.1992), Nikolova v BG (25.3.1999), Robins v UK (23.9.1997), Ruiz Torija v E (9.12.1994), Van Geyseghem v B (21.1.1999), Wille v FL (28.10.1999).

Rotondi v Italy 00/135

[Application lodged 15.10.1996; Court Judgment 27.4.2000]

Mr Tommaso Rotondi complained of the length of civil proceedings.

Court found by majority (6–1) V 6(1).

Judges: Mr Fischbach, President, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska, Mr AB Baka.

In an earlier application to the European Commission of Human Rights a violation of A 6(1) had been found in respect of the period from 9 September 1989 to 13 June 1995. The period the Court was concerned with began from 14 June 1995 and concluded on 6 March 1997. The period of one

year and eight months did not appear excessive in itself but it followed a long period which had already been found to constitute a violation.

Non-pecuniary damage (by majority (6–1)) ITL 5,000,000).

Cited: Bottazzi v I (28.7.1999), Leterme v F (29.4.1998), Pailot v F (22.4.1998), Rando v I (15.2.2000).

Rowe and Davis v United Kingdom 00/83

[Application lodged 20.12.1993; Commission report 20.10.1998; Court Judgment 16.2.2000]

On the evening of 15/16 December 1988 a series of offences occurred in Surrey. Following investigations, the police arrested and prosecuted Mr Raphael Rowe and Mr Michael Davis and a third man, Johnson. On 26 February 1990 the jury returned unanimous verdicts convicting the applicants and Johnson of murder, assault occasioning grievous bodily harm, and three counts of robbery. They were each sentenced to concurrent terms of life, 15 years' and 12 years' imprisonment. They appealed on the grounds, *inter alia*, that their convictions were unsafe and unsatisfactory because of weaknesses and inconsistencies in the evidence against them. At a hearing before the Court of Appeal, counsel for the prosecution handed a document to the court seeking a ruling on a matter of disclosure. Having considered those submissions and having examined the relevant documents, the court refused to order disclosure. On 29 July 1993 the Court of Appeal upheld the applicants' conviction and that of Johnson, concluding that there was no basis to say that there was even a lurking doubt about their safety. The application of the applicants to the Court of Appeal for leave to appeal to the House of Lords was refused on 30 September 1993. The applicants complained that they had not had a fair trial at first instance or before the Court of Appeal.

Comm found unanimously V 6(1)+6(3)(b) and (d).

Court found unanimously V 6(1).

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr L Ferrari Bravo, Mr L Caflisch, Mr J-P Costa, Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach, Mr B Zupancic, Mrs N Vajic, Mr J Hedigan, Mrs W Thomassen, Mrs M Tsatsa-Nikolovska, Mr T Pantiru, Mr E Levits, Mr K Traja, Sir John Laws, ad hoc judge.

The guarantees in A 6(3) were specific aspects of the right to a fair trial set out in para 1. It was a fundamental aspect of the right to a fair trial that criminal proceedings, including the elements of such proceedings which related to procedure, should be adversarial and that there should be equality of arms between the prosecution and defence. In addition A 6(1) required that the prosecution authorities should disclose to the defence all material evidence in their possession for or against the accused. However, the entitlement to disclosure of relevant evidence was not an absolute right. In any criminal proceedings there might be competing interests, such as national security or the need to protect witnesses at risk of reprisals or keep secret police methods of investigation of crime, which had to be weighed against the rights of the accused. In some cases it might be necessary to withhold certain evidence from the defence so as to preserve the fundamental rights of another individual or to safeguard an important public interest. However, only such measures restricting the rights of the defence which were strictly necessary were permissible under A 6(1). Moreover, in order to ensure that the accused received a fair trial, any difficulties caused to the defence by a limitation on its rights had to be sufficiently counterbalanced by the procedures followed by the judicial authorities. During the applicants' trial at first instance the prosecution decided, without notifying the judge, to withhold certain relevant evidence on grounds of public interest. Such a procedure, whereby the prosecution itself attempted to assess the importance of concealed information to the defence and weigh that against the public interest in keeping the information secret, could not comply with the above-mentioned requirements of A 6(1). It was true that at the commencement of the applicants' appeal prosecution counsel notified the defence that certain information had been withheld, without however revealing the nature of this material, and that on two separate occasions the Court of Appeal reviewed the undisclosed evidence and, in *ex parte* hearings with the benefit of submissions from the Crown but in the absence of the defence, decided in favour of non-disclosure. However, the Court did not consider

that that procedure before the appeal court was sufficient to remedy the unfairness caused by the absence of any scrutiny of the withheld information by the trial judge. Unlike the latter, who saw the witnesses give their testimony and was fully versed in all the evidence and issues in the case, the judges in the Court of Appeal were dependent for their understanding of the possible relevance of the undisclosed material on transcripts of the Crown Court hearings and on the account of the issues given to them by prosecuting counsel. In addition, the first instance judge would have been in a position to monitor the need for disclosure throughout the trial, assessing the importance of the evidence at a stage when new issues were emerging, when it might have been possible through cross-examination seriously to undermine the credibility of key witnesses and when the defence case was still open to take a number of different directions or emphases. In contrast, the Court of Appeal was obliged to carry out its appraisal *ex post facto* and might even, to a certain extent, have unconsciously been influenced by the jury's verdict of guilty into underestimating the significance of the undisclosed evidence. Therefore, the prosecution's failure to lay the evidence in question before the trial judge and to permit him to rule on the question of disclosure deprived the applicants of a fair trial and there had been a violation of A 6(1).

Costs and expenses (GBP 25,000 less FF 15,233.40).

Cited: Brandstetter v A (28.8.1991), Doorson v NL (26.3.1996), Edwards v UK (16.12.1992), Van Mechelen and Others v NL (23.4.1997).

Rubinat v Italy (1985) 7 EHRR 512 85/2

[Application lodged 21.7.1978; Commission report 5.5.1983; Court Judgment 12.2.1985]

Mr. Pedro Rubinat was a Spanish sailor. On 27 April 1972, in the course of a dispute, he fatally wounded a Nicaraguan sailor in a boarding-house in Genoa, after which he went abroad. The next day a warrant for his arrest was issued but he could not be found. On 25 November 1974, the Genoa Assize Court, after holding a trial by default sentenced him to 21 years' imprisonment for murder. The officially appointed defence counsel entered an appeal which was dismissed by the Genoa Appeal Court of Assize on 28 May 1976. On 29 October 1976, Mr Rubinat was arrested in France and extradited on 27 May 1977. His appeal to the Court of Cassation was dismissed and his 'procedural objection' and application for a retrial were dismissed by the Genoa Court of Appeal and the Court of Cassation. On 12 May 1983, the President of the Italian Republic granted a pardon to Mr Rubinat, who after his release went abroad and his whereabouts were not known. The applicant complained that he had not received the benefit of a fair trial.

Comm found unanimously V 6(1).

Court unanimously struck case out of list.

Judges: Mr G Wiarda, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr E García de Enterría, Mr L-E Pettiti, Mr C Russo, Mr J Gersing.

The circumstances disclosed a fact of a kind to provide a solution of the matter. The applicant had been released well before expiry of the sentence and the lasting silence observed by him since then appeared to amount to an implied discontinuance or an indication that he no longer wished to be associated in the proceedings, the aim he was pursuing having been attained. Although the case raised issues of principle transcending the person and the interests of the applicant there was no compelling reason to proceed. The court was giving a ruling on the same date, on analogous legal issues arising in respect of Mr Colozza and thereby clarified the scope of the engagements undertaken by the Contracting States in that area.

Cited: Colozza (12.2.1985), Deweer (27.2.1980), Tyrer v UK (25.4.1978).

Ruiz-Mateos v Spain (1993) 16 EHRR 505 93/23

[Application lodged 5.5.1987; Commission report 14.1.1992; Court Judgment 23.6.1993]

Mr José María Ruiz-Mateos, a businessman, Mr Zoilo Ruiz-Mateos, Mr Rafael Ruiz-Mateos, Mr Isidoro Ruiz-Mateos, Mr Alfonso Ruiz-Mateos and Mrs María Dolores Ruiz-Mateos were brothers and sister. In 1983 they held 100% of the shares in RUMASA SA, the parent company of the RUMASA group, which comprised several hundred undertakings. RUMASA SA's holding in these undertakings varied from one to the other. By a legislative decree of 23 February 1983 the Government ordered the expropriation in the public interest of all the shares in the companies comprising the RUMASA group, including those of the parent company. The State, which was the beneficiary of this measure, was to take immediate possession of the expropriated property through the intermediary of the Directorate General for National Assets. The aim of the expropriation and transfer of possession of the companies concerned was to protect the public interest because, in order to finance the group's companies, its banks had taken risks considered to be disproportionate in relation to their solvency, thereby jeopardising the stability of the banking system and the interests of the depositors, employees and third parties. On 9 May 1983 Mr José María Ruiz-Mateos instituted proceedings for 50% of the shares. The other five applicants followed suit on 27 May with regard to the remaining shares. Preliminary questions were referred to the Constitutional Court. On 23 December 1986 the action for restitution was dismissed. On 27 December 1986 the applicants appealed to the Audiencia provincial of Madrid. Following a reference to the Constitutional Court the Audiencia provincial dismissed the appeal by a judgment of 25 February 1991. The applicants complained of the length of the proceedings and that they had not had a fair hearing in the proceedings before the Constitutional Court as Counsel for the State, their opponent in the civil proceedings, was able to submit to the Constitutional Court.

Comm found by majority (13–2) V 6(1) with regard to a fair hearing, (11–4) V 6(1) with regard to length of proceedings.

Court found by majority (22–2) V 6(1), as regards the length of the proceedings, (18–6) V 6(1) as regards the fairness of the proceedings conducted in the Constitutional Court.

Judges: Mr R Bernhardt (pd), President, Mr Thór Vilhjálmsson (d), Mr F Gölcüklü (c), Mr F Matscher (pc/pd), Mr L-E Pettiti (pd), Mr B Walsh (c), Mr C Russo, Mr A Spielmann, Mr J De Meyer (c), Mr N Valticos, Mr SK Martens, Mrs E Palm, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou, Mr F Bigi, Sir John Freeland, Mr AB Baka (pd), Mr MA Lopes Rocha (pd), Mr L Wildhaber, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr D Gotchev, judges, Mr D Ruiz-Jarabo Colomer (pd), ad hoc judge.

The period to be taken into consideration began on 27 May 1983, when Zoilo, Rafael, Isidoro, Alfonso and María Dolores Ruiz-Mateos brought their action in respect of half the capital of RUMASA, thereby supplementing the action brought by José María Ruiz-Mateos on 9 May 1983 in respect of the other half. It ended on 25 February 1991, the date of the judgment of the Audiencia provincial. The application of 6 March 1991 for the interpretation of the judgment was not relevant, as it had no bearing on the outcome of the dispute. Proceedings in the Constitutional Court were to be taken into account for calculating the relevant period where the result of such proceedings was capable of affecting the outcome of the dispute before the ordinary courts. The constitutional proceedings took place in mid-course of the main action and not after its conclusion which provided an additional reason for taking them into account in the calculation of the period to be considered, especially where they concerned a preliminary issue. The Constitutional Court found the two questions referred by the civil courts to be admissible. As the questions referred concerned a preliminary issue, the civil courts had to await the decisions of the Constitutional Court, which were decisive for the ruling in the main action. The period to be taken into consideration therefore included the two sets of constitutional proceedings; that being so, it lasted nearly seven years and nine months. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the

circumstances of the case. Although the main civil action was not complex at the outset, it subsequently gave rise to constitutional questions which were undeniably difficult. There was little delay on the part of the applicants. There were no notable interruptions at first instance except to resolve the preliminary issue. On appeal there were two long periods of inactivity. Despite the special features of constitutional proceedings, the proceedings were too long in this instance, in particular as there was a connection between the two questions referred to the Constitutional Court. What was at stake in the case, not only for the applicants but also for Spanish society in general, was considerable, in view of its vast social and economic implications. The large number of persons concerned and the amount of capital involved militated in favour of a prompt resolution of the dispute. The proceedings exceeded a reasonable time within the meaning of A 6(1).

The Court was not called upon to give an abstract ruling on the applicability of A 6(1) to constitutional courts in general or to the constitutional courts of particular countries. It had to determine whether any rights guaranteed to the applicants under that provision were affected in the present case. The constitutional proceedings did not in general deal with disputes over civil rights and obligations. There was a close link between the subject-matter of the two civil and constitutional proceedings and, in the present case, to have dealt with them separately would have been artificial and considerably weakened the protection afforded in respect of the applicants' rights. The questions of constitutionality provided the applicants with the sole means available to them of complaining of an interference with their right of property. Accordingly, A 6(1) applied to the contested proceedings. The right to an adversarial trial meant the opportunity for the parties to have knowledge of and comment on the observations filed or evidence adduced by the other party. Proceedings before a constitutional court had their own characteristics which took account of the specific nature of the legal rules to be applied and the implications of the constitutional decision for the legal system in force. In this case they dealt with a law which directly concerned a restricted circle of persons. If in such a case the question whether that law was compatible with the Constitution was referred to the Constitutional Court within the context of proceedings on a civil right to which persons belonging to that circle were a party, those persons had as a rule to be guaranteed free access to the observations of the other participants in these proceedings and a genuine opportunity to comment on those observations. In view of the closeness of the link between the proceedings in the case, it would be artificial to dissociate the role of the executive, on whose authority the decision to expropriate was taken, from that of the Directorate General for National Assets, the beneficiary of the measure. The applicants were not given an opportunity to reply to the observations of the Counsel for the State, although it would have been in their interests to be able to do so before the final decision. The Counsel for the State had advance knowledge of their arguments and was able to comment on them in the last instance before the Constitutional Court. There had accordingly been a violation of A 6(1).

Just satisfaction dismissed (no causal connection between the alleged damage and the violations found had been established).

Cited: Bock v D (29.3.1989), Brandstetter v A (28.8.1991), Buchholz v D (6.5.1981), Capuano v I (27.7.1987), De Geouffre de la Pradelle v F (16.12.1992), Deumeland v D (29.5.1986), Foti and Others v I (10.12.1982), Giancarlo Lombardo v I (26.11.1992), Martins Moreira v P (26.10.1988), Poiss v A (23.4.1987), Ringeisen v A (16.7.1971), Unión Alimentaria Sanders SA v E (7.7.1989).

Ruiz Torija v Spain (1995) 19 EHRR 542 94/45

[Application lodged 15.3.1991; Commission report 8.7.1993; Court Judgment 9.12.1994]

Mr Eusebio Ruiz Torija had been the lessee of a bar in Madrid since 1960, when in 1988 the lessor instituted proceedings for the termination of the lease and his eviction. On 13 February 1989 the first-instance court dismissed the lessor's action but did not examine the applicant's objection that the action was time-barred. On appeal by the lessor, the Madrid Audiencia Provincial gave judgment on 30 January 1990 quashing the impugned decision and allowing the action for the applicant's eviction without ruling on the question whether the action was time-barred. The

applicant's appeal to the Constitutional Court was declared inadmissible on 29 October 1990. He complained that he had not been given a fair hearing in so far as the Madrid Audiencia Provincial had failed to deal in its judgment with one of his submissions.

Comm found by majority (18–3) V 6(1).

Court unanimously dismissed the Government's preliminary objection, found by majority (8–1) V 6(1).

Judges: Mr R Ryssdal, President, Mr R Bernhardt (d), Mr F Gölcüklü, Mr R Macdonald, Mr C Russo, Mr S Martens, Mr JM Morenilla, Mr F Bigi, Mr MA Lopes Rocha.

In Spanish law, having suffered no prejudice, the party to whom the operative part of the judgment was wholly favourable lacked standing to appeal, whether by filing a separate appeal or by 'joining' the appellant's appeal. The applicant's pleadings in the first-instance court were directed towards the dismissal of the action for his eviction. As the first-instance court found in his favour, it was not open to him to challenge the judgment. The objection of non-exhaustion of domestic remedies was therefore dismissed.

A 6(1) obliged the courts to give reasons for their judgments, but could not be understood as requiring a detailed answer to every argument. The extent to which that duty to give reasons applied might vary according to the nature of the decision. It was necessary to take into account, *inter alia*, the diversity of the submissions that a litigant might bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That was why the question whether a court had failed to fulfil the obligation to state reasons, deriving from A 6, could only be determined in the light of the circumstances of the case. The applicant pleaded before the first instance court, *inter alia*, that the action brought by the lessor for his eviction was time-barred. The Audiencia Provincial was bound, under the applicable procedural law, to review all the submissions made at first instance, at least in so far as they had been 'the subject of argument' and regardless of whether they had been expressly repeated in the appeal. It was not the task of the Court to examine whether the limitation plea was well-founded. The submission was relevant. If the Audiencia Provincial had held the submission to be well-founded, it would of necessity have had to dismiss the plaintiff's action. The fact that the first-instance court allowed evidence to be adduced in support of this submission suggested the contrary. Accordingly, since the issue of limitation would have been decisive in this instance, the Audiencia Provincial should have addressed the submission in its judgment. It was therefore necessary to establish whether in the present case the silence of the appeal court could reasonably be construed as an implied rejection. The court was under no obligation to examine the question of limitation before considering the arguments on the merits. In addition, the question whether the action was time-barred fell within a completely different legal category from that of the grounds for termination of the lease; it therefore required a specific and express reply. In the absence of such a reply, it was impossible to ascertain whether the Audiencia Provincial simply neglected to deal with the submission that the action was out of time or whether it intended to dismiss it and, if that were its intention, what its reasons were for so deciding. There had therefore been a violation of A 6(1).

Present judgment constituted sufficient just satisfaction in respect of the alleged non-pecuniary damage. Costs and expenses (ESP 1,000,000).

Cited: Van de Hurk v NL (19.4.1994).

Ruotolo v Italy 92/24

[Application lodged 15.9.1986; Commission report 15.1.1991; Court Judgment 27.2.1992]

Mr Luigi Ruotolo was dismissed by the X Company in April 1979. On 18 October 1979 he applied to the Rome magistrates' court for reinstatement and damages. On 28 April 1981 the magistrates' court dismissed the applicant's claim. Following appeals, his case was referred by the Court of Cassation to the District Court. On 17 January 1987 the applicant resumed his action before the District Court which on 19 January 1989 allowed his petition for reinstatement and awarded him damages. The X company appealed against that decision to the Court of Cassation. The Court of

Cassation gave judgment on 31 May 1991, but on 24 January 1992 the text of its judgment had still not been filed with the registry. He complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found by majority (8–1) V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi (d).

The period to be taken into consideration began on 18 October 1979 when the proceedings were instituted in the Rome magistrates' court. It ended, at the earliest, on 31 May 1991, the date of the second judgment of the Court of Cassation. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. Special diligence was necessary in employment disputes. The case was one of some complexity and the parties caused five adjournments of hearings. A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. Viewed separately, several of the delays observed appeared normal; however, having regard to the sum of such periods and several delays for which the competent courts were responsible, an overall lapse of time of more than 12 years was excessive. There had therefore been a violation of A 6(1).

Non-pecuniary damage (ITL 5,000,000).

Cited: Lestini v I (26.2.1992), Vocaturo v I (24.5.1991).

Ryllo v Italy 97/59

[Application lodged 30.4.1993; Commission report 28.11.1995; Court Judgment 2.9.1997]

Mr Giuseppe Ryllo was a retired headteacher. On 8 September 1984 he took early retirement. On 2 June 1987 he asked to be reappointed to his former post, but on 2 July 1988 the Ministry of Education refused his request. He appealed to the Lazio Regional Administrative Court, which, on 22 March 1989, set aside the Ministry's decision on the ground that no reasons had been given for it. On 5 May 1989 the applicant applied to be reinstated, but this request was likewise refused on 24 October 1989. He again applied to the Administrative Court for judicial review of the decision of 24 October. Following a hearing on 1 March 1995 the Administrative Court gave judgment in the applicant's favour. The text of its decision was deposited with the registry on 23 October 1995. The applicant complained of the length of the proceedings

Comm found by majority (23–6) V 6.

Court found by majority (8–1) 6(1) not applicable.

Judges: Mr R Bernhardt, President, Mr C Russo, Mr N Valticos, Mr R Pekkanen (d), Mr AB Baka, Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr P Kûris, Mr E Levits.

Disputes relating to the recruitment, careers and termination of service of civil servants were as a general rule outside the scope of A 6(1). In the present case the applicant was seeking judicial review of the Ministry of Education's decision of 24 October 1989 refusing to reappoint him to the headteacher's post from which he had resigned in 1984. The dispute raised by him thus clearly related to his recruitment, career and termination of service. It did not, therefore, concern a 'civil' right within the meaning of A 6(1). Accordingly, A 6(1) was not applicable in the case.

Cited: Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993), Neigel v F (17.3.1997), Scollo v I (28.9.1995).

S

S v Italy 00/29

[Application lodged 18.9.1995; Court Judgment 25.1.2000]

Mr S complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 22 October 1983 and ended on 4 March 1996. It had lasted more than 12 years, four months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 9,000,000).

Cited: Bottazzi v I (28.7.1999).

S v Switzerland (1992) 14 EHRR 670 91/51

[Applications lodged 18.11.1986, 28.5.1988; Commission report 12.7.1990; Court Judgment 28.11.1991]

S was a mason. In the early 1980s a protest movement broke out in Zürich directed against the sale of nuclear power stations to a Latin American country then under a military regime. Demonstrations, arson and attacks with explosives resulted. The applicant was suspected of being involved in the crimes and arrested. During the proceedings his contacts with his lawyer were subject to surveillance. Interviews with his lawyer were conducted in the presence of a policeman and his correspondence was intercepted. The Zürich Principal Public Prosecutor considered those measures necessary in view of the risk that the applicant's lawyer might collude with other lawyers or other co-accused. The appellant's appeals against the surveillance were dismissed. He complained, *inter alia*, that he had not been allowed to communicate with his lawyer freely and without supervision.

Comm found by majority (14–1) V 6(3)(c), (14–1) no separate issue under 6(3)(b), unanimously no separate issue under 5(4).

Court found unanimously V 6(3)(c), not necessary to examine 6(3)(b) or 5(4).

Judges: Mr J Cremona, President, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher (so), Mr B Walsh, Mr R Bernhardt, Mr J De Meyer (so), Mrs E Palm.

The Convention did not expressly guarantee the right of a person charged with a criminal offence to communicate with defence counsel without hindrance. However, an accused's right to communicate with his advocate out of hearing of a third person was part of the basic requirements of a fair trial in a democratic society and followed from A 6(3)(c). If a lawyer were unable to confer with his client and receive confidential instructions from him without such surveillance, his assistance would lose much of its usefulness, whereas the Convention was intended to guarantee rights that were practical and effective. The risk of 'collusion' relied on by the Government, notwithstanding the seriousness of the charges against the applicant, could not justify the restriction in issue and no other reason had been adduced cogent enough to do so. There was nothing extraordinary in a number of defence counsel collaborating with a view to co-ordinating their defence strategy. Moreover, neither the professional ethics of the lawyer, who had been designated as court-appointed defence counsel, nor the lawfulness of his conduct were at any time called into question in the case. Furthermore, the restriction in issue lasted for over seven months. The argument that the applicant was not prejudiced by the measures in question as he was able to make several applications for provisional release also had to be dismissed. A violation of the Convention did not necessarily imply the existence of damage. There had therefore been a violation of A 6(3)(c).

The applicant did not rely on A 6(3)(b) before the Court and there was no need for the Court to consider the question of its own motion.

Having regard to the conclusion in respect of A 6(3)(c), it was not necessary to consider the case from the point of view of A 5(4).

Non-pecuniary damage (CHF 2,500), costs and expenses (CHF 12,500).

Cited: Alimena v I (19.2.1991), Artico v I (13.5.1980).

SA v Portugal 00/197

[Application lodged 7.4.1997; Court Judgment 27.7.2000]

The applicant complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr G Ress, President, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mr V Butkevych, Mrs N Vajic, Mr M Pellonpää.

The Commission had already found a violation of A 6 because the applicant had not had his case examined in a reasonable time. The present proceedings concerned the period after 1 July 1993 (the date after adoption of the Commission's report). The proceedings ended on 14 August 1998. The period had lasted about five years and one month and could not be considered reasonable.

Non-pecuniary damage (PTE 400,000).

Cited: Pailot v F (22.4.1998), Silva Pontes v P (23.3.1994).

SAGEMA SNC v Italy 00/134

[Application lodged 22.5.1997; Court Judgment 27.4.2000]

The applicant complained of the length of civil proceedings.

Court found by majority (6–1).

Judges: Mr M Fischbach, President, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska, Mr AB Baka.

The Commission had already found a violation of A 6 because the applicant had not had his case examined in a reasonable time. The present proceedings concerned the period after 18 January 1995. The proceedings ended on 12 August 1997. The period had lasted about two years and seven months and could not be considered reasonable.

Non-pecuniary damage (by majority (6–1), ITL 6,000,000).

Cited: Bottazzi v I (28.7.1999), Leterme v F (29.4.1998), Pailot v F (22.4.1998).

SM v France 00/182

[Application lodged 25.2.1998; Court Judgment 18.7.2000]

The applicant was a medico-social secretary. She complained of the length of administrative proceedings concerning the amount of her retirement pension.

Court found unanimously V 6(1).

Judges: Mr L Loucaides, President, Mr J-P Costa, Mr P Kûris, Mrs F Tulkens, Mrs HS Greve, Mr K Traja, Mr M Ugrekhelidze.

Pension disputes fell within the scope of A 6 because once retired, a servant broke his special link with the administration. A 6 was applicable. The period to be taken into consideration began on 10 January 1985 and ended on 16 October 1997. It had lasted about 12 years, nine months, six days. There were a number of periods of inactivity attributable to the judicial authorities. Neither the complexity of the case nor the applicant's conduct could explain the time taken.

Non-pecuniary damage (FF 40,000).

Cited: Hornsby v GR (19.3.1997), Nikolova v BG (25.3.1999), Pellegrin v F (8.12.1999).

SR v Italy 98/26

Application lodged 5.5.1993; Commission report 28.5.1997; Court Judgment 23 April 1998]

Mr SR was a civil servant. On 27 July 1988 he applied to the Court of Audit in Rome for the annulment of decisions of the Minister of Transport and the Italian State Railway Company refusing his request to have an additional period of employment of about one year taken into account for the calculation of his pension. By a judgment of 10 May 1995, which was deposited with the registry on 11 September 1995, the Tuscany Regional Division allowed the applicant's claim in part. He complained of the length of the proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Bernhardt, President, Mr C Russo, Mr N Valticos, Mr I Foighel, Mr R Pekkanen, Sir John Freeland, Mr L Wildhaber, Mr J Makarczyk, Mr U Lôhmus.

The relevant period began on 27 July 1988 when the applicant applied to the Court of Audit in Rome and ended on 11 September 1995 when the judgment of the Tuscany Regional Division of the Court of Audit was deposited with the registry. It therefore lasted a little over seven years and one month. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and that of the relevant authorities. The introduction of reform of the jurisdiction and organisation of the Court of Audit could not justify delays as the State was under a duty to organise the entry into force and implementation of such measures in a way that avoided prolonging the examination of pending cases. There were periods of inactivity which counted against the authorities. No criticism could be levelled at the appellant's conduct. The case was not particularly complex. The length of the proceedings could not be regarded as reasonable. There had accordingly been a violation of A 6(1).

Non-pecuniary damage (ITL 17,500,000), costs and expenses (ITL 2,500,000).

Cited: Ceteroni v I (15.11.1996).

SW v United Kingdom (1996) 21 EHRR 363 95/48

[Applications lodged 29.3.1992; Commission report 27.6.1994; Court Judgment 22.11.1995]

The separate applications of SW and CR were heard together. SW married his wife in 1987. By 1990 the relationship had deteriorated and they were sleeping separately. On 18 September 1990, following an argument, his wife left the house. Later the same evening she re-entered the house and the applicant had sexual intercourse with her. She complained that she had been raped at knife-point. On 19 September 1990 the applicant was charged with rape and assault. He was convicted following trial and sentenced to imprisonment. His appeal was dismissed. He complained that, in breach of A 7, he was convicted in respect of conduct, namely the rape upon his wife, which at the relevant time did not constitute a criminal offence.

Comm found by majority (11–6) NV 7.

Court found unanimously NV 7.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr C Russo, Mr J De Meyer, Mr SK Martens, Mr F Bigi, Sir John Freeland, Mr P Jambrek, Mr U Lôhmus.

The guarantee enshrined in A 7 occupied a prominent place in the Convention system of protection. It had to be construed and applied in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment. Accordingly, A 7 was not confined to prohibiting the retrospective application of the criminal law to an accused's disadvantage: it also embodied, more generally, the principle that only the law can define a crime and prescribe a penalty and the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy. From those principles it followed that an offence had to be

clearly defined in the law. That requirement was satisfied where the individual could know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him criminally liable. When speaking of 'law', A 7 alluded to the very same concept as that to which the Convention referred elsewhere when using that term, a concept which comprised written as well as unwritten law and implied qualitative requirements, notably those of accessibility and forseeability. However clearly drafted a legal provision might be, in any system of law, including criminal law, there was an inevitable element of judicial interpretation. There would always be a need for elucidation of doubtful points and for adaptation to changing circumstances. The applicant's conviction was based on the statutory offence of rape. The applicant did not dispute that the conduct for which he was convicted would have constituted rape within the meaning of the statutory definition of rape as applicable at the time, had the victim not been his wife. The question was whether removal of the marital immunity would conflict with the statutory definition of rape, in particular whether it would be prevented by the word 'unlawful'. The Court of Appeal carefully examined various strands of interpretation of the provision in the case-law, including the argument that the term 'unlawful' excluded intercourse within marriage from the definition of rape. The Court held that it was in the first place for the national authorities, notably the courts, to interpret and apply national law. It saw no reason to disagree with the Court of Appeal's conclusion, which was subsequently upheld by the House of Lords, that the word 'unlawful' in the definition of rape was merely surplusage and did not inhibit them from removing a common law fiction which had become anachronistic and offensive and from declaring that a rapist remains a rapist subject to the criminal law, irrespective of his relationship with his victim. The decisions of the Court of Appeal and then the House of Lords did no more than continue a perceptible line of case-law development dismantling the immunity of a husband from prosecution for rape upon his wife. There was no doubt under the law as it stood at the dates of the offences that a husband who forcibly had sexual intercourse with his wife could, in various circumstances, be found guilty of rape. Moreover, there was an evident evolution, which was consistent with the very essence of the offence, of the criminal law through judicial interpretation towards treating such conduct generally as within the scope of the offence of rape. This evolution had reached a stage where judicial recognition of the absence of immunity had become a reasonably foreseeable development of the law. The essentially debasing character of rape was so manifest that the result of the decisions of the Court of Appeal and the House of Lords could not be said to be at variance with the object and purpose of A 7, namely to ensure that no one should be subjected to arbitrary prosecution, conviction or punishment. The abandonment of the unacceptable idea of a husband being immune against prosecution for rape of his wife was in conformity not only with a civilised concept of marriage but also, and above all, with the fundamental objectives of the Convention, the very essence of which was respect for human dignity and human freedom. The national courts' decisions that the applicant could not invoke immunity to escape conviction and sentence for rape upon his wife did not give rise to a violation of his right under A 7(1). It was not necessary to enquire into whether the facts in the case were covered by the exceptions to the immunity rule already made by the English courts before 12 November 1989 or 18 September 1990.

Cited: Kemmache v F (No 3) (24.11.1994), Kokkinakis v GR (25.5.1993), Tolstoy Miloslavsky v UK (13.7.1995).

Sabeur Ben Ali v Malta 00/172

[Application lodged 21.2.1997; Court Judgment 29.6.2000]

Mr Ben Nasr Sabeur Ben Ali was arrested on 17 March 1995 for drug-related offences. On 19 March 1995 he was brought before the Court of Magistrates and remanded in custody. On conclusion of the inquiry on 4 April 1995, he was committed for trial. On 29 July 1996 he applied to the Court of Magistrates for provisional release. The application was communicated to the Attorney General, who was given 24 hours to reply. The parties were heard on 31 July 1996 and on 1 August 1996 the magistrate rejected the application because he was not satisfied that, if the applicant was released,

there would be no interference with the due administration of justice. The trial commenced on 4 February 1997. On 5 February 1997 the applicant was acquitted of all charges and was released from custody. He complained that the Court of Magistrates before which he appeared on 19 March 1995 did not have the power to examine the reasonableness of the suspicion against him and that he could not obtain a review of his detention.

Court found unanimously V 5(3), V 5(4).

Judges: Mr CL Rozakis, President, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mr M Fischbach, Mr E Levits.

A 5(3) provided persons arrested or detained on suspicion of having committed a criminal offence with a guarantee against any arbitrary or unjustified deprivation of liberty. According to the Court's case-law, the opening part of A 5(3) required prompt automatic review by a judicial officer of the merits of the detention. The applicant's appearance before the Court of Magistrates on 19 March 1995 was not capable of ensuring respect for A 5(3) because, as established in *Aquilina v M*, that court had no power to review automatically the merits of the detention. Since A 5(3) guaranteed an automatic right to be brought before a judge, the fact that the national law gave the applicant the possibility, which he did not use, of lodging an application challenging the lawfulness of his detention and a bail application, the latter after the conclusion of the inquiry, was not sufficient to satisfy the requirements of A 5(3). The applicant could not obtain an automatic ruling by a domestic judicial authority on whether there existed a reasonable suspicion against him and therefore there had been a breach of A 5(3).

The aim of A 5(4) was to ensure a speedy review of the lawfulness of detention. The Government in support of their contention that the applicant could have obtained a review of the lawfulness of his detention invoked s 137 of the Criminal Code, but did not refer to any instances in which s 137 was successfully invoked to challenge the lawfulness of arrest or detention on suspicion of a criminal offence. They had therefore not shown that the applicant could have obtained a review of the lawfulness of his detention by relying on s 137 of the Criminal Code. With regard to a constitutional application, such an application involved a referral to the Civil Court and the possibility of an appeal to the Constitutional Court. That was a cumbersome procedure in which the proceedings were invariably longer than what would qualify as speedy for A 5(4). It followed that lodging a constitutional application would not have ensured a speedy review of the lawfulness of the applicant's detention. Finally, the applicant could not have obtained a review of the lawfulness of his detention by lodging a bail application, the question of bail coming into play only when the detention was lawful. It had not been shown that the applicant had at his disposal under domestic law a remedy for challenging the lawfulness of his detention. A 5(4) was therefore violated.

Non-pecuniary damage (MTL 1,000), costs and expenses (MTL 900).

Cited: Aquilina v M (29.4.1999), Assenov and Others v BG (28.10.1998), E v N (29.8.1990), Mats Jacobsson v S (28.6.1990), Sakik and Others v TR (26.11.1997).

Saccomanno v Italy 99/22

[Application lodged 28.3.1997; Court Judgment 12.5.1999]

Mr Giacomo Saccomanno was a lawyer. In 1990 he was charged with malicious accusation. On 8 January 1997 he was acquitted. The judgment was lodged with the registry on 19 February 1997. He complained of the length of proceedings.

Court found unanimously V 6(1).

Judges: Mr CL Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska.

The period to be taken into consideration began on 8 October 1990 and ended on 19 February 1997. It had lasted more than six years and four months at one level of jurisdiction. The case had not

been complex. Although some of the delay was due to the applicant, that did not justify the length of the intervals between hearings, nor above all, the overall length of the proceedings. There had been several long periods of inactivity for which the judicial authorities had been responsible and in respect of which the Government had advanced no explanation. There had been a violation of A 6(1).

Non-pecuniary damage (ITL 10,000,000), costs and expenses (ITL 1,500,000).

Cited: Demir and Others v TR (23.9.1998), Eckle v D (15.7.1982), IA v F (23.9.1998), Nikolova v BG (25.3.1999), Pélissier and Sassi v F (25.3.1999), Philis v GR (No 2) (27.6.1997), Portington v GR (23.9.1998), Zana v TR (25.11.1997).

Saïdi v France (1994) 17 EHRR 251 93/36

[Application lodged 17.1.1989; Commission report 14.5.1992; Court Judgment 20.9.1993]

Mr Fahrat Saïdi, a Tunisian national, was a bricklayer. On 29 May 1986 the Nice police arrested him and on 30 May 1986 he was charged with possession and supply of heroin and involuntary homicide. He was committed with others for trial. On 3 February 1987 the Nice Criminal Court sentenced him to imprisonment and an order permanently excluding him from French territory. His appeals to the Aix-en-Provence Court of Appeal and the Court of Cassation were unsuccessful. He complained of the refusal of the judicial authorities to organise a confrontation with the prosecution witnesses who had identified him.

Comm found by majority (13–1) V 6(1) and (3)(d).

Court unanimously dismissed the Government's preliminary objection, found V 6(1), 6(3)(d).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti (c), Mr C Russo, Mr R Pekkanen, Mr JM Morenilla, Mr F Bigi, Sir John Freeland, Mr MA Lopes Rocha.

The applicant provided the French courts with the opportunity which was in principle intended to be afforded to the Contracting States by A 26, to prevent or to put right the violations alleged against them. The objection based on a failure to exhaust the domestic remedies was therefore unfounded.

The taking of evidence was governed primarily by the rules of domestic law and it was in principle for the national courts to assess the evidence before them. The Court's task under the Convention was to ascertain whether the proceedings in their entirety, including the way in which evidence was taken, were fair. All the evidence normally had to be produced in the presence of the accused at a public hearing with a view to adversarial argument. However, the use as evidence of statements obtained at the stage of the police inquiry and the judicial investigation was not in itself inconsistent with A 6(3)(d) and 6(1), provided that the rights of the defence had been respected. As a rule those rights required that the defendant be given an adequate and proper opportunity to challenge and question a witness against him either when he was making his statements or at a later stage of the proceedings. In convicting the applicant the two courts which tried him referred to no evidence other than the statements obtained prior to the trial. The testimony of drug dealers constituted the sole basis for the applicant's conviction, after having been the only ground for his committal for trial. Yet neither at the stage of the investigation nor during the trial was the applicant able to examine or have examined the witnesses concerned. The lack of any confrontation deprived him in certain respects of a fair trial. The Court was fully aware of the undeniable difficulties of the fight against drug-trafficking – in particular with regard to obtaining and producing evidence – and of the ravages caused to society by the drug problem, but such considerations could not justify restricting to this extent the rights of the defence of everyone charged with a criminal offence. There had therefore been a violation of A 6(1) and 6(3)(d).

Present judgment constituted sufficient just satisfaction. Costs and expenses (FF 42,000).

Cited: Belilos v CH (29.4.1988), Cardot v F (19.3.1991), Edwards v UK (16.12.1992), Guzzardi v I (6.11.1980), Isgrò v I (19.2.1991).

Sainte-Marie v France (1993) 16 EHRR 116 92/78

[Application lodged 29.4.1987; Commission report 10.7.1991; Court Judgment 16.12.1992]

Mr Jean-Pierre Sainte-Marie was a farmer. On 30 January 1985 he was arrested in connection with an inquiry into a bomb attack carried out against a police station by Iparretarrak, a clandestine Basque separatist movement. He was charged first with firearms offences and criminal conspiracy and second with using explosives to cause criminal damage. The two sets of proceedings were conducted in parallel both as regards review of the detention on remand and for the investigation and trial. His appeals against his detention were dismissed. In October 1985 he was convicted by the Court of Appeal. Two of the judges in the Pau Court of Appeal had previously heard his appeal against his detention on remand. He complained of the impartiality of the tribunal.

Comm found by majority (14–5) NV 6(1).

Court unanimously dismissed the Government's preliminary objection, found by majority (8–1) NV 6(1).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr Thór Vilhjálmsson, Mr L-E Pettiti, Mr B Walsh (d), Mr SK Martens, Mrs E Palm, Mr R Pekkanen, Mr AN Loizou.

Regarding the Government's objection of failure to exhaust his domestic remedies, the applicant's complaint before the Convention organs was directed at something completely different from that suggested by the Government. The preliminary objection was therefore devoid of purpose.

The mere fact that a judge had already taken pre-trial decisions in the case, including decisions relating to detention on remand, could not in itself justify fears as to his impartiality. Only special circumstances might warrant a different conclusion. There was nothing of that nature in the present case. The judges based their decision on the applicant's own statements. He did not retract those statements and never claimed that they had been obtained under duress. They were moreover corroborated by uncontested physical evidence. The judges made a brief assessment of the available facts in order to establish whether *prima facie* the police suspicions had some substance and gave grounds for fearing that there was a risk of the accused's absconding. Accordingly, the participation of the judges in the adoption of the judgment did not undermine the impartiality of the Criminal Appeals Division since the applicant's misgivings could not be regarded as objectively justified. There had therefore been no violation of A 6(1).

Cited: Hauschildt v DK (24.5.1989).

Sakik and Others v Turkey (1998) 26 EHRR 662 97/90

[Application lodged 11.3.1994; Commission report 23.5.1996; Court Judgment 26.11.1997]

Mr Sirri Sakik, Mr Ahmet Türk, Mr Mahmut Alinak, Mrs Leyla Zana, Mr Mehmet Hatip Dicle and Mr Orhan Dogan were members of the Turkish National Assembly who were elected at the general election of 20 October 1991. At that time they were members of the People's Labour Party, which was founded in June 1990 but proscribed and dissolved by the Constitutional Court on 14 August 1993 on account of what were held to be separatist activities. By that date the applicants had joined the Democracy Party which had been set up in the meantime. In early March 1994 the National Assembly lifted their parliamentary immunity and the applicants were arrested, having been accused by the public prosecutor of committing terrorist crimes. They were detained pending trial. On 21 March 1994 the Constitutional Court dismissed appeals lodged by the applicants against the lifting of their parliamentary immunity. On 8 December 1994 the National Security Court sentenced Mr Sakik and Mr Alinak to three years and six months' imprisonment for separatist propaganda and Mr Türk, Mr Dicle, Mr Dogan and Mrs Zana to 15 years' imprisonment for membership of an armed gang. On appeal the Court of Cassation quashed Mr Türk's conviction on 26 October 1995 and ordered his release but upheld the other applicants' convictions. They complained *inter alia* of the lawfulness and length of their detention in police custody, the impossibility of securing review by a court and the lack of a right to compensation.

Comm found unanimously NV 5(1), V 5(3), (4) and (5).

Court found unanimously Turkey's derogation under 15 was not applicable, NV 5(1), V 5(3), dismissed the Government's preliminary objection relating to 5(4), V 5(4), dismissed both limbs of the Government's preliminary objection relating to 5(5), the second of which it joined to and considered with the merits, found V 5(5).

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr AN Loizou, Mr JM Morenilla, Mr P Kûris.

The derogation applied only to the region where a state of emergency had been proclaimed, which did not include the city of Ankara. However, the applicants' arrest and detention took place in Ankara. A 15 authorised derogations from the obligations arising from the Convention only 'to the extent strictly required by the exigencies of the situation'. The Court would be working against the object and purpose of that provision if, when assessing the territorial scope of the derogation concerned, it were to extend its effects to a part of Turkish territory not explicitly named in the notice of derogation. It followed that the derogation in question was inapplicable *ratione loci* to the facts of the case.

In their memorial the applicants accepted the Commission's conclusion that A 5(1) had not been breached. Consequently, they presented no argument regarding this complaint to the Court which likewise considered that no breach of A 5(1) had been established.

The Court recalled its case-law on the effects of A 5 on the investigation of terrorist offences. The applicants' detention in police custody had lasted 12 days in the case of Mr Sakik, Mr Türk, Mr Alinak and Mrs Zana, and 14 days in the case of Mr Dicle and Mr Dogan. Even if the activities of which the applicants stood accused were linked to a terrorist threat, the Court could not accept that it was necessary to detain them for 12 or 14 days without judicial intervention. Accordingly, there had been a breach of A 5(3).

The Government's preliminary objection on the ground of non-exhaustion of domestic remedies in respect of A 5(4) was not raised before the Commission and was therefore inadmissible on the grounds of estoppel.

The single judge who had ordered the applicants' detention pending trial did not intervene until 12 or 14 days after their arrest. Such a lengthy period sat ill with the notion of 'speedily'. The existence of a remedy had to be sufficiently certain, failing which it would lack the accessibility and effectiveness required for the purposes of A 5(4). There was no example of any person detained in police custody having successfully invoked A 19(8) of the Constitution or A 5(4) of the Convention when applying to a judge for a ruling on the lawfulness of his detention or for his release. The lack of precedents indicated the uncertainty of that remedy in practice. There had been a breach of A 5(4).

The first limb of the preliminary objection regarding non-exhaustion of remedies in respect of A 5(5) was not raised before the Commission and was therefore inadmissible on grounds of estoppel. The second limb was closely linked to consideration of the complaint under A 5(5) and therefore joined to the merits. There was no example of any litigant obtaining compensation referred to in A 5(5) by relying on one of the provisions mentioned by the Government. The effective enjoyment of the right guaranteed by A 5(5) was not ensured with a sufficient degree of certainty. Therefore the Court dismissed the second limb of the Government's preliminary objection and concluded that there had been a breach of A 5(5).

Non-pecuniary damage (FF 25,000 each to Mr Sakik, Mr Türk, Mr Alinak and Mrs Zana and FF 30,000 each to Mr Dicle and Mr Dogan), costs and expenses (FF 120,000).

Cited: Aksoy v R (18.12.1996), Brogan and Others v UK (29.11.1988), Ceteroni v I (15.11.1996), Ciulla v I (22.2.1989), De Jong, Baljet and Van den Brink v NL (22.5.1984), Murray v UK (28.10.1994), Nideröst-Huber v CH (18.2.1997), Van Droogenbroeck v B (24.6.1982), Yagci and Sargin v TR (8.6.1995).

Salabiaku v France (1991) 13 EHRR 379 88/12

[Application lodged 29.7.1983; Commission report 16.7.1987; Court Judgment 7.10.1988]

Mr Amosi Salabiaku was a Zairean who was arrested at Roissy Airport when collecting a trunk which was subsequently found to contain a large quantity of cannabis. The applicant asserted that he was unaware of the presence of the cannabis and that he had mistaken the trunk for a parcel he had come to collect. He was charged with both the criminal offence of illegally importing narcotics and the customs offence of smuggling prohibited goods and committed for trial. He was convicted and sentenced to two years' imprisonment, a prohibition on residing in French territory and a fine. On 9 February 1982, the Paris Court of Appeal set aside the judgment with regard to the criminal offence of illegal importation of narcotics but upheld the first-instance decision as regards the customs offence of smuggling prohibited goods. The Court of Cassation dismissed the appeal on 21 February 1983. The applicant complained that the presumption on the basis of which he was convicted of a customs offence was incompatible with A 6.

Comm found by majority (10–3) NV 6(1), (9–4) NV 6(2).

Court unanimously found NV 6(2), NV 6(1).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh.

Contracting States were free to apply the criminal law to an act where it was not carried out in the normal exercise of one of the rights protected under the Convention and, accordingly, to define the constituent elements of the resulting offence. Contracting States could, under certain conditions, penalise a simple or objective fact as such, irrespective of whether it resulted from criminal intent or from negligence. However, the applicant was not convicted for mere possession of unlawfully imported prohibited goods but for smuggling prohibited goods. The shift from the idea of accountability in criminal law to the notion of guilt showed the relative nature of the distinction. It raised a question with regard to A 6(2). Presumptions of fact or of law operated in every legal system and the Convention did not prohibit such presumptions in principle. However, it required the Contracting States to remain within certain limits which took into account the importance of what was at stake and maintained the rights of the defence. The prosecuting authority had to establish possession of the smuggled goods. This was a simple finding of fact. The applicant could be accorded the benefit of extenuating circumstances and acquitted if he succeeded in establishing a case of *force majeure*. It was clear from the judgments that the courts in question were careful to avoid resorting automatically to the presumption laid down in the Customs Code and did not apply the Customs Code in a way which conflicted with the presumption of innocence.

The applicant's complaints under A 6(1) to a large extent corresponded to those which he formulated under A 6(2). There were no ground for departing from the conclusion reached in considering specifically the presumption of innocence. For the rest, the evidence adduced did not disclose any failure to comply with the various requirements of A 6(1). In particular, the proceedings at first instance, on appeal and in the Court of Cassation were fully judicial and adversarial in nature.

Cited: Bouamar v B (29.2.1988), Engel and Others v NL (8.6.1976), Lutz v D (25.8.1987), Sunday Times v UK (26.4.1979).

Salerno v Italy 92/65

[Application lodged 18.1.1986; Commission report 5.9.1991; Court Judgment 12.10.1992]

Mr Vincenzo Salerno brought proceedings against the notaries' pension fund before the Rome magistrates' court in June 1973. He said, as he had worked as an auxiliary notary for 19 years and had paid contributions into the notaries' pension fund, he sought recognition of his right to join the fund and to draw the pension payable to its members. The Court of Cassation dismissed his application. On 8 April 1982 the applicant instituted further proceedings in the Rome magistrates' court to have the notaries' pension fund repay old-age pension contributions he had paid into it.

His claim was dismissed by the magistrates' court. His appeal to the Rome District Court was dismissed the appeal and an appeal to the Court of Cassation was dismissed on 12 June 1986, the judgment being filed with the registry on 1 April 1987. The applicant complained of the length of proceedings.

Comm found by majority (16–4) V 6(1).

Court found unanimously NV 6(1).

Judges: Mr R Bernhardt, President, Mr F Matscher, Mr R Macdonald, Mr C Russo, Mr SK Martens (c), Mrs E Palm, Mr I Foighel (c), Mr R Pekkanen (c), Mr AN Loizou.

This was a disputed issue, on which only the competent courts could rule. The first action, which was finally disposed of by the Court of Cassation, was brought to secure recognition of a right to old-age benefits, whereas the second action, which ended on 1 April 1987, was for repayment of contributions to the pension fund in question. The courts to which the fresh application was made in 1982 acknowledged that the applicant's arguments were sufficiently tenable, since they held the action to be admissible. The claimed right was undoubtedly a civil one, thus A 6(1) applied.

The period to be considered began on 8 April 1982, with the institution of proceedings against the notaries' pension fund in the Rome magistrates' court, and ended on 1 April 1987, when the Court of Cassation's judgment was filed. It therefore lasted for nearly five years. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. There were several periods of inactivity on the part of the judicial authorities. Nevertheless, having regard to the fact that the case came before three different courts, the delays that occurred did not appear substantial enough for the total length of the proceedings to have exceeded an acceptable limit in the circumstances of the present case. There had accordingly been no breach of A 6(1).

Salesi v Italy (1998) 26 EHRR 187 93/10

[Application lodged 12.6.1987; Commission report 20.2.1992; Court Judgment 26.2.1993]

Mrs Enrica Salesi instituted proceedings on 28 February 1986 against the Minister of the Interior before the Rome magistrates' court seeking payment of a monthly disability allowance which the Lazio social-security department had refused her. On 2 December 1986 the court ordered the Minister of the Interior to pay the allowance requested. On 21 April 1987 the Minister of the Interior appealed and on 24 May 1989 the Rome District Court dismissed the appeal. The Minister's appeal on points of law was dismissed by the Court of Cassation in a judgment of 5 June 1991, filed in the registry on 10 March 1992. The applicant complained of the length of the proceedings.

Comm found by majority (13–8) V 6(1).

Court unanimously found V 6(1).

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr N Valticos, Mr SK Martens, Mrs E Palm, Mr F Bigi.

The Court recalled *Feldbrugge v NL* and *Deumeland v D*, as to the applicability of A 6(1) to social security disputes. Nevertheless, the development in the law that was initiated by those judgments and the principle of equality of treatment warranted taking the view that now the general rule was that A 6(1) did apply in the field of social insurance. The present case raised the question of welfare assistance and not social insurance. There were differences between the two, but they could not be regarded as fundamental at the present stage of development of social security law. State intervention was not sufficient to establish that A 6(1) was inapplicable. Despite the public law features of the case, the applicant was not affected in her relations with the administrative authorities as such, acting in the exercise of discretionary powers; she suffered an interference with her means of subsistence and was claiming an individual, economic right flowing from specific rules laid down in a statute giving effect to the Constitution. The protection of that basic right was, moreover, organised in such a way that at the judicial stage disputes over it came within the

jurisdiction of the ordinary court, the labour magistrates' court. A 6(1) therefore applied in the instant case.

The period to be considered began on 28 February 1986, when proceedings were instituted against the Minister of the Interior in the Rome magistrates' court, and ended on 10 March 1992, when the Court of Cassation's judgment was filed. It therefore lasted a little over six years. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The case was not a complex one and the applicant's conduct did not substantially contribute to the length of the proceedings. There were delays on the part of the judicial authorities. As to the argument based on the backlog of cases in the appellate court, A 6(1) imposed on the Contracting States the duty to organise their judicial systems in such a way that their courts could meet each of its requirements. In addition, in view of what was at stake for the applicant, the period of time which elapsed in the case was not reasonable.

Cited: Deumeland v D (29.5.1986), Feldbrugge v NL (29.5.1986), Salerno v I (12.10.1992), Tusa v I (27.2.1992).

Salgueiro da Silva Mouta v Portugal 99/125

[Application lodged 12.2.1996; Court Judgment 21.12.1999]

Mr João Manuel Salgueiro da Silva Mouta married his wife in 1983 and they had a daughter, M, born on 2 November 1987. The applicant and his wife separated in 1990 and since then he had been in a homosexual relationship. They started divorce proceedings in which they reached an agreement giving parental responsibility to the mother and access to the applicant. However, she refused the applicant access to M. He sought an order giving him parental responsibility for the child which was granted by the Family Affairs Court in 1994. M stayed with the applicant until 1995 when, he alleged, she was abducted by her mother. Criminal proceedings were pending in that regard. His wife's appeal resulted in the Court of Appeal reversing the lower court's judgment, holding that generally a young child should not be separated from its mother and stating that a homosexual environment could not be claimed to be healthy for a child's development, given that, in the Court of Appeal's view, it was an abnormal situation. The court granted the applicant a contact order but it was never complied with. He complained of a violation of A 8 alone and together with A 14.

Court found unanimously V 14+8.

Judges: Mr M Pellonpää, President, Mr G Ress, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mr I Cabral Barreto, Mrs N Vajic.

Regarding the difference in treatment, the Court of Appeal had acted correctly in considering the interest of the child, basing its decision on the facts of the case and the law allowing it to award parental responsibility to one parent rather than the other. However, in reversing the decision of the lower court and awarding parental responsibility to the mother rather than the father, the Court of Appeal had had regard to a new factor, namely that the applicant was a homosexual living with another man. There had therefore been a difference in treatment between the applicant and M's mother based on the applicant's sexual orientation, which fell within A 14 since the list set out in that article was not exhaustive. Regarding the justification for the difference of treatment, the Court of Appeal had pursued a legitimate aim in reaching its decision, namely the protection of the child's health and rights. The comments of the Court of Appeal (that the child must live in a traditional Portuguese family and that it was unnecessary to examine whether or not homosexuality was an illness or sexual orientation, either way it was an abnormality and children must not grow up in the shadow of abnormal situations) were not simply clumsy or unfortunate or *obiter dicta*, they suggested that the applicant's homosexuality had been decisive in the decision to award parental responsibility to the mother. That conclusion was supported by the fact that when ruling on the applicant's rights of access, the Court of Appeal had discouraged the applicant from behaving during visits in a way that would make the child aware that he was living with

another man as if they were spouses. The Court of Appeal had drawn a distinction dictated by considerations as to the applicant's sexual orientation and there had been a violation of A 14+8.

Having regard to the above conclusion it was not necessary to examine A 8 taken in isolation, the arguments on that point were similar in substance with those already examined under A 14+8.

Present judgment constituted just satisfaction for alleged damage. Costs (PTE 350,000) and expenses (PTE 1,800,000).

Cited: Engel and Others v NL (8.6.1976), Hoffmann v A (23.6.1993), Karlheinz Schmidt v D (18.7.1994).

Salman v Turkey 00/170

[Application lodged 20.5.1993; Commission report 1.5.1999; Court Judgment 27.6.2000]

Mrs Behiye Salman's husband, Agit Salman, was detained by police on 28/29 April 1992 on suspicion of aiding and abetting the Kurdistan Workers' Party (PKK) and subsequently died. The facts were disputed between the parties. The applicant complained that her husband had died as a result of being tortured while in police custody. She relied on A 2, 3, 6, 13, 14 and 18 of the Convention. In the course of the proceedings, she further alleged that she had been hindered in the effective exercise of the right of individual petition as guaranteed by former A 25(1).

Comm found unanimously V 2 on account of the death in custody of the applicant's husband, V 3 in that her husband had been tortured, V 13, NV 14 and 18, that Turkey had failed to comply with its obligations under former 25.

Court dismissed by majority (16–1) the Government's preliminary objection, found (16–1) V 2 in respect of the death of Agit Salman in custody, unanimously V 2 in that the authorities failed to carry out an adequate and effective investigation into the circumstances of Agit Salman's death in custody, unanimously V 3, (16–1) V 13, unanimously that the respondent State has failed to comply with its obligations under former 25(1).

Judges: Mr L Wildhaber, President, Mr J-P Costa, Mr A Pastor Ridruejo, Mr L Ferrari Bravo, Mr G Bonello (c), Mr J Makarczyk, Mr P Kûris, Mrs F Tulkens, Mr V Butkevych, Mr J Casadevall, Mrs N Vajic, Mrs HS Greve (c), Mr AB Baka, Mr R Maruste, Mrs S Botoucharova, Mr M Ugrekhelidze, Mr F Gölcüklü (d), ad hoc judge.

The Court recalled its case-law relating to the rule of exhaustion of domestic remedies. With respect to an action in administrative law based on the authorities' strict liability, a Contracting State's obligation under A 2 and 13 of the Convention to conduct an investigation capable of leading to the identification and punishment of those responsible in cases of fatal assault might be rendered illusory if in respect of complaints under those articles an applicant were to be required to exhaust an administrative law action leading only to an award of damages. Consequently, the applicant was not required to bring the administrative proceedings in question and the preliminary objection was in that respect unfounded. The preliminary objection based on administrative law was therefore dismissed. As regards a civil action for redress for damage sustained through illegal acts or patently unlawful conduct on the part of State agents, the plaintiff in such an action had to establish a causal link between the tort and the damage and identify the person believed to have committed the tort. In the present case there was no evidence as to which police officer was responsible and the report from the Forensic Medicine Institute did not establish that any unlawful acts had occurred. With regard to the criminal law remedies, the trial terminated in an acquittal of the police officers on the basis that there was insufficient evidence to establish that they had ill-treated her husband prior to his death or to establish that he had died because of ill-treatment. The applicant has argued that in those circumstances a further appeal had no reasonable prospect of success. The issues were closely linked to the complaints regarding the ineffectiveness of the investigation and therefore that aspect of the preliminary objection was joined to the merits.

A 2 ranked as one of the most fundamental provisions in the Convention, to which no derogation was permitted. A 2 had to be interpreted and applied so as to make its safeguards practical and effective. Any use of force had to be no more than 'absolutely necessary' for the achievement of

one or more of the purposes set out in sub-paras (a)–(c). The force used had to be strictly proportionate to the achievement of the permitted aims. In the light of the importance of the protection afforded by A 2, the Court had to subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Persons in custody were in a vulnerable position and the authorities were under a duty to protect them. Consequently, where an individual was taken into police custody in good health and was found to be injured on release, it was incumbent on the State to provide a plausible explanation of how those injuries were caused. The obligation on the authorities to account for the treatment of an individual in custody was particularly stringent where that individual died. In assessing evidence, the general principle applied in cases had been to apply the standard of proof 'beyond reasonable doubt'. However, such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lay wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact would arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation. Agit Salman was taken into custody in apparent good health and without any pre-existing injuries or active illness. No plausible explanation had been provided for the injuries to the left ankle, bruising and swelling of the left foot, the bruise to the chest and the broken sternum. The evidence did not support the Government's contention that injuries might have been caused on arrest nor that the broken sternum was caused by cardiac massage after a heart attack brought on by the stress of his detention. The Government had not accounted for the death of Agit Salman during his detention and their responsibility for his death was engaged. There had been a violation of A 2 in that respect.

While an autopsy investigation was of critical importance in determining the facts surrounding Agit Salman's death, the procedure was defective thereby fundamentally undermining any attempt to determine police responsibility for Agit Salman's death. Furthermore, the indictment named indiscriminately all the officers known to have come in to contact with Agit Salman from his arrest to his death without adducing evidence concerning the more precise identification of the officers who did, or could have, ill-treated Agit Salman. In those circumstances, an appeal to the Court of Cassation had no effective prospect of clarifying or improving the evidence available. That being so, the applicant had to be regarded as having complied with the requirement to exhaust the relevant criminal law remedies. The authorities failed to carry out an effective investigation into the circumstances surrounding Agit Salman's death thus rendering recourse to civil remedies equally ineffective in the circumstances. Therefore the criminal and civil proceedings limb of the Government's preliminary objection were dismissed. There had been a violation of A 2 in this respect.

The Government had not provided a plausible explanation for the marks and injuries found on Agit Salman's body after he had entered custody in apparent good health. The bruising and swelling on the left foot combined with the grazes on the left ankle were consistent with the application of *falaka*. It was not likely to have been caused accidentally. The bruise to the chest overlying a fracture in the sternum was also more consistent with a blow to the chest than a fall. Those injuries, unaccounted for by the Government, had therefore to be considered attributable to a form of ill-treatment for which the authorities were responsible. Having regard to the nature and degree of the ill-treatment and to the strong inferences that could be drawn from the evidence that it occurred during interrogation about Agit Salman's suspected participation in PKK activities, it involved very serious and cruel suffering that could be characterised as torture. There had therefore been a breach of A 3.

Given the fundamental importance of the right to protection of life, A 13 required, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and including effective access for the complainant to the investigation procedure. The Government

were responsible under A 2 and 3 of the Convention for the death and torture in custody of the applicant's husband. The applicant's complaints in this regard were therefore arguable for the purposes of A 13. The authorities thus had an obligation to carry out an effective investigation into the circumstances of the death of the applicant's husband. No effective criminal investigation could be considered to have been conducted in accordance with A 13, the requirements of which may be broader than the obligation to investigate imposed by the article. The applicant had therefore been denied an effective remedy in respect of the death of her husband and thereby access to any other available remedies at her disposal, including a claim for compensation. Consequently, there had been a violation of A 13.

Having regard to the findings under A 2, 3 and 13 above, it was not necessary to determine whether the failings identified in the case were part of a practice adopted by the authorities.

It was of the utmost importance for the effective operation of the system of individual petition instituted by former A 25 (now A 34) that applicants or potential applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. In this context, pressure included not only direct coercion and flagrant acts of intimidation but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy. Whether or not contacts between the authorities and an applicant were tantamount to unacceptable practices from the standpoint of former A 25(1) had to be determined in the light of the particular circumstances of the case. The applicant was questioned by police officers from the Adana Anti-Terror Department on 24 January 1996 and by police officers again on 9 February 1996. The record of interview showed that she was questioned, not only about her declaration of means, but also about how she introduced her application to the Commission and with whose assistance. Furthermore, the Government had not denied that the applicant was blindfolded while at the Adana Anti-Terror Department. That would have increased the applicant's vulnerability causing her anxiety and distress and amounted to oppressive treatment. There was no plausible reason as to why the applicant was questioned twice about her legal aid application and in particular why the questioning was by Anti-Terror Department police officers, whom the applicant had claimed were responsible for the death of her husband. The applicant must have felt intimidated by these contacts with the authorities. That constituted undue interference with her petition to the Convention organs. The respondent State had therefore failed to comply with its obligations under former A 25(1) of the Convention.

Pecuniary damage (by majority (16–1) GBP 39,320.64), non-pecuniary damage ((16–1) GBP 35,000), costs and expenses ((16–1) GBP 21,544.58 less FF 11,195).

Cited: Akdivar and Others v TR (16.9.1996), Aksoy v TR (18.12.1996), Barberà, Messegué and Jabardo v E (13.6.1994 (A 50)), Boyle and Rice v UK (27.4.1988), Çakici v TR (8.7.1999), Ergi v TR (28.7.1998), Ireland v UK (18.1.1978), Kaya v TR (19.2.1998), Kurt v TR (25.5.1998), McCann and Others v UK (27.9.1995), Selmouni v F (28.7.1999), Yasa v TR (2.9.1998).

Salvatori and Gardin v Italy 00/21

[Application lodged 24.11.1997; Court Judgment 25.1.2000]

Mr Mara Salvatori and Mr Luigi Gardin complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 20 May 1988 and was still pending. It had lasted more than 11 years and seven months at one instance. That period was not considered reasonable.

Non-pecuniary damage (ITL 32,000,000), costs and expenses (ITL 1,500,000).

Cited: Bottazzi v I (28.7.1999).

Sanchez-Reisse v Switzerland (1986) 9 EHRR 71 86/10

[Application lodged 10.5.1982; Commission report 13.12.1984; Court Judgment 21.10.1986]

The applicant was arrested in Switzerland with a view to extradition, but he objected and applied for provisional release. He complained that the procedures adopted by the Federal Court for considering his requests for release breached A 5(4).

Comm found unanimously V 5(4) because the requirements of the procedures and the speed laid down therein had not been complied with in the proceedings in question.

Court by majority found V 5(4) on account of non-compliance with procedural guarantees and on account of the failure to take decisions speedily.

It was the duty of national judicial authorities to ensure that pre-trial detention did not exceed a reasonable time. A *sine qua non* for continued detention was the persistence of a reasonable suspicion that the person arrested had committed an offence but after a certain time that was no longer sufficient and the Court had to establish whether the other grounds were relevant and sufficient and if the national courts had displayed special diligence. In this case the procedure followed, viewed as a whole, did not fully comply with the guarantees afforded by A 5(4) because it did not provide the applicant with the benefit of an adversarial procedure. Furthermore, because the matter was particularly straightforward, the time which elapsed between the lodging of the requests and the decisions thereon did not satisfy the requirements of speed laid down in A 5(4).

Costs and expenses (CHF 6,868).

Cited: De Wilde, Ooms and Versyp v B (10.3.1972); Minelli v CH (25.3.1983), Neumeister v A (27.6.1968), Schiesser v CH (4.12.1979); Winterrwerp v NL (24.10.1979), X v UK (5.11.1981), Zimmermann and Steiner v CH (13.7.1983).

Sander v United Kingdom 00/147

[Application lodged 22.7.1996; Court Judgment 9.5.2000]

Mr Kudlip S Sander, an Asian, together with co-accused appeared before the Birmingham Crown Court, composed of a judge and a jury, to be tried for conspiracy to defraud. During the trial one of the jurors wrote a note to the court in which he alleged that at least two of the other jurors had made openly racist remarks and jokes. After discussing the matter with counsel in chambers and hearing submissions in open court, the judge recalled the jury and reminded them of their oath and to search their consciences and indicate if they were unable to try the case solely on the evidence. The next morning the judge received two letters from the jury. The first letter, which was signed by all the jurors including the juror who had sent the complaint, refuted the allegations and confirmed their intention to reach a verdict without any racial bias. The second letter was written by a juror who appeared to have thought himself to have been the one who had been making the jokes. He apologised if he had given any offence, that he was somebody who had many connections with people from ethnic minorities and that he was in no way racially biased. The judge decided that he would not discharge the jury. The jury found the applicant guilty, but acquitted another Asian co-accused. The applicant was sentenced to five years' imprisonment. His appeal to the Court of Appeal was dismissed. The applicant complained that he was not tried by an impartial tribunal.

Court found by majority (4–3) V 6(1).

Judges: Mr J-P Costa (d), President, Sir Nicolas Bratza (d), Mr L Loucaides (pc/pd), Mr P Kûris, Mr W Fuhrmann (d), Mrs HS Greve, Mr K Traja.

It was of fundamental importance in a democratic society that the courts inspired confidence in the public and, as far as criminal proceedings were concerned, in the accused. To that end a tribunal, including a jury, had to be impartial from a subjective as well as an objective point of view. The personal impartiality of a judge had to be presumed until there was proof to the contrary. The same held true in respect of jurors. It was established that at least one juror had made comments

that could be understood as jokes about Asians. That did not on its own amount to evidence that the juror in question was actually biased against the applicant. Since it was not possible for the trial judge to question the jurors about the true nature of those comments and the exact context in which they had been made, it had not been established that the court that tried the applicant was lacking in impartiality from a subjective point of view. Regarding objective impartiality, the letter from all the jurors could not on its own discredit the allegations contained in the original note, because, first, one of the jurors wrote a separate letter indirectly admitting that he had been making racist jokes, which in the context of judicial proceedings, took on a different hue and assumed a different significance from jokes made in the context of a more intimate and informal atmosphere; secondly, the collective letter was also signed by the juror who had submitted the note, thus casting some doubt on the credibility of the letter and since the identity of the juror was known he must have compromised his position vis-à-vis his fellow jurors; thirdly, openly admitting to racism was something which the average person would have a natural tendency to avoid. *A fortiori*, an open admission of racism could not be easily expected from a person in jury service, the latter being generally regarded an important civic duty. Therefore, the collective denial of the allegations contained in the note could not in itself provide a satisfactory solution to the problem. Generally speaking, an admonition or direction by a judge, however clear, detailed and forceful, would not change racist views overnight. Although in the present case it could not be assumed that such views were indeed held by one or more jurors, it had been established that at least one juror had been making racist comments. In those circumstances, the direction given by the judge to the jury could not dispel the reasonable impression and fear of a lack of impartiality, which were based on the original note. Under domestic law the judge could not question the jurors on the allegations contained in the note. Nor could the co-accused's acquittal be of decisive importance, since there was nothing to indicate that the two cases were comparable. Finally, the fact that the Court of Appeal rejected the applicant's appeal applying principles that corresponded to the Convention case-law could offer only limited assistance to the Court in the present case. The allegations contained in the note were capable of causing the applicant and any objective observer legitimate doubts as to the impartiality of the court, which neither the collective letter nor the redirection of the jury by the judge could have dispelled. The case of *Gregory v UK* could be distinguished as there was no admission by a juror that he had made racist comments, in the form of a joke or otherwise; there was no indication as to who had made the complaint and the complaint was vague and imprecise. Although discharging the jury might not always be the only means to achieve a fair trial, there were certain circumstances where this was required by A 6(1). Given the importance attached by all Contracting States to the need to combat racism, the judge should have reacted in a more robust manner than merely seeking vague assurances that the jurors could set aside their prejudices and try the case solely on the evidence. By failing to do so, the judge did not provide sufficient guarantees to exclude any objectively justified or legitimate doubts as to the impartiality of the court. It followed that the court that condemned the applicant was not impartial from an objective point of view. There was, therefore, a violation of A 6(1).

Dismissed unanimously the applicant's claims for just satisfaction as no causal link established between the violation found and the claimed damage.

Cited: Gregory v UK (25.2.1997), Piersack v B (1.10.1982).

Sanna v Italy 00/126

[Application lodged 8.10.1997; Commission report 4.3.1999; Court Judgment 11.4.2000]

Mr Franco Sanna complained of the length of civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mrs E Palm, President, Mr L Ferrari Bravo, Mr Gaukur Jörundsson, Mr R Türmen, Mr B Zupancic, Mr T Pantîru, Mr R Maruste.

The period to be taken into consideration began on 11 October 1993 and was still pending at 1 December 1999. It had lasted more than six years and one month at one instance. The period could not be considered reasonable.

Non-pecuniary damage (ITL 12,000,000), costs and expenses (ITL 4,000,000).

Cited: Bottazzi v I (28.7.1999).

Santilli v Italy (1992) 14 EHRR 421 91/7

[Application lodged 4.3.1985; Commission report 6.11.1989; Court Judgment 19.2.1991]

Mr Franco Santilli operated a food-production business. On 24 July 1979 he obtained a loan from a finance institution on condition that the sum would be used solely for equipping the firm. On 11 September the amount was paid into the applicant's account, but the bank used it to offset his overdraft. He brought proceedings against his bank on 27 September 1979. Judgment was delivered against the applicant on 19 July 1984. The applicant's trustee in bankruptcy appealed on 7 December 1984 and the appeal was dismissed in a judgment dated 6 May 1986, filed on 18 June 1986. He complained of the length of the civil proceedings and of the disregard of his right to peaceful enjoyment of his possessions.

Comm found unanimously V 6(1), NV P1A1.

Court found unanimously V 6(1), not necessary to examine P1A1.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr C Russo, Mr N Valticos, Mr SK Martens, Mr JM Morenilla.

The period to be considered began on 27 September 1979, when the summons was served on the defendant. It ended on 18 June 1986, when the Court of Appeal's judgment was filed. It had lasted just under six years, nine months. States had to organise their legal systems so as to allow the courts to comply with the requirement of reasonable time. In assessing the reasonableness of the length of the proceedings, account had to be taken of the complexity of the case, conduct of the applicant and of the competent authorities. The present case was complex but there had been long periods of total inactivity by the trial court. The lapse of time was not reasonable; there had been a breach of A 6(1).

In the circumstances of the case and the conclusion above, it was not necessary to determine also the complaint based on P1A1.

Non-pecuniary damage (ITL 10,000,000), costs and expenses (ITL 4,000,000).

Cited: Obermeier v A (28.6.1990), Unión Alimentaria Sanders SA v E (7.7.1989).

Santos v Portugal 99/42

[Application lodged 4.2.1997; Court Judgment 22.7.1999]

Mr Cassiano Santos lodged a criminal complaint against a bad cheque on 20 June 1991. In May 1993, he claimed damages against the defendant. The defendant could not be found and he was summonsed by the display of notices. The defendant received the case file on 8 February 1997 and the case was set for trial. The trial was adjourned *sine die* when the judge fell ill. On 19 March 1999 the case was set down for trial for 11 October 2000. The applicant complained of the length of the proceedings.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mr I Cabral Barreto, Mrs N Vajic, Mrs S Botoucharova.

The period to be taken into consideration began not when the criminal complaint was lodged on 20 June 1991, but when the action in damages was brought on 7 May 1993. The adjourned proceedings were still pending. The length of the proceedings was six years and approximately two months. The case was not complex and the applicant had not contributed to the delay in the

proceedings. There had been periods of inactivity when the defendant could not be found. Whilst that could not be entirely attributable to the State, the fact that the judicial authorities had difficulties in effecting service as required by statute could not deprive the applicant, who was the civil party to those proceedings, of his right to have his case heard within a reasonable time. There were other unjustifiable delays in the proceedings.

Non-pecuniary damage (PTE 800,000).

Cited: Casciaroli v I (27.2.1992), Foti and Others v I (10.12.1982), Silva Pontes v P (23.3.1994).

Saraiva de Carvalho v Portugal (1994) 18 EHRR 534 94/15

[Application lodged 10 October 1989; Commission report 14.1.1993; Court Judgment 22.4.1994]

Mr Otelo Saraiva de Carvalho was a lieutenant-colonel in the Portuguese army. On 10 June 1984 he was arrested and detained on a charge of founding and leading a terrorist organisation, 'FP 25 de Abril' (Popular Forces 25 April), a group that had claimed responsibility for several bomb outrages, armed attacks and murders. On 7 January 1985 the prosecutor delivered his charges. On 22 January 1985 the judge responsible for the case, Mr Antonio Salvado, issued a *despacho de pronúncia*, assessing and classifying the offences charged. The applicant did not appeal against the *despacho*. The trial, on 7 October 1985 before the Lisbon Criminal Court, was composed of three judges and was presided over by Mr Salvado. On 20 May 1987 was found guilty of being a leading member of the 'FP 25 de Abril' and sentenced to 15 years' military imprisonment. The applicant complained that his case had not been heard by an impartial tribunal as the same judge had both initially issued the *despacho de pronúncia* and subsequently presided over the Criminal Court.

Comm found by majority (9–8) NV 6(1).

Court found unanimously NV 6(1).

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr A Spielmann, Mr SK Martens, Mr I Foighel, Mr F Bigi, Mr AB Baka, Mr MA Lopes Rocha, Mr J Makarczyk.

The existence of impartiality for the purposes of A 6(1) had to be determined according to a subjective test, that was on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that was ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in that respect. There was no dispute about the judge's personal impartiality. The mere fact that a judge had already taken decisions before the trial could not in itself be regarded as justifying anxieties about his impartiality. What mattered was the scope and nature of the measures taken by the judge before the trial. That intermediate decision was not equivalent to a committal for trial. The judge in charge of the case, when issuing the despacho, was determining whether the file, including the prosecution's charges, amounted to a *prima facie* case such as to justify making an individual go through the ordeal of a trial. The issues which the judge had to settle when taking that decision were consequently not the same as those which were decisive for his final judgment. The applicant had not appealed the decision. In producing the despacho, Mr Salvado was acting in his capacity as a judge of the Criminal Court, he took no steps in the investigation or in the prosecution. His detailed knowledge of the case did not mean that he was prejudiced in a way that prevented him from being impartial when the case came to trial. His function in the initial phase of the proceedings was to satisfy himself not that there was a 'particularly confirmed suspicion' but that there was *prima facie* evidence. Nor could Mr Salvado's preliminary assessment of the available evidence be regarded as a formal finding of guilt. That was made only in the judgment of 20 May 1987, on the basis of the evidence adduced and tested orally at 263 sittings and which led the division presided over by Mr Salvado to convict the applicant. As to the decision to leave an accused in pre-trial detention, this could only justify fears concerning a judge's impartiality in special circumstances. Mr Salvado, however, did not at the time make any fresh assessment capable of having a decisive influence on his opinion of the merits; he did no more than make a cursory examination, which disclosed no factors telling in favour of Mr Saraiva de Carvalho's release. Mr Salvado's participation in the adoption of the judgment of 20 May 1987

did not undermine the impartiality of the Criminal Court, since the applicant's fears could not be regarded as having been objectively justified. There had therefore been no breach of A 6(1).

Cited: De Cubber v B (26.10.1984), Fey v A (24.2.1993), Hauschildt v DK (24.5.1989), Nortier v NL (24.8.1993), Padovani v I (26.2.1993), Piersack v B (1.10.1982).

Sartori v Italy 00/192

[Application lodged 6.3.1995; Court Judgment 27.7.2000]

Mr Giuseppe Sartori complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr G Ress, President, Mr B Conforti, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mrs N Vajic, Mr M Pellonpää.

The period to be taken into consideration began on 20 November 1984 and was still pending on appeal. It had lasted over 15 years and seven months at two levels of jurisdiction, which could not be considered reasonable.

Non-pecuniary damage (ITL 30,000,000).

Cited: Bottazzi v I (28.7.1999).

Saunders v United Kingdom (1997) 23 EHRR 313 96/59

[Application lodged 20.7.1988; Commission report 10.5.1994; Court Judgment 17.12.1996]

Mr Ernest Saunders had become a director and chief executive of Guinness plc in 1981. In early 1986 Guinness was competing with another public company, Argyll Group plc, to take over a third public company, the Distillers Company plc ('Distillers'). The take-over battle resulted in victory for Guinness. Allegations and rumours of misconduct during the course of the bid led the Secretary of State for Trade and Industry to appoint inspectors to investigate the affairs of Guinness. The applicant was interviewed by DTI inspectors. A criminal investigation followed, the transcripts and documents obtained as a result of the inspectors' interviews being passed on to the police. The applicant was subsequently charged with numerous offences relating to an illegal share-support operation. On 22 August 1990 he was convicted of conspiracy, false accounting and theft and sentenced to an overall prison sentence of five years. He complained that the use at his trial of statements made by him to the DTI inspectors under their compulsory powers deprived him of a fair hearing.

Comm found by majority (14–1) V 6(1).

Court found by majority (16–4) V 6(1).

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü (d), Mr L-E Pettiti (c), Mr B Walsh (c), Mr A Spielmann, Mr J De Meyer (c), Mr N Valticos (d), Mr SK Martens(d), Mrs E Palm, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla (c), Sir John Freeland, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr D Gotchev, Mr B Repik (c), Mr P Kûris (d).

The applicant's complaint was confined to the use of the statements obtained by the DTI inspectors during the criminal proceedings against him. While an administrative investigation was capable of involving the determination of a 'criminal charge' in the light of the Court's case-law concerning the autonomous meaning of this concept, it had not been suggested that A 6(1) was applicable to the proceedings conducted by the inspectors or that those proceedings themselves involved the determination of a criminal charge within the meaning of that provision. As was held in *Fayed v UK*, the functions performed by the inspectors under the relevant provision of the Companies Act 1985 were essentially investigative in nature and they did not adjudicate either in form or in substance. Their purpose was to ascertain and record facts which might subsequently be used as the basis for action by other competent authorities – prosecuting, regulatory, disciplinary or even legislative. A requirement that such a preparatory investigation should be subject to the guarantees of a judicial procedure as set forth in A 6(1) would in practice unduly hamper the effective

regulation in the public interest of complex financial and commercial activities. Accordingly, the Court's sole concern in the present case was with the use made of the relevant statements at the applicant's criminal trial. Although not specifically mentioned in A 6, the right to silence and the right not to incriminate oneself were generally recognised international standards which lay at the heart of the notion of a fair procedure under A 6. Their rationale lay, *inter alia*, in the protection of the accused against improper compulsion by the authorities thereby contributing to the avoidance of miscarriages of justice and to the fulfilment of the aims of A 6. The right not to incriminate oneself, in particular, presupposed that the prosecution in a criminal case sought to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused. In this sense the right was closely linked to the presumption of innocence contained in A 6(2). The right not to incriminate oneself was primarily concerned, however, with respecting the will of an accused person to remain silent. It did not extend to the use in criminal proceedings of material which might be obtained from the accused through the use of compulsory powers but which had an existence independent of the will of the suspect such as, *inter alia*, documents acquired pursuant to a warrant, breath, blood and urine samples and bodily tissue for the purpose of DNA testing. In the present case the Court was only called upon to decide whether the use made by the prosecution of the statements obtained from the applicant by the inspectors amounted to an unjustifiable infringement of the right. The Court did not accept the Government's premise that only statements which were self-incriminating could fall within the privilege against self-incrimination since some of the applicant's answers were in fact of an incriminating nature in the sense that they contained admissions to knowledge of information which tended to incriminate him. In any event, bearing in mind the concept of fairness in A 6, the right not to incriminate oneself could not reasonably be confined to statements of admission of wrongdoing or to remarks which were directly incriminating. Testimony obtained under compulsion which appeared on its face to be of a non-incriminating nature – such as exculpatory remarks or mere information on questions of fact – might later be deployed in criminal proceedings in support of the prosecution case, for example, to contradict or cast doubt upon other statements of the accused or evidence given by him during the trial or to otherwise undermine his credibility. Where the credibility of an accused had to be assessed by a jury, the use of such testimony might be especially harmful. It followed that what was of the essence in that context was the use to which evidence obtained under compulsion was put in the course of the criminal trial. The transcripts of the applicant's answers, whether directly self-incriminating or not, were used in the course of the proceedings in a manner which sought to incriminate the applicant. It was unnecessary to speculate on the reasons why the applicant chose to give evidence at his trial. Nor was it necessary to decide whether the right not to incriminate oneself was absolute or whether infringements of it might be justified in particular circumstances. The general requirements of fairness contained in A 6, including the right not to incriminate oneself, applied to criminal proceedings in respect of all types of criminal offences without distinction from the most simple to the most complex. The public interest could not be invoked to justify the use of answers compulsorily obtained in a non-judicial investigation to incriminate the accused during the trial proceedings. The various procedural safeguards to which reference had been made by the respondent Government (independence of inspectors who were subject to judicial supervision, the power of judge to exclude evidence at trial), could not provide a defence in the present case since they did not operate to prevent the use of the statements in the subsequent criminal proceedings. Accordingly, there had been an infringement in the present case of the right not to incriminate oneself and the applicant had been deprived of a fair hearing in violation of A 6(1).

In the light of the above finding of an infringement of the right not to incriminate oneself, it was not necessary to examine the applicant's allegations regarding misuse of powers by the prosecuting authorities.

Finding of a violation constituted just satisfaction in respect of any non-pecuniary damage sustained. Costs and expenses (GBP 75,000).

Cited: Deweer v B (27.2.1980), Fayed v UK (21.9.1994), Funke v F (25.2.1993), John Murray v UK (8.2.1996).

Savona v Italy 00/74

[Application lodged 13.12.1995; Commission report 27.10.1998; Court Judgment 15.2.2000]

Mr Salvatore Savona complained of the length of civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr L Ferrari Bravo, Mr P Kûris, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The proceedings lasted more than seven years and two months (from 15 June 1989 to 13 September 1996) at one level of jurisdiction and that could not be considered reasonable.

Non-pecuniary damage (ITL 28,000,000), costs and expenses (ITL 3,000,000).

Cited: Bottazzi v I (28.7.1999).

Scalvini v Italy 99/68

[Application lodged 5.4.1996; Commission report 27.5.1998; Court Judgment 26.10.1999]

Mr Aurelio Scalvini complained of the length of civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr L Ferrari Bravo (so), Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mr AB Baka, Mr E Levits.

The period to be taken into consideration began on 17 June 1989 and was still pending. It had lasted more than 10 years and three months. The period could not be considered reasonable.

Non-pecuniary damage (ITL 35,000,000), costs and expenses (ITL 5,000,000).

Cited: Bottazzi v I (28.7.1999), Capuano v I (25.6.1987).

Scarano v Italy 00/34

[Application lodged 11.11.1997; Court Judgment 25.1.2000]

Mr Vincenzo Scarano complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 16 May 1983 and ended on 29 October 1998. It had lasted more than 15 years and five months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 48,000,000), costs and expenses (ITL 567,200).

Cited: Cited: Bottazzi v I (28.7.1999), Capuano v I (25.6.1987).

Scarfò v Italy 97/65

[Application lodged 30.11.1993; Commission report 28.11.1995; Court Judgment 2.9.1997]

Mr Raffaele Vincenzo Scarfò was a civil servant employed by the Calabria Regional Council. On 4 May 1982 he instituted proceedings in the Calabria Regional Administrative Court for judicial review of a decision of the Regional Council assigning him, at the time when he was recruited to a permanent post, to a staff category lower than the one to which he considered himself to be entitled on the basis of the duties he had performed during the period when he was employed on a fixed-term contract. In a judgment of 5 December 1994, deposited with the registry on 13

February 1995, judgment was given against the applicant. He complained of the length of proceedings.

Comm found by majority (23–6) V 6.

Court found by majority (8–1) 6(1) not applicable.

Judges: Mr R Bernhardt, President, Mr C Russo, Mr N Valticos, Mr R Pekkanen (d), Mr AB Baka, Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr P Kûris, Mr E Levits.

In the law of many Member States of the Council of Europe there was a basic distinction between civil servants and employees governed by private law. That had led the Court to hold that disputes relating to the recruitment, careers and termination of service of civil servants were as a general rule outside the scope of A 6(1). In the present case the applicant sought only judicial review of the Regional Council's decision assigning him, at the time when he was recruited to a permanent post, to a staff category lower than the one to which he considered himself to be entitled. The dispute raised by him thus clearly related to his recruitment and his career and did not concern a 'civil' right within the meaning of A 6(1). Accordingly, A 6(1) was not applicable in the case.

Cited: Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993), Neigel v F (17.3.1997).

Scarth v United Kingdom 99/41

[Application lodged 2.2.1996; Commission report 21.10.1998; Court Judgment 22.7.1999]

Proceedings were brought against Mr Scarth on 26 September 1994 for recovery of a debt of GBP 697. The case was referred for hearing by way of arbitration. The applicant made an application for the main hearing to be in public and for evidence to be given on oath. The District Judge refused. The arbitration hearing took place in private on 16 January 1995 and the award was in favour of the plaintiff. The applicant's further appeals were dismissed. He complained, *inter alia*, of the lack of a public hearing.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr A Pastor Ridruejo, President, Mr L Caflisch, Mr J Makarczyk, Mr I Cabral Barreto, Mr V Butkevych, Mr J Hedigan, Mrs S Botoucharova.

The Government did not contest the opinion of the Commission on the allegations of breach of A 6(1). Regarding the further submissions of the applicant concerning those parts of the application which had been declared inadmissible, the scope of the case before the Court was determined by the Commission's decision on admissibility. The Commission declared inadmissible the whole of the application save the complaint relating to the absence of an oral hearing. It followed that the scope of the present case was limited exclusively to that complaint. The Court saw no reason to disagree with the conclusion reached by the Commission. The denial of a public hearing at first instance of the applicant's case was not compatible with A 6(1).

Finding of violation sufficient satisfaction for any non-pecuniary damage suffered by the applicant. Costs and expenses (GBP 705.82).

Cited: Çiraklar v TR (28.10.1998).

Schenk v Switzerland (1991) 13 EHRR 242 88/11

[Application lodged 6.3.1984; Commission report 14.5.1987; Court Judgment 12.7.1988]

Mr Pierre Schenk was a company director. He married Josette in 1947 and they separated in 1973. He advertised, under an assumed name, for a member of the Foreign Legion or similar for an assignment. Mr P answered the advert but informed the applicant's wife that her husband had commissioned him to kill her. They reported the matter to the police. The applicant phoned Mr P and the conversation was secretly taped. The recording was used in the applicant's trial for attempted incitement to murder. He was convicted and appealed claiming unlawfulness of the recording. His appeals were dismissed. He claimed to be the victim of an infringement of his right

to respect for his private life and his correspondence, which included the right to the confidentiality of telephone communications. He also alleged that his right to a fair trial had been infringed by reason of the use of the disputed recording in evidence. Finally, he complained of a failure to comply with the principle of the presumption of innocence since his guilt had not been proved according to law.

Comm found by majority (11–2) NV 6(1).

Court found by majority (13–4) NV 6(1), unanimously NV 6(2), by majority (15–2) not necessary to examine 8.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr L-E Pettiti (jd), Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr A Spielmann (jd), Mr J De Meyer (d/jd), Mr JA Carrillo (jd) Salcedo, Mr N Valticos.

Although the Commission had declared the claim under A 8 inadmissible for failure to exhaust domestic remedies and the Court had no jurisdiction to examine it as such, it could nevertheless be considered under another relevant provision, in this case A 6(1). While A 6 guaranteed the right to a fair trial, it did not lay down any rules on the admissibility of evidence which was primarily a matter for regulation under national law: The Court could only ascertain whether the applicant's trial as a whole was fair. The rights of the defence were not disregarded. The applicant had the opportunity, which he took, to challenge the authenticity of the recording and oppose its use. He had obtained an investigation of Mr P. The recording of the telephone conversation was not the only evidence on which the conviction was based. The use of the disputed recording in evidence did not deprive him of a fair trial and therefore did not contravene A 6(1).

The record of the hearing and the judgment contained nothing to suggest that the Criminal Court had treated him as if he were guilty before convicting him. There was therefore no breach of A 6(2).

The A 8 complaint was subsumed under the A 6 consideration.

Cited: Klass and Others v D (6.9.1978).

Scherer v Switzerland (1994) 18 EHRR 276 94/13

[Application lodged 6.8.1990; Commission report 14.1.1993; Court Judgment 5.3.1994]

Mr Bruno Scherer, who died on 13 March 1992, ran a sex shop in Zurich for homosexuals. The shop sold, among other things, magazines, books and video films. The nature of the establishment was not apparent to passers-by, but customers knew about it through advertisements to be found in specialist magazines or at homosexuals' meeting-places. At the back of the shop there was a room seating twelve people that was used for showing video films, which were changed every week or every fortnight. Customers heard of the films by word of mouth. From 21 to 23 November 1983 nine people saw the film *New York City*, which lasted two hours and was made up almost exclusively of sexual acts. On 23 November 1983 the sex shop was searched and the Zurich district attorney's office confiscated the film, the video recorder and the film-show takings and brought proceedings against the applicant. On 15 March 1984 the district attorney's office issued a sentence order whereby the applicant was fined for publishing obscene items and driving while under the influence of alcohol. There followed numerous appeal hearings. The applicant complained, *inter alia*, of his conviction for showing the film *New York City* and the ban on showing that film on his own premises and of later convictions for selling obscene publications.

Comm found by majority (12–5) V 10, unanimously not necessary to examine 8, by majority (15–2) NV 6(1).

Court by majority (6–3) SO.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr A Spielmann (d), Mr I Foighel (d), Mr J M Morenilla (d), Mr M A Lopes Rocha, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr D Gotchev.

The applicant's lawyer informed the Registrar on 3 May 1993 that his client had died on 13 March 1992 and subsequently indicated that the applicant's executor wanted the proceedings to continue. He did not at any time provide information concerning the heirs or their connection with the

applicant. On a number of occasions the Court had accepted that the parents, spouse or children of a deceased applicant were entitled to take his place in the proceedings. Those cases always involved close relatives. There was nothing to show that that was the position here. Furthermore, the applicant's executor had not expressed any intention whatsoever of seeking, on the applicant's behalf, to have the criminal proceedings reopened in Switzerland or to claim compensation for non-pecuniary damage in Strasbourg. Under those circumstances the applicant's death could be held to constitute a fact of a kind to provide a solution of the matter. There was also no reason of public policy why the case should not be struck out of the list, especially as, since the events giving rise to the instant case, the Federal Court's case-law on obscene items and the relevant Swiss legislation had undergone substantial changes. Accordingly the case was struck out of the list.

Cited: G v I (27.2.1992), Pandolfelli and Palumbo v I (27.2.1992), Raimondo v I (22.2.1994), Vocaturo v I (24.5.1991), X v F (31.3.1992).

Schiesser v Switzerland (1979–80) 2 EHRR 417 79/5

[Application lodged 15.11.1976; Commission report 9.3.1978; Court Judgment 4.12.1979]

Mr Friedrich Schiesser, who had been hiding from the police, gave himself up on 5 April 1976. He was at once brought before the Winterthur District Attorney and heard without his lawyer being present. He was placed in detention on remand. The District Attorney strongly suspected that the applicant had committed or attempted to commit several offences of aggravated theft and feared that he might suppress evidence. The applicant's appeal was dismissed by the Zürich Public Prosecutor on 13 April 1976. His public law appeal to the Federal Court was rejected. His detention on remand continued and further appeals were dismissed. He was eventually released on 12 July 1976. On 11 May 1978 he was sentenced to a suspended term of imprisonment for professional theft as a member of a gang. He alleged a violation of A 5(3) in that the District Attorney could not be regarded as an 'officer authorised by law to exercise judicial power', within the meaning of that provision.

Comm found by majority (9–5) NV 5(3), (11–1 with two abstentions that it was not called upon to consider 5(4) as the applicant had not exhausted domestic remedies). within the meaning of 26.

Court found by majority (5–2) NV 5(3), unanimously no jurisdiction to consider 5(4).

Judges: Mr G Balladore Pallieri, President, Mr M Zekia, Mr R Ryssdal (d), Mrs D Bindschedler-Robert, Mr D Evrigenis (d), Mr P-H Teitgen, Mr F Matscher.

The Court had to ascertain only whether the Attorney possessed the attributes of an 'officer authorised by law to exercise judicial power'. A 5 was designed to ensure that no one should be arbitrarily dispossessed of his liberty. That overall purpose entailed following a procedure that had a judicial character and gave guarantees appropriate to the kind of deprivation of liberty in question, without which it would be impossible to speak of a court. The officer referred to in A 5(3) had to offer guarantees befitting the judicial power conferred on him by law. The officer was not identical with the judge, but had to have some of the latter's attributes, that was to say he had to satisfy certain conditions each of which constituted a guarantee for the person arrested. One of the conditions was independence of the executive and of the parties. That did not mean that the officer may not be to some extent subordinate to other judges or officers provided that they themselves enjoyed similar independence. In addition, under A 5(3), there was both a procedural and a substantive requirement. The procedural requirement placed the officer under the obligation of himself hearing the individual brought before him; the substantive requirement imposed on him the obligations of reviewing the circumstances militating for or against detention, of deciding, by reference to legal criteria, whether there were reasons to justify detention and of ordering release if there were no such reasons. The status of the District Attorney and his powers in the matter of detention on remand were laid down in detail in the Constitution of the Courts Act and the Code of Criminal Procedure. In the present case the District Attorney intervened exclusively in his capacity as an investigating authority, that was in considering whether the applicant should be charged and detained on remand and, subsequently, in conducting inquiries with an obligation to

be equally thorough in gathering evidence in his favour and evidence against him. He did not assume the mantle of prosecutor. The District Attorney received no advice or instructions from outside sources, he acted alone, without the Public Prosecutor's assistance or supervision. He therefore exercised the personal discretion conferred on him by law. In those conditions, he offered guarantees of independence that were sufficient for the purposes of A 5(3). With regard to the procedural guarantees, when the applicant gave himself up, he was interrogated by the District Attorney himself within 24 hours. The District Attorney told the applicant why he was suspected of having committed or attempted to commit offences and informed him of his right of appeal against the warrant issued for his arrest. Although the applicant complained that his lawyer was not allowed to attend the interrogation, A 5(3) did not make a lawyer's presence obligatory. Immediately after the interrogation the District Attorney issued a detention order made in accordance with a procedure prescribed by law. The District Attorney therefore offered in the present case the guarantees of independence and the procedural and substantive guarantees inherent in the notion of 'officer authorised by law to exercise judicial power'. There had accordingly been no breach of A 5(3).

The Commission's report regarding A 5(4) amounted, in substance, to an implicit decision of inadmissibility. An examination therefore lay outside the Court's jurisdiction.

Cited: Delcourt v B (10.11.1969), De Wilde, Ooms and Versyp v B (18.6.1971), Handyside v UK (7.12.1976), Lawless v IRL (1.7.1961), Ireland v UK (18.1.1978), Marckx v B (13.6.1979), Neumeister v A (27.6.1968), Wemhoff v D (27.6.1968), Winterwerp v NL (24.10.1979).

Schmautzer v Austria (1996) 21 EHRR 511 95/34

[Application lodged 26.5.1989; Commission report 19.5.1994; Court Judgment 23.10.1995]

On 30 April 1986 Mr Peter Schmautzer was stopped by the police while driving his car. He was not wearing his safety-belt. In a sentence order of 1 June 1987 the federal police authority in Graz imposed on him a fine with imprisonment in default of payment, for an offence under the Motor Vehicles Act. He appealed to the Styria regional government, which upheld the decision, but reduced the fine. His appeals to the Constitutional Court and the Administrative Court were rejected. He complained that he had not had access to an independent and impartial tribunal.

Comm found unanimously V 6(1) as regards access to a court and that no separate issue under A 6(1) as to the failure to hold a hearing.

Court found unanimously V 6(1), not necessary to examine the complaint based on lack of a hearing in the Administrative Court.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Mr R Macdonald, Mr SK Martens (so), Mr I Foighel, Mr JM Morenilla, Sir John Freeland, Mr J Makarczyk.

In order to determine whether an offence qualified as 'criminal' for the purposes of the Convention, it was first necessary to ascertain whether or not the provision defining the offence belonged, in the legal system of the respondent State, to criminal law; next, the very nature of the offence and the degree of severity of the penalty risked had to be considered. Although the offences in issue and the procedures followed in the case fell within the administrative sphere, they were nevertheless criminal in nature. That was reflected in the terminology employed. In addition, the fine imposed on the applicant was accompanied by an order for his committal to prison in the event of his defaulting on payment. Those considerations were sufficient to establish that the offence of which the applicant was accused could be classified as criminal for the purposes of the Convention. It followed that A 6 applied.

The applicant based his complaints on A 6, whereas the wording of the Austrian reservation mentioned only A 5 and made express reference solely to measures for the deprivation of liberty. Moreover, the reservation only came into play where both substantive and procedural provisions of one or more of the four specific laws indicated in it had been applied. Here, however, the substantive provisions of a different Act, the Motor Vehicles Act 1967, were applied. The reservation in question did not therefore apply in the instant case.

Decisions taken by administrative authorities, which did not themselves satisfy the requirements of A 6(1), had to be subject to subsequent control by a judicial body that had full jurisdiction. The Constitutional Court was not such a body. In the present case, it could look at the impugned proceedings only from the point of view of their conformity with the Constitution, and that did not enable it to examine all the relevant facts. It accordingly lacked the powers required under A 6(1). The powers of the Administrative Court had to be assessed in the light of the fact that the court in the case was sitting in proceedings that were of a criminal nature for the purposes of the Convention. It followed that when the compatibility of those powers with A 6(1) was being gauged, regard had to be had to the complaints raised in that court by the applicant as well as to the defining characteristics of a judicial body that had full jurisdiction. Those included the power to quash in all respects, on questions of fact and law, the decision of the body below. As the Administrative Court lacked that power, it could not be regarded as a tribunal within the meaning of the Convention. It followed that the applicant did not have access to a tribunal. There had accordingly been a violation of A 6 on that point.

Having regard to the conclusion above, it was not necessary to examine the complaints regarding the lack of a hearing in the Administrative Court and that court's failure to take evidence from witnesses.

Costs and expenses (ATS 70,000).

Cited: Albert and Le Compte v B (10.2.1983), Chorherr v A (25.8.1993), Demicoli v M (27.8.1991), Fischer v A (26.4.1995), Öztürk v D (21.2.1984).

Schmidt and Dahlström v Sweden (1979–80) 1 EHRR 632 76/2

[Application lodged 9.6.1972; Commission report 17.7.1974; Court Judgment 6.2.1976]

Mr Folke Schmidt was a professor of law at the University of Stockholm and Mr Hans Dahlström was an officer in the Swedish Army. They were members of trade unions affiliated to two of the main federations representing Swedish State employees. They complained that under clause 18 of the collective agreement of June 1971, as members of organisations having proclaimed selective strikes, namely SACO (Swedish Confederation of Professional Associations) and SR (National Federation of State Employees), they were denied retroactivity of certain benefits, even though they themselves had not gone on strike. They complained that they had been unfairly prejudiced as compared with non-union officials and members of other unions, such as TCO-S and SF, that had refrained from strike action.

Comm found by majority (9–1 with one abstention) NV 11 in respect of the Government's policy of denying retroactive benefits to non-striking members of belligerent unions, (8–1 with two abstentions) NV 14+11(1) in respect of differential treatment.

Court found unanimously NV 11, NV 14+11.

Judges: Mr G Balladore Pallieri President, Mr H Mosler, Mr J Cemona, Mr G Wiarda, Mr P O'Donoghue, Mrs H Pedersen, Mr S Petren.

The Convention nowhere made an express distinction between the functions of a Contracting State as holder of public power and its responsibilities as employer. A 11 was accordingly binding upon the State as employer, whether the latter's relations with its employees were governed by public or private law. While A 11 (1) presented trade union freedom as one form or a special aspect of freedom of association, the Article did not secure any particular treatment of trade union members by the State. As far as their personal freedom of association was concerned, the applicants had retained that freedom both as of right and, in fact, despite the measure complained of; for they had remained members of their respective trade union organisations. The Convention safeguarded freedom to protect the occupational interests of trade union members by trade union action, the conduct and development of which the Contracting States had to both permit and make possible. A 11(1) nevertheless left each State a free choice of the means to be used towards this end. The grant of a right to strike represented without any doubt one of the most important of these means, but there were others. The Convention required that under national law, trade unionists should be

enabled, in conditions not at variance with A 11, to strive through the medium of their organisations for the protection of their occupational interests. Examination of the file in the case did not disclose that the applicants had been deprived of that capacity. There was thus established no infringement of a right guaranteed by A 11(1).

Despite finding no breach of A 11, the Court had to ascertain whether the difference in treatment, characterised by the applicants as discriminatory, infringed A 11 and 14 taken together. While the granting of retroactivity of salary increases or other benefits in itself fell outside the scope of A 11, in the present circumstances it was linked to the exercise of a right guaranteed by the said provision, namely the freedom to protect the occupational interests of trade union members by trade union action. A 14 was pertinent in the case. Clause 18 of the collective agreement of June 1971 accorded retroactivity of benefits to union officials except insofar as they had been on strike. In support of the difference of treatment thus established between the applicants and their non-striking colleagues, whether non-union or members of other unions, the Government invoked the principle according to which 'a strike destroys retroactivity'. The application of that principle was legitimate and there was no reason to believe that the State had other and ill-intentioned aims. Clause 18 of the collective agreement of June 1971 denied retroactivity of benefits to those who had continued to carry out their professional tasks during the period in question. Solidarity prevailed between the various members of the two organisations when engaged in a concerted campaign of selective industrial action. While some members were participating in person wherever strikes had been proclaimed, the other members, though discharging their duties in sectors unaffected by strike action, were providing financial and psychological support for this action. That reasoning did not apply to non-union employees or employees belonging to organisations other than SACO or SR, who had not gone on strike. Consequently, the Court could not accept the applicants' argument that the benefit of retroactivity should have been refused – or, alternatively, granted – to all staff in sectors where SACO or SR were representative. The principle of proportionality had not been offended in the present case.

Cited: 'Belgian Linguistic' case (23.7.1968), National Union of Belgian Police (27.10.1975).

Schönenberger and Durmaz v Switzerland (1989) 11 EHRR 202 88/8

[Application lodged 10.1.1985; Commission report 12.12.1986; Court Judgment 20.6.1988]

Mr Edmund Schönenberger, the first applicant, was a lawyer. The second applicant, Mr Mehmet Durmaz, a Turkish national, was a taxi-driver. On 16 February 1984 the second applicant was arrested and questioned in respect of drugs offences. His wife asked Mr Schönenberger to take charge of his defence and the district prosecutor was informed. On 24 February the first applicant wrote to the district prosecutor enclosing forms of authority to act and a letter to the second applicant. The letter to the second applicant contained information, *inter alia*, informing him of his right to refuse to make any statement and advising him that to exercise it would be to his advantage. The district prosecutor received the letter and enclosure for the second applicant but kept them from him without telling him that he had received them. He also asked the second applicant to choose a lawyer. The applicant then chose another lawyer. The applicants complained not that the Swiss authorities had apprised themselves of the contents of the letter from Mr Schönenberger to Mr Durmaz, but that they did not forward the letter to its addressee.

Comm found unanimously V 8, no separate issue arises under A 10.

Court found unanimously V 8, no separate issue arises under A 10.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mrs D Bindschedler-Robert, Mr L-E Pettiti, Sir Vincent Evans, Mr R Bernhardt, Mr J De Meyer.

There was interference by a public authority in the exercise of the right to respect for correspondence. The interference was in accordance with the law. The stopping of the letter by the district prosecutor had as its aim the prevention of disorder or crime. The pursuit of that objective might justify wider measures of interference in the case of a convicted prisoner than in that of a person at liberty. The same reasoning could be applied to a person being held on remand and

against whom inquiries with a view to bringing criminal charges were being made since in such a case there was often a risk of collusion. To be necessary in a democratic society, an interference had to be founded on a pressing social need and, in particular, be proportionate to the legitimate aim pursued. The Court did not accept the Government's argument that the stopping of the letter was necessary as the advice given was of such a nature as to jeopardise their proper conduct of the criminal proceedings. The first applicant sought to inform the second applicant of his right not to make a statement and advising him that to exercise it would be to his advantage. In that way, he was recommending that the second applicant adopt a certain tactic, lawful in itself under Swiss case-law, as it was open to an accused person to remain silent. The first applicant could also properly regard it as his duty, pending a meeting with the second applicant, to advise him of his right and of the possible consequences of exercising it. Advice given in those terms was not capable of creating a danger of connivance between the sender of the letter and its recipient and did not pose a threat to the normal conduct of the prosecution. The first applicant was acting on the instructions of Mrs Durmaz and had so informed the district prosecutor by telephone. The various contacts amounted to preliminary steps intended to enable the second applicant to have the benefit of the assistance of a defence lawyer of his choice and, thereby, to exercise a right enshrined in A 6. The fact that the first applicant had not been formally appointed was therefore of little consequence. Therefore the contested interference was not justifiable as necessary in a democratic society; consequently it was in breach of A 8.

No separate issue arose under A 10.

Damages (CHF 6,320 to Mr Schönenberger and CHF 2,750 to Mr Durmaz).

Cited: Golder v UK (21.2.1975), Olsson v S (24.3.1988), Silver and Others v UK (25.3.1983).

Schöpfer v Switzerland 98/35

[Application lodged 11.8.1994; Commission report 9.4.1997; Court Judgment 20.5.1998]

Mr Alois Schöpfer was a lawyer and a former member of the Cantonal Council. At the material time he was an advocate acting as defence counsel for a Mr S, who had been placed in detention pending trial on suspicion of committing a number of thefts. On 9 November 1992 the applicant held a press conference in his office in Lucerne at which he declared that at the Hochdorf district authority offices both the laws of the Canton of Lucerne and human rights were flagrantly disregarded, and had been for years. He pointed out that he was speaking to the press because it was his last resort. His comments were published in the press. The Lucerne Bar's Supervisory Board informed the applicant that his conduct raised certain ethical questions, relating in particular to the need for discretion with regard to pending proceedings and to covert publicity. On 21 December 1992 the Supervisory Board brought disciplinary proceedings against the applicant. On 15 March 1993 he was fined CHF 500 for a breach of professional ethics. The applicant's appeal was dismissed. He complained that the disciplinary penalty imposed on him had breached A 10.

Comm found by majority (9–6) NV 10.

Court found by majority (7–2) NV 10.

Judges: Mr Thór Vilhjálmsson, President, Mr J De Meyer (d), Mr R Pekkanen, Mr AB Baka, Mr MA Lopes Rocha, Mr L Wildhaber, Mr J Makarczyk, Mr P Jambrek (d), Mr M Voicu.

The penalty in issue amounted to interference with the applicant's exercise of his freedom of expression. It was prescribed by law and pursued a legitimate aim, namely maintaining the authority and impartiality of the judiciary. The special status of lawyers gave them a central position in the administration of justice as intermediaries between the public and the courts. Such a position explained the usual restrictions on the conduct of members of the Bar. The courts as the guarantors of justice, whose role was fundamental in a State based on the rule of law, had to enjoy public confidence. Regard being had to the key role of lawyers in this field, it was legitimate to expect them to contribute to the proper administration of justice, and thus to maintain public

confidence therein. The applicant first publicly criticised the administration of justice in Hochdorf and then exercised a legal remedy which proved effective with regard to the complaint in question. In so doing, his conduct was scarcely compatible with the contribution it was legitimate to expect lawyers to make to maintaining public confidence in the judicial authorities. The Court had regard to the seriousness and general nature of the criticisms made by the applicant and the tone in which he chose to make them. Freedom of expression was secured to lawyers, who were certainly entitled to comment in public on the administration of justice, but their criticism should not overstep certain bounds. In that connection, account had to be taken of the need to strike the right balance between the various interests involved, which included the public's right to receive information about questions arising from judicial decisions, the requirements of the proper administration of justice and the dignity of the legal profession. The applicant, who was a lawyer, had raised in public his complaints on the subject of criminal proceedings which were at that time pending before a criminal court. In addition to the general nature, the seriousness and the tone of the applicant's assertions, the Court noted that he first held a press conference, claiming that this was his last resort, and only afterwards lodged an appeal before the Lucerne Court of Appeal, which was partly successful. He also omitted to apply to the other supervisory body for the district authority, the public prosecutor's office, whose ineffectiveness he did not attempt to establish except by means of mere assertions. Having regard also to the modest amount of the fine imposed on the applicant, the Court considered that the authorities did not go beyond their margin of appreciation in punishing Mr Schöpfer. There had accordingly been no breach of A 10.

Cited: Casado Coca v E (24.2.1994), De Haes and Gijsels v B (24.2.1997).

Schouten and Meldrum v Netherlands (1995) 19 EHRR 432 94/48

[Application lodged 4.9.1991; Commission report 12.10.1993; Court Judgment 9.12.1994]

Mr Johannes Schouten was sole managing director of a limited liability company which owned a physiotherapy practice. In March 1987 the Occupational Association for Health and Mental and Social Well-being (BVG) sent Mr Schouten a demand for payment of contributions in respect of the physiotherapists under the Health Insurance Act, the Medical Assistance Fund Act, the Unemployment Insurance Act and the Occupational Disability Insurance Act. On 27 March 1987 the applicant lodged an objection to the BVG's demand and requested formal confirmation of its decision, with a view to lodging an appeal. The BVG gave such confirmation on 9 December 1988 with the reasons for its decision. The applicant appealed to the Rotterdam Appeals Tribunal. Thereafter proceedings continued until the Central Appeals Tribunal gave judgment in July 1991.

Mr Hendrik Alexander Meldrum was a physiotherapist. In October 1987 the BVG sent Mr Meldrum a demand for payment of contributions in respect of the other physiotherapists under the same statutes as above. In a letter of 4 December 1987 Mr Meldrum lodged an objection to the BVG's demand and requested formal confirmation of its decision, with a view to lodging an appeal. The BVG gave this confirmation on 1 May 1989 and Mr Meldrum appealed.

The applicants complained of the length of proceedings and of the fairness of proceedings in that the BVG was able to delay the start of judicial proceedings indefinitely.

Comm found V 6(1) as regards reasonable time, by majority (18–1) in the case of Mr Schouten and unanimously in the case of Mr Meldrum, V 6(2) as regards breach of principle of equality of arms, by majority (11–8 and 11–7 respectively).

Court found unanimously V 6(1) as regards the reasonable time requirement, NV 6(1) as regards fairness.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr B Walsh, Mr A Spielmann, Mr SK Martens, Mr AN Loizou, Mr AB Baka, Mr P Jambrek, Mr K Jungwiert.

This was the first time the Court had had to rule on the applicability of A 6(1) to a dispute concerning contributions under social-security schemes, as distinct from entitlement to benefits under such schemes. The approaches to benefits and to contributions were not necessarily the same. The Court analysed the various features of both the public law (the character of the

legislation, the compulsory nature of the social-security schemes and the assumption by the State or by public or semi-public institutions of full or partial responsibility for ensuring social protection) and private law (the personal and economic nature of the right, the link between the social-insurance schemes and the contract of employment and the similarity between the social-security schemes and private insurance) which were contained in the social-security legislation in issue, in order to determine whether the contested obligation could be regarded as a 'civil' one for the purposes of A 6(1). The Court concluded that the relative cogency of the features of public and private law present in the instant cases led it to find that the private law features were of greater significance than those of public law. On balance, the disputes in issue were to be regarded as having involved the determination of civil rights and obligations and A 6(1) was therefore applicable.

The periods to be taken into consideration began when the applicants requested formal confirmation of the BVG's decision. In Mr Schouten's case, the period ran from 27 March 1987 until 10 July 1991, thus amounting to more than four years and three months. In Mr Meldrum's case, it ran from 4 December 1987 until 13 March 1991, thus amounting to approximately three years and three months. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case, having regard to the criteria developed in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. No criticism could be levelled against the national authorities in respect of the proceedings before the Appeals Tribunal and the Central Appeals Tribunal. Extensions of time were granted at the applicants' request. The Court was concerned only with the time which elapsed before the BVG gave formal confirmation of its decision, which was one year, 10 months and 12 days in Mr Schouten's case and one year, four months and 27 days in Mr Meldrum's case. The case was of some complexity, but that was not sufficient to explain the delays in question. The evidence adduced did not indicate that the BVG would, or even could, have complied with any request from the applicants to speed up the formal confirmation. The Netherlands Supreme Court case-law appeared to deprive the applicants of the remedy of bringing summary proceedings and that could not therefore be held against them. Regarding the BVG's workload, A 6(1) obliged Contracting States to organise their judicial systems in such a way that their courts could meet each of its requirements. There had, accordingly, been a violation of A 6(1) as the applicants' civil rights and obligations were not determined within a reasonable time.

Regarding the fairness of the proceedings, the Court did not find it established that the applicants' position before the tribunals would have been any different had the delays in question not occurred. No violation of A 6 had been made out in this respect.

Costs and expenses (NLG 10,000 to each applicant).

Cited: Feldbrugge v NL (29.5.1986), Muti v I (23.3.1994), Salesi v I (26.2.1993), Schuler-Zgraggen v CH (24.6.1993).

Schuler-Zgraggen v Switzerland (1993) 16 EHRR 405 93/25

[Application lodged 29.12.1988; Commission report 7.4.1992; Court Judgment 24.6.1993]

Mrs Margrit Schuler-Zgraggen contracted open pulmonary tuberculosis and being physically and mentally unfit for work was granted a full state invalidity pension. After the birth of her son in May 1984 and a medical examination by the invalidity insurance authorities, her pension was cancelled on the basis that her health had improved after the birth and she was 60–70% able to look after her home and her child. She appealed, requesting sight of her medical file. That was refused, although subsequently granted by the appeal court. The appeal court dismissed her appeal without a hearing. She complained that her right to a fair trial had been infringed in that she had had insufficient access to the file of the Appeals Board and there had been no hearing in the Federal Insurance Court. She also complained that the assumption made by that court, that she would have given up working even if she had not had health problems, amounted to discrimination on the ground of sex.

Comm found by majority (10–5) NV 6(1) on account of the failure to hold a hearing, (13–2) NV 6(1) in respect of access to the file, (9–6) NV 14+6(1).

Court dismissed unanimously the Government's preliminary objections, found no jurisdiction to entertain the complaint concerning the independence of the medical experts, by majority (8–1) NV 6(1), V 14+6(1).

Judges: Mr R Bernhardt, President, Mr F Gölcüklü (d), Mr B Walsh (d), Mr C Russo, Mr A Spielmann, Mr I Foighel, Mr AN Loizou, Mr MA Lopes Rocha, Mr L Wildhaber.

The development in the law and the principle of equality of treatment warranted taking the view that the general rule was that A 6(1) applied in the field of social insurance, including welfare assistance. State intervention was not sufficient to establish that A 6(1) was inapplicable; other considerations argued in favour of the applicability of A 6(1) in the instant case. The most important of those lay in the fact that despite the public law features, the applicant was not only affected in her relations with the administrative authorities as such, but also suffered an interference with her means of subsistence; she was claiming an individual, economic right flowing from specific rules laid down in a federal statute. A 6 therefore applied in the instant case.

With regard to access to the file, the applicant's complaint related not so much to inspecting the file as to having the documents in it handed over or securing photocopies of them. The preliminary objection of lack of victim status was therefore dismissed. Although the proceedings before the Appeals Board did not enable the applicant to have a complete, detailed picture of the particulars supplied to the Board, the Federal Insurance Court remedied that shortcoming by requesting the Board to make all the documents available to the applicant. Taken as a whole, the proceedings were therefore fair and there had not been a breach of A 6(1) in that respect.

Regarding lack of hearing before the Federal Insurance Court, the Government was estopped from relying on the preliminary objection of non-exhaustion of domestic remedies as they only raised it after the Commission decision on admissibility, whereas nothing prevented them from doing so earlier. The public character of court hearings constituted a fundamental principle enshrined in A 6(1), although it could be waived at a person's own free will. The Federal Insurance Court's Rules of Procedure provided for the possibility of a hearing on an application by one of the parties which the applicant had not sought. It could reasonably be considered, therefore, that she unequivocally waived her right to a public hearing in the Federal Insurance Court. The dispute did not appear to raise issues of public importance such as to make a hearing necessary. It was understandable that in this sphere the national authorities should have regard to the demands of efficiency and economy. Systematically holding hearings could be an obstacle to the particular diligence required in social-security cases and could ultimately prevent compliance with the reasonable time requirement of A 6(1). There had accordingly been no breach of A 6(1) in respect of the oral and public nature of the proceedings.

The complaint regarding the independence of doctors was a new complaint which had not been raised before the Commission and did not relate to the facts the Commission found within the limits of its decision on admissibility. That being so, the Court had no jurisdiction to consider it.

A 14+6: regarding the Government's preliminary objection of failure to exhaust domestic remedies, the applicant had objected to the terms of the Federal Insurance Court's judgment against which no appeal lay. In addition, in her administrative law appeal she had already criticised the similar assumption made by the Appeals Board in its decision. The objection was therefore unfounded. The admissibility of evidence was governed primarily by the rules of domestic law, it was normally for the national courts to assess the evidence before them. The Court's task under the Convention was to ascertain whether the proceedings, considered as a whole, including the way in which the evidence was submitted, were fair. In this instance, the Federal Insurance Court adopted in its entirety the Appeals Board's assumption that women gave up work when they gave birth to a child. It did not attempt to probe the validity of that assumption itself by weighing arguments to the contrary. That assumption could not be regarded as an incidental remark, clumsily drafted but of negligible effect. On the contrary, it constituted

the sole basis for the reasoning, thus being decisive, and introduced a difference of treatment based on the ground of sex only. The advancement of the equality of the sexes was now a major goal in the Member States of the Council of Europe and very weighty reasons would have to be put forward before such a difference of treatment could be regarded as compatible with the Convention. There were no such reasons in the present case. Therefore, for want of any reasonable and objective justification, there had been a breach of A 14 taken together with A 6(1).

Judgment itself constituted just satisfaction as to the alleged non-pecuniary damage. Costs and expenses (by majority (8–1) CHF 7,500). Pecuniary damage reserved.

Cited: Abdulaziz, Cabales and Balkandali v UK (28.5.1985), Boddaert v B (12.10.1992), Deumeland v D (29.5.1986), Edwards v UK (16.12.1992), Feldbrugge v NL (29.5.1986), Håkansson and Sturesson v S (21.2.1990), Lüdi v CH (15.6.1992), Olsson v S (No 2) (27.11.1992), Pine Valley Developments Ltd and Others v IRL (29.11.1991), Salesi v I (26.2.1993).

Schwabe v Austria 92/56

[Application lodged 1.2.1988; Commission report 8.1.1991; Court Judgment 28.8.1992]

Mr Karl Thomas Uwe Schwabe was Chairman of the Young Austrian People's Party for the District of Wolfsberg in Carinthia and a councillor. On 26 September 1986 he was convicted of defamation and of having reproached a person with an offence for which he had already served his sentence, for having stated in a press release of 19 August 1985 that the Deputy Head of the Carinthian Government had caused a traffic accident in 1966 under the influence of alcohol. The Klagenfurt Regional Court considered it decisive that the applicant had compared that accident with the Mayor's, without mentioning that, unlike the Mayor, the Deputy Head had not been convicted of drunken driving. That omission, according to the Regional Court, could have led the reader to believe that the accidents were comparable, as far as the drivers' blood alcohol content was concerned. In that respect, it held that the applicant had failed to prove the truth of his allegations. His appeal to the Graz Court of Appeal was dismissed. He complained that his conviction had breached A 10.

Comm found by majority (10–6) V 10.

Court found by majority (7–2) V 10.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson (d), Mr F Gölcüklü, Mr F Matscher (d), Mr J De Meyer, Mr SK Martens (c), Mr R Pekkanen, Mr JM Morenilla.

The conviction was an interference with the applicant's exercise of his freedom of expression. The interference was prescribed by law, namely the Criminal Code, and had a legitimate aim, namely the protection of the reputation or rights of others. Where what was at stake was the limits of acceptable criticism in the context of public debate on a political question of general interest, the Court had to satisfy itself that the national authorities did apply standards which were in conformity with those principles and, moreover, that in doing so they based themselves on an acceptable assessment of the relevant facts. For this purpose the Court considered the impugned judicial decisions in the light of the case as a whole, including the applicant's publication and the context in which it was written. The applicant's press release was a reaction to the interview given by the Head of the Carinthian Government, a member of the Austrian Socialist Party, suggesting that the Mayor of Maria Rain, who was a member of the People's Party, should resign because of his conviction. It was apparent from the release, when read as a whole, that the applicant's main concern was to show that the writer applied different and stricter standards of political morality to a 'small mayor of a village', belonging to another political party, than to his 'party friend' and deputy. The question became a matter of general debate on political morals between the two rival parties. A politician's previous criminal convictions of the kind at issue here, together with his public conduct in other respects, may be relevant factors in assessing his fitness to exercise political functions. It was not established that the applicant's statement about the Deputy's alcohol consumption was misleading. The two accidents were not the subject of direct comparison but

were mentioned only in relation to the different attitude towards them. It was significant that the applicant described both accidents in completely different terms. He nevertheless concluded that they had enough features in common to warrant the resignation of both the politicians concerned. The impugned comparison thus essentially amounted to a value-judgment, for which no proof of truth was possible. The facts on which the applicant based his value-judgment were substantially correct and his good faith did not give rise to serious doubts. He could not be considered to have exceeded the limits of freedom of expression. Therefore the interference complained of by the applicant was not necessary in a democratic society for the protection of the reputation of others. There had, accordingly, been a violation of A 10.

Present judgment constituted sufficient just satisfaction for non pecuniary damage. Pecuniary damage (ATS 35,242.42), costs and expenses (ATS 130,402).

Cited: Castells v E (23.4.1992), Handyside v UK (7.12.1976), Lingens v A (8.7.1986), Oberschlick v A (23.5.1991), Observer and Guardian v UK (26.11.1991), Sunday Times (No 1) v UK (26.4.1979), Sunday Times (No 2) v UK (26.11.1991).

Sciarrotta and Guarino v Italy 00/120

[Application lodged 24.7.1997; Commission report 4.3.1999; Court Judgment 5.1.2000]

Mrs Eleonora Sciarrotta, Mrs Giuseppa Sciarrotta and Mrs Carmela Guarino complained of the length of civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr L Ferrari Bravo, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mr AB Baka, Mr E Levits.

The period to be taken into consideration began on 30 May 1978 and was still pending at 27 January 2000. It had lasted approximately 21 years and eight months. The period could not be considered reasonable.

Non-pecuniary damage (ITL 45,000,000 to each applicant), costs and expenses (ITL 1,600,000).

Cited: Bottazzi v I (28.7.1999).

Scollo v Italy (1996) 22 EHRR 514 95/31

[Application lodged 19.11.1991; Commission report 9.5.1994; Court Judgment 28.9.1995]

Mr Francesco Salvatore Scollo let out a flat on which the rent was subject to control by the public authorities. He served his tenant notice to quit and on 22 April 1983 the magistrate formally confirmed the notice to quit and set the date of eviction at 30 June 1984. Subsequently, on an application by the tenant, the magistrate deferred execution until 31 October 1984, pursuant to a Law of 25 March 1982, which had extended existing leases for a period of two years. Nevertheless, the tenant remained in occupation even after that date. Attempts by the bailiff to evict the tenant were unsuccessful. On 8 February 1988 a new series of laws came into force suspending forcible evictions until 30 April 1989. The applicant recovered his flat on 15 January 1995 after further numerous attempts at eviction. He complained of an interference with his right to the peaceful enjoyment of his possessions as he had been unable to recover his flat due to the legislative provisions, and of the length of proceedings.

Comm found by majority (21–2) V P1A1, (22–1) not necessary to examine 6(1).

Court found unanimously V P1A1, V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr SK Martens, Mr AN Loizou, Mr L Wildhaber, Mr G Mifsud Bonnici.

The applicant's complaints under A 14+P1A1 and under A 6(1) in respect of the right of access to a court, were outside the scope of the case as defined by the Commission's decision on admissibility.

There was neither a transfer of property nor a *de facto* expropriation. At all times the applicant retained the possibility of alienating his property and received rent. As the implementation of the measures in question meant that the tenant continued to occupy the flat, it undoubtedly amounted to control of the use of property. Accordingly, the second paragraph of P1A1 was applicable. The legislative provisions suspending evictions during the period from 1984 to 1988 were prompted by the need to deal with the large number of leases which expired in 1982 and 1983 and by the concern to enable the tenants affected to find acceptable new homes or obtain subsidised housing. To have enforced all evictions simultaneously would undoubtedly have led to considerable social tension and jeopardised public order. Therefore, the impugned legislation had a legitimate aim in the general interest, as required by the second paragraph P1A1. The applicant did not have an urgent need to recover his property for the whole of the period concerned. By adopting emergency measures and providing for certain exceptions to their application, the Italian legislature was reasonably entitled to consider, having regard to the need to strike a fair balance between the interests of the community and the right of landlords, and of the applicant in particular, that the means chosen were appropriate to achieve the legitimate aim. However, the restriction on the applicant's use of his flat resulting from the competent authorities' failure to apply those provisions was contrary to the requirements of the second paragraph of P1A1. It followed that there had been a breach of P1A1.

A 6(1) was applicable, regard being had to the purpose of the proceedings, which was to settle the dispute between the applicant and his tenant. The period in question began on 4 March 1983, when the tenant was summoned to appear before the magistrate. It ended on 15 January 1995, when the tenant vacated the premises of his own accord. It therefore lasted just over 11 years and 10 months. If an eviction was to be enforced, the interested party had to take the initiative, and the applicant did not spare any effort to obtain satisfaction, applying on numerous occasions to the bailiff, who systematically requested police assistance. However, the prefectoral committee and the Prefect never acted on these requests. While not overlooking the practical difficulties raised by the enforcement of a very large number of evictions, the inertia of the competent administrative authorities engaged the responsibility of the Italian State under A 6(1). There had accordingly been a breach of that provision.

Pecuniary damage (ITL 13,634,280), non-pecuniary damage (ITL 30,000,000), costs and expenses (ITL 14,280,000).

Cited: Brincat v I (26.11.1992), James and Others v UK (21.2.1986), Mellacher and Others v A (19.12.1989), Sporrong and Lönnroth v S (23.9.1982).

Scopelliti v Italy (1994) 17 EHRR 493 93/50

[Application lodged 6.4.1989; Commission report 1.7.1992; Court Judgment 23.11.1993]

Mrs Antonia Scopelliti instituted proceedings on 10 December 1980 against the National Highways Corporation and the Ministry of Public Works seeking compensation for damage deriving from the unauthorised occupation of the Highways Corporation of land belonging to her, which had been used to improve a trunk road. On 5 October 1987 the Catanzaro District Court gave judgment allowing the applicant's claims and ordering the Highway Corporation to pay her compensation. She complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr C Russo, Mr I Foighel, Mr F Bigi, Mr AB Baka, Mr MA Lopes Rocha, Mr L Wildhaber, Mr J Makarczyk.

The period to be taken into consideration began on 10 December 1980, when the proceedings were instituted against the Highway Corporation in the Catanzaro District Court, and ended on 1 March 1989, the date on which the District Court's judgment became final. It therefore lasted a little under eight years and three months. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The expert was working in the context of judicial proceedings, supervised by a judge, who remained responsible for the preparation and the speedy conduct of the trial. Although adjournments were requested jointly by the parties, considerable periods of time elapsed between the majority of the adjournments. Although civil proceedings in Italy were subject to the 'principio dispositivo', according to which it was for the parties to take the initiative with regard to the progress of the proceedings, that principle did not dispense the courts from ensuring compliance with the requirements of A 6 as regards reasonable time. Considered as a whole, the time which elapsed between 10 December 1980 and 14 January 1988 could not be regarded as reasonable. There had therefore been a violation of A 6(1).

Finding of this violation constituted just satisfaction for any non-pecuniary damage sustained. Costs and expenses (ITL 11,546,310).

Cited: Billi v I (26.2.1993), Capuano v I (25.6.1987), Guincho v P (10.7.1984).

Scott v Spain (1997) 24 EHRR 391 96/67

[Application lodged 2.9.1992; Commission report 4.7.1995; Court Judgment 30.11.1996]

Mr Christopher Ian Scott was first arrested on 5 March 1990 under suspicion of having raped a Finnish woman. Subsequently, it was ordered that he be kept in custody pending the resolution of a request for extradition. On 22 February 1991 the Audiencia Nacional ordered the applicant's extradition, as requested by the UK authorities. However, the extradition order was only to be executed after the determination of the rape case. He was subsequently acquitted of the rape but detention continued to his extradition. He spent a total of two years, six months and 29 days under the different orders for detention pending trial on the rape charge and exactly four years in connection with extradition proceedings. He relied on A 5(1)(c) and (3) of the Convention, complaining that he had been unlawfully detained for an unreasonably long period of time.

Comm found by majority (10–3) NV 5(1)(c), (12–1) V 5(3).

Court found by majority (8–1) NV 5(1), dismissed unanimously the Government's preliminary objection concerning the non-exhaustion of domestic remedies as regards the complaint under A 5(3), unanimously V 5(3).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr A Spielmann, Mr JM Morenilla, Mr AB Baka, Mr G Mifsud Bonnici, Mr D Gotchev, Mr B Repik (pd), Mr K Jungwiert.

The orders for the applicant's detention were made in compliance with the substantive domestic legislation applicable and were not arbitrary for the purposes of the Convention. Accordingly, there was no breach of A 5(1).

Preliminary objection of non-exhaustion rejected. The applicant's applications for provisional release included one to the Constitutional Court.

It was the duty of national judicial authorities to ensure that pre-trial detention did not exceed a reasonable time. A *sine qua non* for continued detention was the persistence of a reasonable suspicion that the person arrested had committed an offence, but after a certain time that was no longer sufficient and the Court had to establish whether the other grounds are relevant and sufficient and if the national courts have displayed special diligence. The Court was unable to subscribe to the Government's contention that the various difficulties associated with the implementation of the international letter of judicial co-operation (translation of documents, transmission by diplomatic channels, repeated summons of the complainant) could justify the very long period of time the applicant spent in detention. The case was not particularly complex and there was nothing to suggest that the length of the proceedings could be attributable in whole or in

part to the applicant's conduct. In these circumstances the Court could not but conclude that the duty of special diligence enshrined in A 5(3) had not been observed.

Finding of violation constituted adequate satisfaction for any damage suffered by the applicant. Costs and expenses (GBP 18,000 less FF 20,700).

Cited: Amuur v F (25.6.1996), Bouamar v B (29.2.1988), Kamasinski v A (19.12.1989), Kolompar v B (24.9.1992), Letellier v F (26.6.1991), Quinn v F (22.3.1995), Wemhoff v D (27.6.1968), Van der Leer v NL (21.2.1990), Van der Tang v E (13.7.1995), Tomasi v F (27.8.1992).

Scozzari and Giunta v Italy 00/181

[Applications lodged 9.12.1997 and 16.6.1998; Commission report 2.12.1998; Court Judgment 13.7.2000]

The first applicant, Mrs Dolorata Scozzari, had dual Belgian and Italian nationality and lived in Italy. She was also acting on behalf of her children, G, born in 1987, who had dual Belgian and Italian nationality, and M, born in 1994, who had Italian nationality. The second applicant, Mrs Carmela Giunta, was the first applicant's mother. Following examination by social services of the first applicant's home situation and the conclusion that there was violence by the first applicant's husband towards both her and the children and the fact that the elder child had been subjected to paedophile abuse by a social worker, the Florence Youth Court on 9 September 1997 ordered the two children's placement at 'Il Forteto', a community which was organised as an agricultural co-operative. Two of the main leaders of the community had been convicted in January 1985 of ill treatment and sexual abuse of persons who had stayed in the home. The two men continued to hold positions of responsibility in the community. On 9 September the Youth Court restricted the first applicant's contact with the children although in practice she was prevented from seeing them. Arranged visits were suspended. Following the Youth Court's decision of 22 December 1998, the first applicant saw them for the first time on 29 April 1999 and a second visit took place on 9 September 1999, but social services suspended all visits thereafter. The applicants appealed to the Court of Appeal, which on 31 March 1999 upheld the decision of the Youth Court. The applicants complained of various infringements of their rights under, *inter alia*, A 8.

Comm found by majority (24–1) NV 8 as a result of the suspension of the first applicant's parental rights or of the fact that her children had been taken into care, (13–12) NV 8 as a result of the children being placed at 'Il Forteto', (21–4) V 8 as a result of the suspension of all contact between the first applicant and her children, unanimously NV 3 or NV P1A2 as regards the second applicant, no separate issue under 6(1) and 14.

Court unanimously dismissed the Government's preliminary objection, found NV 8 on account of the suspension of the first applicant's parental rights and of the fact that her children were taken into care, V 8 on account of the delays in and limited number of contact visits between the first applicant and her children, V 8 on account of the placement of the first applicant's children at 'Il Forteto', NV 8 as regards the second applicant, no separate issue under 6(1) and 14, NV 3 on account of the treatment of the first applicant's children at 'Il Forteto', applicants were estopped from raising their complaint of a violation of 3 of the Convention based on the suffering linked to their situation taken as a whole, NV P1A2.

Judges: Mr L Wildhaber, President, Mr J-P Costa, Mr L Ferrari Bravo, Mr Gaukur Jörundsson, Mr L Caflisch, Mr I Cabral Barreto, Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach, Mr B Zupancic (c), Mrs N Vajic, Mr J Hedigan, Mrs M Tsatsa-Nikolovska, Mr T Pantîru, Mr E Levits, Mr K Traja, Mr C Russo, ad hoc judge.

In principle, a person who was not entitled under domestic law to represent another might nevertheless, in certain circumstances, act before the Court in the name of the other person. In particular, minors could apply to the Court even, or indeed especially, if they were represented by a mother who was in conflict with the authorities and criticised their decisions and conduct as not being consistent with the rights guaranteed by the Convention. In the event of a conflict over a minor's interests between a natural parent and the person appointed by the authorities to act as the child's guardian, there was a danger that some of those interests would never be brought to the Court's attention and that the minor would be deprived of effective protection of his rights under the Convention. Consequently, even though the mother had been deprived of parental rights, her

standing as the natural mother sufficed to afford her the necessary power to apply to the Court on the children's behalf, too, in order to protect their interests. Therefore, since the first applicant also had standing to act on behalf of the children, the Belgian Government were entitled to take part in the proceedings within the meaning of A 36(1) and Rule 61(2) of the Rules of Court, as the elder child also had Belgian nationality. Therefore, the Government's preliminary objection had to be dismissed, both as regards the *locus standi* of the first applicant's children and the standing of the Belgian Government to intervene in the proceedings.

A 8: the interference was in accordance with the law and pursued a legitimate aim, namely the protection of health or morals and the protection of the rights and freedoms of others, as they were intended to protect the welfare of the first applicant's children.

Regarding the suspension of the first applicant's parental authority and the removal of the children: it was an interference of a very serious order to split up a family. Such a step had to be supported by sufficiently sound and weighty considerations in the interests of the child. The first applicant's domestic circumstances seriously deteriorated in 1994. Her former husband had played a negative role. The case file showed that it was he who was largely responsible for the violent atmosphere within the family through his repeated assaults on the children and his former wife. However, even after separating from her former husband, the first applicant found it difficult to look after her children (a neuropsychiatric report stated that she was suffering from a personality disorder and was incapable of managing the complex situation of her family and children). The problem was compounded by the severe trauma suffered by the elder child as a result of the paedophile abuse of him by a social worker who succeeded in ingratiating himself with the first applicant's family. Against that background the authorities' intervention, through the suspension of the first applicant's parental rights and the temporary removal of the children from their mother's care, was based on relevant and sufficient reasons and was justified by the need to protect the children's interests. Consequently, there has been no violation of A 8 of the Convention on that account.

Regarding contact between the first applicant and her children: the decision of 9 September 1997 to prohibit any contact between the first applicant and her elder son did not appear to have been based on sufficiently valid reasons. The child had gone through a very difficult and traumatic experience. However, a measure as radical as the total severance of contact could be justified only in exceptional circumstances. While the complex circumstances that were harmful to the family life and the development of the children fully justified their being temporarily taken into care, the grave situation within the first applicant's family did not justify by itself contact with the elder child being severed, regard being had not only to the attachment which the first applicant had always shown to her children, but also and above all to the authorities' decision to allow at the same time a resumption of contact with the younger child. Although the decision of 9 September 1997 provided for the organisation of visits with the younger son, there were delays in taking further action. To the extent that the delay was attributable to administrative difficulties, in so fundamental an area as respect for family life, such considerations could not be allowed to play more than a secondary role. In the circumstances of the present case, it was unacceptable that social services should be able, as they had been, to alter the practical effect of judicial decisions establishing that contact would, in principle, take place. Given their limited number and irregular occurrence (two in almost three years), the visits arranged to date had for all intents and purposes been sporadic and made little sense when viewed in the light of the principles established under A 8. It was apparent from the case file that since the first visit social services had played an inordinate role in the implementation of the Youth Court's decisions and adopted a negative attitude towards the first applicant, an attitude for which the Court found no convincing objective basis. In reality, the manner in which social services had dealt with the situation had helped to accentuate the rift between the first applicant and the children, creating a risk that it would become permanent. The fact that there had been only two visits (after one and a half years' separation) since its decision of 22 December 1998 should have incited the Youth Court to investigate the reasons for the delays in the programme, yet it merely accepted the negative conclusions of social services, without

conducting any critical analysis of the facts. A 8 demanded that decisions of courts aimed in principle at facilitating visits between parents and their children so that they could re-establish relations with a view to reunification of the family be implemented in an effective and coherent manner. Accordingly, the relevant authorities, in this case the Youth Court, had a duty to exercise constant vigilance, particularly as regards action taken by social services, to ensure the latter's conduct did not defeat the authorities' decisions. In conclusion, the authorities failed to strike a fair balance between the interests of the first applicant's children and her rights under A 8 of the Convention and consequently, there had been a violation of A 8 on that point.

Regarding the decision to place the children with the 'Forteto' community: the Court recalled its case-law. The Court was not called upon to express an opinion on or become involved in the debate between the supporters and opponents of 'Il Forteto'. However, the fact that the two members of the community convicted in 1985 continued to hold positions of responsibility within the community could not be regarded as innocuous and for practical purposes meant that a detailed examination of the concrete situation of the first applicant's children was called for. Contrary to the assertions of the respondent Government, the evidence on the case file showed that the two leaders concerned played a very active role in bringing up the first applicant's children. The Court had strong reservations about that. The combination of the past sexual abuse against the elder child and the criminal antecedents of two community leaders made the first applicant's concerns about the placement of her children in 'Il Forteto' understandable from an objective standpoint, especially bearing in mind her position as a mother separated from her children. In addition, the authorities had at no point explained to the first applicant why, despite the men's convictions, sending the children to 'Il Forteto' did not pose a problem. Such a failure to communicate was not compatible with the duties incumbent on States to act fairly and to provide information when taking serious measures interfering in a sphere as delicate and sensitive as family life. Unless full and pertinent explanations were given by the authorities concerned, parents should not be forced, as they were in the instant case, merely to stand by while their children were entrusted into the care of a community whose leaders included people with serious previous convictions for ill treatment and sexual abuse. The situation was compounded first by the fact that some of the leaders of 'Il Forteto', including one of the two men convicted in 1985, appeared to have contributed substantially to delaying or hindering the implementation of the decisions of the Florence Youth Court to allow contact between the first applicant and her children; and secondly the evidence pointed to the first applicant's children having been subjected to the mounting influence of the leaders at 'Il Forteto', including one of the two men convicted in 1985. The facts showed that the leaders of 'Il Forteto' responsible for looking after the first applicant's children helped to deflect the implementation of the Youth Court's decisions from their intended purpose of allowing visits to take place. Moreover, it was not known who really had effective care of the children at 'Il Forteto'. That situation should have prompted the Youth Court to increase its level of supervision regarding the way in which the children were being looked after, however, that did not occur. In practice, the leaders concerned worked in a community which enjoyed very substantial latitude and did not appear to be subject to effective supervision by the relevant authorities. As regards the absence of any time-limit on the children's stay at 'Il Forteto', experience showed that when children remained in the care of a community for a protracted period, many of them never returned to a real family life outside the community. Accordingly, there was no valid justification for the failure to put a time-limit on the care order concerning the first applicant's children, especially as that failure appeared to contravene the relevant provisions of Italian law. The absence of any time limit on the care order, the negative influence of the people responsible for the children at 'Il Forteto', coupled with the attitude and conduct of social services, were in the process of driving the first applicant's children towards an irreversible separation from their mother and long-term integration within 'Il Forteto'. While there was evidence of improvement in the children's psychological and physical condition since the placement, that process, which undermined both the role of the courts dealing with the case and of their decisions, presented a real danger that the relations between the first applicant and her children would be

severed. Consequently, the authorities had failed to show the degree of prudence and vigilance required in such a delicate and sensitive situation, and had done so to the detriment not just of the first applicant's rights but also of the superior interests of the children. Accordingly, the uninterrupted placement to date of the children at 'Il Forteto' did not satisfy the requirements of A 8 of the Convention.

Regarding the position of the second applicant: the evidence on the case file indicated that the second applicant would have substantial difficulty in looking after the children properly. After moving to Italy, she had had to return to Belgium to resolve other problems. The authorities' decision not to entrust the children into the second applicant's care was based on reasons that remained relevant even after the second applicant's move to Italy, which in any event proved to be temporary. With regard to contact between the second applicant and the children, the Court noted that her attitude was initially characterised by a degree of incoherence. Subsequently, despite the decision of the Florence Youth Court on 22 December 1998 that contact between the second applicant and the children should start before 15 March 1999, she failed to get in contact but simply waited to hear from social services, even after the expiry of the time-limit fixed by the Youth Court. Nor did she consider it necessary to inform the authorities when she travelled to Belgium so that the two notices of appointment which social services did send, albeit belatedly, were to no avail. The second applicant had not furnished any valid explanation for her failure to act after the time-limit expired or to inform the relevant authorities when she travelled to Belgium. Her conduct betrayed a lack of enthusiasm for seeing her grandchildren again, a factor which offsets the authorities' delay. There had therefore been no violation of A 8 as regards the second applicant.

The applicants did not pursue before the Court their complaints of violations of A 6(1) (for delays in the examination of their appeals before the domestic courts) and A 14 (for allegedly discriminatory treatment). In the light of its decision under A 8, the Court followed the conclusions of the Commission (that the complaint under A 6(1) should be regarded as having been absorbed by the issues related to A 8 and that A 14 was of no relevance to the case) and held that no separate issue arose under those provisions.

Despite the fact that some of the witness statements produced by the first applicant gave cause for concern and the Government had not contested their veracity, there was nothing on the case file to indicate that the children had been subjected to treatment contrary to A 3 at 'Il Forteto'. In addition, the first applicant had not lodged a criminal complaint with the relevant domestic authorities. Consequently, there had been no violation of A 3.

With regard to the applicants' complaint that there had also been a violation of A 3 in that their situation, taken as a whole, had caused them suffering and distress, that complaint, in substance, raised no separate issue from the issues arising under A 8 and was not declared admissible by the Commission. The applicants were therefore estopped from raising it.

The first applicant's elder son began school shortly after arriving at 'Il Forteto'. The younger child had just reached school age and was attending a nursery school. With regard to the influence of 'Il Forteto' on the supervision and education of the children, the Court referred to its conclusions on the placement of the children within that community. Consequently, there had been no violation of P1A2.

Non-pecuniary damage (ITL 100,000,000 to first applicant, ITL 50,000,000 to each of the first applicant's children in person), costs and expenses (ITL 17,685,000), lawyer's fees paid on account (ITL 800,000).

Cited: B v UK (8.7.1987), Eriksson v S (22.6.1989), Hokkanen v SF (23.9.1994), Johansen v N (7.8.1996), Marckx v B (13.6.1979), Nielsen v DK (28.11.1988), Norris v IRL (26.10.1988), Olsson v S (24.3.1988 and 27.11.1992), Papamichalopoulos and Others v GR (A 50) (31.10.1995), Vogt v D (26.9.1995).

Scuderi v Italy (1995) 19 EHRR 187 93/30

[Application lodged 14.2.1987; Commission report 8.4.1992; Court Judgment 24.8.1993]

Mr Giuseppe Scuderi was an official at the Ministry of Finance until his retirement in 1973. On 23 November 1982 he brought an action against the Ministry of Finance, the Treasury and the Ente Nazionale di Previdenza e Assistenza per i Dipendenti Statali (ENPAS) in the Lazio Regional Administrative Court seeking a recalculation of the salary due to him. On 29 October 1985 the Lazio Regional Administrative Court allowed the applicant's application. The text of the judgment was filed in the registry on 3 March 1987. That judgment was notified to the parties on 12 and 13 March 1987 and became final on 13 May 1987, the time-limit for any appeal by counsel for the State. The applicant complained of the length of the proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr R Macdonald, Mr C Russo, Mr A Spielmann, Mr SK Martens, Mr I Foighel, Sir John Freeland, Mr AB Baka, Mr MA Lopes Rocha.

The period to be considered began on 23 November 1982, the date of the application to the Administrative Court, and ended on 13 May 1987, the time-limit for any appeal by counsel for the State. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The case was not complex and the applicant's conduct did not contribute to slowing down the proceedings. While those followed their course at a normal speed until 29 October 1985, it thereafter took more than 16 months for the reasons given in the judgment delivered by the Administrative Court on that date to be made known through being filed in the registry. Regarding the excessive workload of the Administrative Court and, in particular, of the judge responsible for writing the decision of 29 October 1985, A 6(1) imposed on the Contracting States the duty to organise their judicial systems in such a way that their courts could meet each of its requirements. A period of more than four years and five months for a single level of jurisdiction could not be considered reasonable.

Non-pecuniary damage (ITL 3,000,000). Costs and expenses not sought.

Cited: De Micheli v I (26.2.1993).

Scuderi v Italy 00/56

[Application lodged 8.2.1997; Court Judgment 8.2.2000]

Mr Angelo Scuderi, who died on 25 November 1998, and his heirs who continued the action, Mrs Antonina Sinatra, Mr Salvatore Antonio Scuderi and Mr Giuseppe Alfio Scuderi, complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska.

The period to be taken into consideration began on 24 June 1983 and ended on 11 October 1999. It had lasted more than 16 years and three months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 20,000,000 to each of the three heirs) costs and expenses (ITL 102,950).

Cited: Bottazzi v I (28.7.1999).

Seidel v France 00/4

[Application lodged 20.2.1996; Court Judgment 11.1.2000]

Mr Jean Seidel complained of the length of proceedings.

Judges: Mr M Pellonpää, President, Mr A Pastor Ridruejo, Mr L Caflisch, Mr I Cabral Barreto, Mr J-P Costa, Mr V Butkevych, Mrs N Vajic.

The period to be taken into consideration began on May 1988 and ended on 26 July 1996. It had lasted about eight years and two months. The period could not be considered reasonable.

Non-pecuniary damage (FF 5,000), costs and expenses (FF 4,400).

Cited: Oztürk v TR (28.9.1999), X v F (31.3.1992).

Sekanina v Austria (1994) 17 EHRR 221 93/33

[Application lodged 21.4.1987; Commission report 20.5.1992; Court Judgment 25.8.1993]

On 1 August 1985, Mr Karl Sekanina was arrested on suspicion of having murdered his wife. Mrs Sekanina had fallen from a window of their matrimonial home, on the fifth floor of a building in Linz, on 4 July 1985. He was detained on remand. On 30 July 1986 the Assize Court sitting at the Linz Regional Court acquitted the applicant. He was immediately released. The prosecution did not appeal against the acquittal. The applicant applied for a contribution from the State to the costs necessarily incurred in his defence and for compensation for the pecuniary damage sustained on account of his being kept in detention. The Linz Regional Court awarded his necessary defence costs but refused to award the compensation sought. His appeal to the Court of Appeal was unsuccessful. He complained that there had been a violation of the principle of presumption of innocence guaranteed by A 6(2) as when dismissing his claim for compensation for wrongful detention, the Austrian courts had considered that, despite his acquittal, he was still the object of suspicion.

Comm found by majority (18–1) V 6(2).

Court found unanimously V 6(2).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr F Matscher (c), Mr L-E Pettiti, Mr B Walsh, Mr N Valticos, Mr R Pekkanen, Mr AB Baka, Mr J Makarczyk.

The Linz Regional Court gave its decision rejecting the claim on 10 December 1986, several months after the judgment acquitting the applicant on 30 July. Austrian legislation and practice nevertheless linked the two questions of the criminal responsibility of the accused and the right to compensation to such a degree that the decision on the latter issue could be regarded as a consequence and, to some extent, the concomitant of the decision on the former. The Austrian courts relied heavily on the evidence from the Assize Court's case file in order to justify their decision rejecting the applicant's claims, thus demonstrating that, in their opinion, there was indeed a link between the two sets of proceedings. The applicant could therefore invoke A 6(2) in relation to the impugned decisions.

A 6(2) did not guarantee a person charged with a criminal offence a right to compensation for detention on remand imposed in conformity with the requirements of A 5. Notwithstanding the acquittal, on 10 December 1986 the Linz Regional Court rejected the applicant's claim for compensation. In its view, there remained strong indications of the applicant's guilt capable of substantiating the suspicions concerning him; it listed them relying on the Assize Court file. The evidence in question could, in its opinion, still constitute an argument for the applicant's guilt. The court inferred from the record of the jury's deliberations that in acquitting the applicant they had given him the benefit of the doubt. The Linz Court of Appeal went further in the grounds of its decision of 25 February 1987, it did not regard itself as bound by the Assize Court's acquittal. After having drawn up a comprehensive list of items of evidence against the applicant, in its view not refuted during the trial, and after having carefully examined the statements of various witnesses, it concluded: 'The jury took the view that the suspicion was not sufficient to reach a guilty verdict; there was, however, no question of that suspicion's being dispelled'. Such affirmations, not corroborated by the judgment acquitting the applicant or by the record of the jury's deliberations, left open a doubt both as to the applicant's innocence and as to the correctness of the Assize Court's verdict. Despite the fact that there had been a final decision acquitting the applicant, the

courts which had to rule on the claim for compensation undertook an assessment of the applicant's guilt on the basis of the contents of the Assize Court file. The voicing of suspicions regarding an accused's innocence was conceivable as long as the conclusion of criminal proceedings had not resulted in a decision on the merits of the accusation. However, it was no longer admissible to rely on such suspicions once an acquittal had become final. Consequently, the reasoning of the Linz Regional Court and the Linz Court of Appeal was incompatible with the presumption of innocence and accordingly there had been a violation of A 6(2).

Costs and expenses (ATS 110,000).

Cited: Englert v D (25.8.1987), Lutz v D (25.8.1987), Nölkenbockhoff v D (25.8.1987).

Selçuk and Asker v Turkey (1998) 26 EHRR 477 98/30

[Application lodged 15.12.1993; Commission report 28.11.96; Court Judgment 24.4.98]

The applicants were Kurds living in Islamköy, a village in South-Eastern Turkey. The first applicant, Mrs Keje Selçuk, was a widow and the mother of five children. The second applicant, Mr Ismet Asker, was married and had seven children. The facts in the case were disputed. The applicants claimed that the Turkish army had deliberately burnt down their homes on 16 June 1993 and, 10 days later, returned to burn the mill partly owned by the first applicant. They claimed breaches of numerous provisions of the Convention.

Comm found unanimously V 8, V P1A1, by majority (27–1) V 3, unanimously NV 2 in respect of the second applicant, NV 5(1), by majority (26–2) V 6(1), V 13, unanimously NV 14 or 18.

Court unanimously dismissed the preliminary objection concerning the non-validity of the applications, by majority (8–1) dismissed the preliminary objection concerning non-exhaustion of domestic remedies, found by majority (8–1) V 3, unanimously not necessary to consider 2 or 5(1), by majority (8–1) V 8, V P1A1, unanimously not necessary to consider 6(1), by majority (8–1) V 13, unanimously NV 14 or 18.

Judges: Mr R Bernhardt, President, Mr F Gölcüklü (d), Mr An Loizou, Sir John Freeland, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr P Jambrek, Mr U Lôhmus, Mr E Levits.

The finding and verification of facts was primarily a matter for the Commission. The Court was not bound by the Commission's findings of fact and remained free to make its own findings, however, it would only exercise its powers to do that in exceptional circumstances. In this case the Court accepted the Commission's findings of the facts which had been proved beyond reasonable doubt.

There was no cause to doubt that the applications were genuine and valid, therefore preliminary objection of non-validity of applications was rejected. The existence of effective and accessible domestic remedies for complaints such as the applicants' had not been demonstrated with sufficient certainty. Although the second applicant presented a petition of complaint to the District Governor, no investigation was opened until communication of applications by Commission to Government. It was understandable if the applicants formed the belief that, the petition to the District Governor having elicited no response, it was pointless for them to attempt to secure satisfaction through national legal channels. There existed special circumstances which dispensed the applicants from the obligation to exhaust domestic remedies. The Government's preliminary objection on non-exhaustion was dismissed.

A 3: even in the most difficult of circumstances, such as the fight against organised terrorism and crime, torture, inhuman or degrading treatment or punishment were prohibited by the Convention. There were no exceptions and no derogations from A 3 even where there was a public emergency threatening the life of the nation. In this case the applicants were 54 and 60 years old respectively and had lived in the village of Islamköy all their lives. Their homes and most of their possessions were destroyed by the security forces depriving them of their livelihoods and forcing them to leave the village. The exercise was premeditated and carried out contemptuously and without respect for the feelings of the applicants and without any precautions taken to secure their safety and no assistance was offered to them afterwards. Bearing in mind the manner in which the

houses were destroyed and the personal circumstances of the applicants they were caused suffering of sufficient severity for the acts of the security forces to be categorised as inhuman treatment within the meaning of A 3 even if the acts in question were carried out without the intention of punishing the applicants, but rather of preventing the homes being used by PKK members of being a discouragement to others.

Before the Court the applicants did not pursue their claims under A 2 and A 5(1) and in those circumstances, the Court found it unnecessary to consider those complaints.

The acts by the security forces of deliberately destroying the applicants' homes and household property, and the mill partly owned by the first applicant, obliging them to leave Islamköy, constituted particularly grave and unjustified interferences with the applicants' rights to respect for their private and family lives and homes, and to the peaceful enjoyment of their possessions. Thus there were violations of A 8 and P1A1.

A 6(1) and 13: given the nature of the complaint it was not necessary to consider A 6(1), but only A 13. Where an individual had an arguable claim that his or her home and possessions have been deliberately destroyed by the authorities, the notion of an effective remedy under A 13 entailed in addition to the payment of appropriate compensation and without prejudice to any other available domestic remedy, an obligation on the State to carry out a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the procedures. Turkey had not carried out a through and effective investigation.

The Commission found the applicants' complaints under A 14 in conjunction with A 6, 8, 13 and P1A1 unsubstantiated. On the basis of the facts as established by the Commission, the Court, therefore, found no violation of those provisions.

Pecuniary damage ((8–1) GBP 17,760.32 to first applicant and GBP 22,408.48 to second applicant), non-pecuniary damage (GBP 10,000 to each applicant), costs and expenses (GBP 18,011.64 less FF 16,093).

Cited: Akdivar and Others v TR (16.9.1996); Akdivar and Others v TR (A 50 judgment) (1.4.1998); Aksoy v TR (18.12.1996), Mentes and Others v TR (28.11.1997); Sakik and Others v TR (26.11.1997), Soering v UK (7.7.1989).

Selmouni v France (2000) 29 EHRR 403 99/48

[Application lodged 11.11.1999; Commission report 11.12.1997; Court Judgment 28.7.1999]

Mr Ahmed Selmouni, a Netherlands and Moroccan national, was arrested on 25 November 1991 and held in police custody until 29 November in connection with drug-trafficking proceedings. He was remanded in custody pending trial. While in police custody he was examined six times by doctors. He was ultimately sentenced in December 1992 to 15 years' imprisonment and permanent exclusion from French territory and a penalty. In a judgment of 16 September 1993, the Paris Court of Appeal reduced the prison sentence to 13 years and upheld the remainder of the judgment. On 27 June 1994 the Court of Cassation dismissed the applicant's appeal. On 1 February 1993 he lodged a criminal complaint together with an application to join the criminal proceedings as a civil party for assault occasioning actual bodily harm resulting in total unfitness for work for more than eight days; assault and wounding with a weapon (namely a baseball bat); indecent assault; assault occasioning permanent disability (namely the loss of an eye); and rape aided and abetted by two or more accomplices, all of which offences were committed between 25 and 29 November 1991 by police officers in the performance of their duties. The applicant identified police officers who were subsequently charged and committed for trial. In a judgment of 25 March 1999 the Versailles Criminal Court sentenced the officers to three years' imprisonment. Those sentences were reduced, although the majority of the convictions were upheld, in a judgment of 1 July 1999 of the Versailles Court of Appeal. The applicant alleged a violation of A 3 and 6(1).

Comm found unanimously V 3 and 6(1).

Court unanimously dismissed the Government's preliminary objection that domestic remedies had not been exhausted, found V 3, V 6(1).

Judges: Mr L Wildhaber, President, Mr L Ferrari Bravo, Mr G Bonello, Mr L Caflisch, Mr P Kûris, Mr J-P Costa, Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach, Mr B Zupancic, Mrs N Vajic, Mr J Hedigan, Mrs W Thomassen, Mrs M Tsatsa-Nikolovska, Mr T Pantiru, Mr R Maruste, Mr K Traja.

The purpose of A 35 was to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Convention institutions. However, the only remedies which A 35 of the Convention required to be exhausted were those that related to the breaches alleged and at the same time were available and sufficient. The existence of such remedies had to be sufficiently certain not only in theory but also in practice, failing which they would lack the requisite accessibility and effectiveness. A 35 provided for a distribution of the burden of proof. It was incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once that burden of proof had been satisfied, it fell to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement. A 35 had to be applied with some degree of flexibility and without excessive formalism. The rule of exhaustion of domestic remedies was neither absolute nor capable of being applied automatically. As soon as the applicant was released from police custody on 29 November 1991, the investigating judge ordered an expert medical report and a preliminary investigation was carried out under the authority of the Public Prosecutor. However, no statement was taken from the applicant until more than a year after the events in issue and the opening of a judicial investigation was not requested until after the applicant had lodged, on 1 February 1993, a criminal complaint together with an application to join the proceedings as a civil party. There were a number of other delays which had to be taken into consideration. The police officers did not finally appear before the criminal courts until almost five years after they had been identified and seven years after the period of police custody in question. Where an individual had an arguable claim that there had been a violation of A 3 (or A 2), the notion of an effective remedy entailed, on the part of the State, a thorough and effective investigation capable of leading to the identification and punishment of those responsible. The authorities did not take the positive measures required in the circumstances of the case to ensure that the remedy referred to by the Government was effective. On the facts of this case the Government's objection on grounds of failure to exhaust domestic remedies could not be upheld.

Where an individual was taken into police custody in good health but was found to be injured at the time of release, it was incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arose under A 3. In the instant case the Court considered that it should accept, in the main, the facts as established by the Commission, having been satisfied on the basis of the evidence which it had examined that the Commission could properly reach the conclusion that the applicant's allegations were proved beyond reasonable doubt, it being recalled that such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences. However, it had not been proved that the applicant was raped nor could a causal link be established on the basis of the medical report between the applicant's alleged loss of visual acuity and the events which occurred during police custody. A 3 enshrined one of the most fundamental values of democratic societies and was prohibited absolutely. The distinction, embodied in A 3, between this torture and inhuman or degrading treatment appeared intended to attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. The applicant had been subjected while in police custody to physical and undoubtedly mental pain and suffering which were inflicted on him intentionally for the purpose, *inter alia*, of making him confess to the offence which he was suspected of having committed. The numerous acts of violence were directly inflicted by police officers in the performance of their duties. The acts

were such as to arouse in the applicant feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance. The Court therefore found elements which were sufficiently serious to render such treatment inhuman and degrading. In respect of a person deprived of his liberty, recourse to physical force which had not been made strictly necessary by his own conduct diminished human dignity and was in principle an infringement of A 3. Having regard to the fact that the Convention was a living instrument which had to be interpreted in the light of present-day conditions, the Court considered that certain acts which were classified in the past as 'inhuman and degrading treatment' as opposed to 'torture' could be classified differently in future. The increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably required greater firmness in assessing breaches of the fundamental values of democratic societies. A large number of blows were inflicted on the applicant which could be presumed to have caused substantial pain. He was dragged along by his hair, made to run along a corridor with police officers positioned on either side to trip him up, made to kneel down in front of a young woman to whom someone said 'Look, you're going to hear somebody sing', that one police officer then showed him his penis, saying 'Look, suck this', before urinating over him and that he was threatened with a blowlamp and then a syringe. Besides the violent nature of the above acts, they would be heinous and humiliating for anyone, irrespective of their condition. The applicant endured repeated and sustained assaults over a number of days of questioning. Under those circumstances, the physical and mental violence, considered as a whole, committed against the applicant's person caused severe pain and suffering and was particularly serious and cruel. Such conduct had to be regarded as acts of torture for the purposes of A 3.

A 6: the period to be taken into consideration began when the applicant expressly lodged a complaint while being interviewed by an officer of the National Police Inspectorate, that is, on 1 December 1992. Having regard to the nature and extreme seriousness of the alleged acts, the Court did not consider that it should take as the starting-point 1 February 1993, the date on which the applicant lodged a criminal complaint and an application to join the proceedings as a civil party or, *a fortiori*, the date on which that complaint and application were registered. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. Neither the complexity of the case nor the applicant's conduct justified the length of the proceedings. The proceedings, which were still pending since an appeal on points of law might be brought, had already lasted more than six years and seven months. A number of delays were attributable to the judicial authorities. Having regard to all the evidence, the reasonable time prescribed by A 6(1) was exceeded.

Pecuniary and non-pecuniary damage (FF 500,000), costs and expenses (FF 113,364).

Cited: Cited: Akdivar v TR (16.9.1996), Aquaviva v F (21.11.1995), Assenov and Others v B (28.10.1998), Aydin v TR (25.9.1997),Cardot v F (19.3.1991), Chahal v UK (15.11.1996), Cruz Varas and Others v S (20.3.1991), Dalia v F (19.2.1998), Handyside v UK (7.12.1976), Hentrich v F (22.9.1994), Ireland v UK (18.1.1978), Loizidou v TR (23.3.1995), McCann and Others v UK (27.9.1995), Remli v F (23.4.1996), Ribitsch v A (4.12.1995), Soering v UK (7.7.1989), Tekin v TR (9.6.1998), Tomasi v F (27.8.1992), Tyrer v UK (25.4.1978), Van Oosterwijck v B (6.11.1980), Vernillo v F (20.2.1991).

Sener v Turkey 00/184

[Application lodged 7.3.1995; Court Judgment 18.7.2000]

Ms Pelin Sener was the owner and editor of a weekly review entitled Haberde Yorumda Gerçek (The Truth of News and Comments), published in Istanbul. On 5 September 1993 the Istanbul State Security Court ordered the seizure of the 23rd edition of the review, dated 4 September 1993, on the ground that an article in it contained separatist propaganda. The applicant was charged with having disseminated propaganda against the indivisibility of the State by publishing the article. In a judgment dated 5 July 1994 the Istanbul State Security Court, composed of three judges including

a military judge, found the applicant guilty and sentenced her to six months' imprisonment and a fine of TRL 50,000,000 and ordered confiscation of the offending publication. The applicant's appeal was dismissed by the Court of Cassation on 30 November 1994. Following amendments to the law, the Istanbul State Security Court re-examined the applicant's case and on 8 March 1996 imposed the same sentence on her. The applicant appealed. On 10 June 1997 the Court of Cassation quashed the judgment of 8 March 1996 on the ground that the Istanbul State Security Court had not commuted the applicant's sentence of imprisonment to a fine. On 25 September 1997 the State Security Court decided to defer the imposition of a final sentence, a final sentence would be imposed should the applicant be convicted of a further intentional offence in her capacity as an editor within three years of that decision. The author of the article was convicted in November 1995 and his sentenced suspended. The applicant complained that her conviction constituted an unjustified interference with her right to freedom of expression, that the restrictions which were applied to the exercise of that right were inconsistent with the legitimate aims prescribed in A 10(2) and that the Istanbul State Security Court which dealt with her case was not an independent and impartial tribunal.

Court found by majority (6–1) V 10, V 6(1), unanimously NV 18.

Judges: Mr J-P Costa, President, Mr W Fuhrmann, Mr P Kûris, Mrs F Tulkens, Mrs HS Greve, Mr K Traja, Mr F Gölcüklü (d), ad hoc judge.

There had been an interference with the applicant's right to freedom of expression on account of her conviction and sentence. The interference was prescribed by law, namely the Prevention of Terrorism Act 1991. Having regard to the sensitivity of the security situation in south-east Turkey and to the need for the authorities to be alert to acts capable of fuelling additional violence, the measures taken against the applicant could be said to have been in furtherance of the aims of protection of national security and public safety. Although certain phrases seemed aggressive in tone, the article taken as a whole did not glorify violence. Nor did it incite people to hatred, revenge, recrimination or armed resistance. On the contrary, the article was an intellectual analysis of the Kurdish problem which called for an end to the armed conflict. Furthermore, the applicant was not convicted for incitement to violence, but for disseminating separatist propaganda. In that regard, the domestic authorities failed to give sufficient weight to the public's right to be informed of a different perspective on the situation in south-east Turkey, irrespective of how unpalatable that perspective may be for them. The reasons given by the Istanbul State Security Court for convicting the applicant, although relevant, could not be considered sufficient to justify the interference with her right to freedom of expression. Despite the fact that the imposition of a final sentence on the applicant was suspended, the conditional suspended sentence had the effect of restricting her work as an editor and reducing her ability to offer the public views. The applicant's conviction was therefore disproportionate to the aims pursued and, accordingly, not necessary in a democratic society. There had therefore been a violation of A 10.

In previous judgments the Court found that the status of military judges sitting as members of State Security Courts did provide some guarantees of independence and impartiality. However, certain aspects of these judges' status made their independence and impartiality questionable: for example, the fact that they were servicemen who still belonged to the army, which in turn took its orders from the Executive; the fact that they remained subject to military discipline; and the fact that decisions pertaining to their appointment were to a great extent taken by the administrative authorities and the army. It was understandable that the applicant, prosecuted in a State Security Court for disseminating propaganda aimed at undermining the national security of the State and public safety, should have been apprehensive about being tried by a bench which included a regular army officer and member of the Military Legal Service. On that account she could legitimately fear that the Istanbul State Security Court might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. In other words, the applicant's fears as to that court's lack of independence and impartiality could be regarded as

objectively justified. The proceedings in the Court of Cassation were not able to dispel these fears since that court did not have full jurisdiction. There had therefore been a breach of A 6(1).

The Court agreed with the Commission that the restrictions which were applied to the applicant's right to freedom of expression were consistent with the legitimate aims contained in A 10(2). Accordingly, there had been no violation of A 18.

Non-pecuniary damage (by majority (6–1) FF 30,000), costs and expenses ((6–1) FF 10,000).

Cited: Ceylan v TR (8.7.1999), Çiraklar v TR (28.10.1998) Erdogdu and Ince v TR (8.7.1999), Hertel v CH (25.8.1998), Karatas v TR (8.7.1999), Incal v TR (9.6.1998), Lingens v A (8.7.1986), Öztürk v TR (28.9.1999), Sürek (No 1) v TR (8.7.1999), Zana v TR (25.11.1997).

Seri v Italy 91/61

[Application lodged 8.6.1987; Commission report 15.1.1991; Court Judgment 3.12.1991]

Mrs Maria Seri was an agricultural worker. On 20 May 1985 she took out a writ against the 'Istituto Nazionale della Previdenza Sociale' before the Rome magistrates' court in order to be reinstated in her disability pension rights, which had been withdrawn with effect from 1 June 1984, and to obtain a court order for the pension arrears. On 12 November 1986 the magistrates' court dismissed her claim. She appealed on 6 February 1987 against the decision. The District Court gave judgment on 24 February 1989 which was lodged with the registry on 12 May 1989. The applicant complained of the length of proceedings.

Comm found unanimously V 6(1).

Court unanimously struck case out of the list.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr SK Martens.

Despite several reminders from the registry, the applicant showed no interest in the proceedings before the Court. The Court considered that there has been an implied withdrawal which constituted a 'fact of a kind to provide a solution of the matter'. In addition, the Court discerned no reason of public policy for continuing the proceedings. It recalled its previous case-law in which it had reviewed the reasonableness of the length of civil proceedings in various Contracting States. Accordingly, the case was struck out of the list.

Cited: Brigandì v I (19.2.1991), Caleffi v I (24.5.1991), Capuano v I (25.6.1987), Owners' Services Ltd v I (28.6.1991), Pretto and Others v I (8.12.1983), Pugliese (No 2) v I (24.5.1991), Santilli v I (19.2.1991), Vocaturo v I (24.5.1991), Zanghì v I (19.2.1991).

Serif v Greece 99/103

[Application lodged 29.9.1997; Court Judgment 14.12.1999]

The State appointed Mr MT as Mufti (Muslim religious leader) of Rodopi, *ad interim* following the death of the previous Mufti. He was confirmed in the post on 6 April 1990. In December 1990, the two independent Muslim Members of Parliament for Xanthi and Rodopi requested the State to organise elections for the posts of Mufti of Rodopi and Xanthi. Having received no reply, the two independent MPs decided to organise themselves elections at the mosques on Friday 28 December 1990 after the prayers. On 24 December 1990, the President of the Republic adopted a legislative act changing the manner of selection of the Muftis, so that they were to be appointed by presidential decree. On 28 December 1990 Mr Ibraim Serif, a theological school graduate, was elected Mufti of Rodopi by those attending Friday prayers at the mosques. Together with other Moslems he challenged the lawfulness of MT's appointment before the Council of State. These proceedings were still pending. On 4 February 1991 Parliament enacted Law 1920 retroactively, thereby validating the act of 24 December 1990. The public prosecutor instituted criminal proceedings against the applicant for having usurped the functions of a minister of a 'known religion' and for having publicly worn the uniform of such a minister without having the right to

do so. On 12 December 1994 the court found the applicant guilty and sentenced him to eight months' imprisonment. On appeal, his conviction was upheld and a sentence of six months' imprisonment to be commuted to a fine was imposed. His appeal to the Court of Cassation was rejected. He complained that his conviction amounted to a violation of A 9.

Court found unanimously V 9, no separate issue under 10.

Judges: Mr M Fischbach, President, Mr C Rozakis, Mr B Conforti, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska, Mr AB Baka, Mr E Levits.

While religious freedom was primarily a matter of individual conscience, it also included, *inter alia*, freedom, in community with others and in public, to manifest one's religion in worship and teaching. The facts underlying the applicant's conviction were issuing a message about the religious significance of a feast, delivering a speech at a religious gathering, issuing another message on the occasion of a religious holiday and appearing in the clothes of a religious leader. In those circumstances, his conviction amounted to an interference with his right under A 9(1), 'in community with others and in public, to manifest his religion in worship and teaching'. It was not necessary to rule on the question whether the interference in issue was prescribed by law because it was in any event incompatible with A 9 on other grounds. The interference pursued a legitimate aim under A 9(2), namely to protect public order. The applicant was not the only person claiming to be the religious leader of the local Moslem community; on 6 April 1990 the authorities had appointed another person as Mufti of Rodopi and the relevant decision had been challenged before the Council of State. Despite a vague assertion that the applicant had officiated at wedding ceremonies and engaged in administrative activities, the domestic courts that convicted the applicant did not mention in their decisions any specific acts by the applicant with a view to producing legal effects. Punishing a person for the mere fact that he acted as the religious leader of a group that willingly followed him could hardly be considered compatible with the demands of religious pluralism in a democratic society. There existed an officially appointed Mufti, but there was no indication that the applicant attempted at any time to exercise the judicial and administrative functions for which the legislation on the Muftis and other ministers of 'known religions' made provision. In democratic societies, the State did not need to take measures to ensure that religious communities remained or were brought under a unified leadership. Although it was possible that tension was created in situations where a religious or any other community became divided, that was one of the unavoidable consequences of pluralism. The role of the authorities in such circumstances was not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerated each other. The Government did not make any allusion to actual disturbances. Nothing was adduced that could warrant qualifying the risk of tension between the Moslems and Christians or between Greece and Turkey as anything more than a very remote possibility. It had not therefore been shown that the applicant's conviction was justified in the circumstances of the case by a pressing social need. As a result, the interference with the applicant's right, in community with others and in public, to manifest his religion in worship and teaching was not necessary in a democratic society for the protection of public order under A 9(2) and there had, therefore, been a violation of A 9.

Given the finding of violation of A 9 of the Convention, it was not necessary to examine whether A 10 was also violated.

Damages (GRD 2,700,000). No claim made for costs and expenses.

Cited: Kokkinakis v GR (25.5.1993), Manoussakis and Others v GR (26.9.1996), Plattform 'Ärzte für das Leben' v A (21.6.1988), Wingrove v UK (25.11.1996).

Serra v France 00/162

[Application lodged 1.10.1996; Court Judgment 13.6.2000]

Mr Jaime Serra complained of the length of administrative proceedings.

Court found unanimously V 6(1).

Judges: Mr W Fuhrmann, President, Mr J-P Costa, Mr L Loucaides, Mr P Kûris, Sir Nicolas Bratza, Mrs Hs Greve, Mr K Traja.

The period to be taken into consideration had lasted 10 years, three months and 17 days at five levels of jurisdiction including more than four and a half years for the examination of the applicant's first cassation appeal. The period could not be considered reasonable.

Non-pecuniary damage (FF 30,000), costs and expenses (FF 20,000).

Cited: Bouilly v F (7.12.1999), Doustaly v F (23.4.1998), Richard v F (22.4.1998), Scalvini v I (26.10.1999).

Serre v France 99/58

[Application lodged 26.12.1995; Court Judgment 29.9.1999]

Mr Jean-Pierre Serre was a veterinary surgeon. He was disqualified by the Veterinary Council from practice for various breaches of the professional regulations. His appeal to the Disciplinary Council resulted in his disqualification being reduced. His appeal to the Conseil d'Etat was rejected. He complained that the proceedings had not been heard in open court.

Court found unanimously V 6(1).

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr L Loucaides, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

As the matter at stake in the disciplinary proceedings was the right to practise as a veterinary surgeon in the private sector, A 6(1) applied to the disciplinary proceedings. The holding of proceedings in open court was a fundamental requirement of A 6(1).

Non-pecuniary damage (by majority (6–1) FF 10,000), costs and expenses ((6–1) FF 65,830).

Cited: Diennet v F (26.9.1995), Gautrin and Others v F (20.5.1998).

Serrentino v Italy 92/35

[Application lodged 22.7.1986; Commission report 6.3.1991; Court Judgment 27.2.1992]

On 10 October 1983 Mr Ignazio Serrentino was involved in a road accident and seriously injured. By summons served on 11 September 1984, he took proceedings for damages before the Reggio Calabria District Court against the owner and the driver of the car which had knocked him down, and also against the X insurance company. On 30 January 1987 the court declared the defendants jointly and severally liable to pay the applicant damages, interest and costs. The text of the judgment was lodged with the registry on 27 March 1987. The parties appealed. On 15 November 1990 the Appeal Court re-assessed the damages. The text of the decision was lodged with the registry on 6 December 1990. The applicant complained of the length of proceedings.

Comm found by majority (9–1) V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 11 September 1984 when the proceedings were instituted against the person responsible for the accident and his insurance company. It had not yet ended, as the Court of Cassation had still to give judgment. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The case was not a complex one. There were several periods of inactivity on the part of the authorities. The parties were responsible for several delays resulting in a total delay of about 11 months, but at the applicant's request the District Court brought forward the date of one hearing by nearly two years. It took the Reggio Calabria Court of Appeal almost two years to find that the appeal filed by the X insurance company had not been notified to the owner of the car in question. Yet under the Italian Code of Civil Procedure the judicial authorities were responsible for ensuring that such steps are properly carried out. In those

circumstances and in view of what was at stake for the applicant, the Court could not regard as reasonable a lapse of time which had already amounted to more than seven years.

Non-pecuniary damage (ITL 10,000,000), costs and expenses (ITL 4,710,000).

Serves v France (1999) 28 EHRR 265 97/77

[Application lodged 21.4.1992; Commission report 23.5.1996; Court Judgment 20.10.1997]

Mr Paul Serves was a regular officer in the French army and at the material time held the rank of captain. He was in command of the first company of the Second Foreign Parachute Regiment and was based in the Central African Republic. On 11 April 1988 the applicant instructed the heads of platoon on an operation. During the course of the operation a native was shot and wounded by Staff Sergeant B. The injured man was treated by the platoon's medical orderly and taken to the bivouac, where Lieutenant C ordered Corporal D to dig a grave. An hour after that had been done, and after being questioned, the captive, on Lieutenant C's orders, was dispatched by means of five shots fired by Corporal D and then buried. The applicant was told of the incident on 15 or 16 April 1988 and ordered his men to remain silent. They returned to their camp at Bouar on 21 April. In his report on the 'provincial tour' the applicant made no mention of any incident. A judicial investigation, for murder, was begun in respect of Lieutenant C and Corporal D only. They were charged on 19 April 1990. In connection with that investigation, the applicant was summoned to appear as a witness before the military investigating judge three times. He attended but refused to take the oath and give evidence. He was ordered to pay fines of FF 500, FF 2,000 and FF 4,000 respectively for refusing to take the oath and give evidence. The applicant's appeal against those orders to the Paris Court of Appeal and thereafter to the Court of Cassation (Criminal Division) were dismissed. On 28 February 1994 the First Indictment Division of the Paris Court of Appeal indicted Corporal D for murder, and Lieutenant C and the applicant for aiding and abetting murder. On 11 May 1994 the Paris Military Court convicted and sentenced Corporal D to one year's imprisonment, suspended, Lieutenant C to three years' imprisonment, with one year suspended, and the applicant to four years' imprisonment, with one year suspended. The applicant complained that the fines imposed on him for refusing to take the oath and give evidence before the investigating judge amounted to an infringement of his right not to incriminate himself. In addition, he criticised the conditions in which the proceedings leading to the imposition of those fines had taken place.

Comm found by majority (25–2) V 6(1), (26–1) no separate issue under 10.

Court found unanimously 6(1) applicable, by majority (6–3) NV 6(1), NV 6(1)+6(3)(b), unanimously not necessary to examine 10.

Judges: Mr R Ryssdal, President, Mr L-E Pettiti, Mr C Russo, Mr A Spielmann, Mr R Pekkanen (D), Sir John Freeland, Mr Ma Lopes Rocha, Mr L Wildhaber (D), Mr J Makarczyk (D).

The Court recalled its case-law. When the applicant was summoned to appear as a witness and fined under the Code of Criminal Procedure, he could be considered the subject of a 'charge' within the autonomous meaning of A 6(1). Accordingly, A 6(1) was applicable in the instant case.

The right of any person charged to remain silent and the right not to incriminate himself were generally recognised international standards which lay at the heart of the notion of a fair procedure under A 6 of the Convention. Their rationale lay, *inter alia*, in protecting the person charged against improper compulsion by the authorities and thereby contributing to the avoidance of miscarriages of justice and to the fulfilment of the aims of A 6. The right not to incriminate oneself, in particular, presupposed that the prosecution in a criminal case sought to prove their case without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the person charged. It was the task of the Court to decide whether the fining of the applicant amounted to coercion such as to render his right not to incriminate himself ineffective. The applicant refused at the outset to take the oath. Yet the oath was a solemn act whereby the person concerned undertook before the investigating judge to tell 'the whole truth and nothing but

the truth'. Whilst a witness's obligation to take the oath and the penalties imposed for failure to do so involved a degree of coercion, the latter was designed to ensure that any statements made to the judge were truthful, not to force witnesses to give evidence. In other words, the fines imposed on the applicant did not constitute a measure such as to compel him to incriminate himself as they were imposed before such a risk ever arose. Consequently, there had been no violation of A 6(1).

The applicant appealed against the orders imposing the fines concerned and at the end of the proceedings, which could not be faulted under A 6 of the Convention, the Paris Court of Appeal dealt with his ground of appeal based on the Code of Criminal Procedure. Consequently, the Court held, without its being necessary to consider the Government's preliminary objection, that there has been no violation of A 6(1) and (3)(b) taken together.

The merits of the applicant's complaint that his right not to incriminate himself had been violated had been considered under A 6(1). He did not provide any information demonstrating a need for that complaint to be considered under A 10 also. It was therefore unnecessary to examine whether there has been a violation of that provision.

Cited: Deweer v B (27.2.1980), Eckle v D (15.7.1982), Funke v F (25.2.1993), John Murray v UK (8.2.1996), Saunders v UK (17.12.1996).

Sheffield and Horsham v United Kingdom (1999) 27 EHRR 163 98/60

[Applications lodged 4.8.1993; Commission report 21.1.1997; Court Judgment 30.7.1998]

The first applicant, Miss Kristina Sheffield, was born in 1946 and was registered at birth as being of the male sex. In 1986 she began treatment and successfully underwent sex reassignment surgery. She changed her name by deed poll to her present name and that name was recorded on her passport and driving licence. Prior to her operation she had been married and had one daughter. She complained of the difficulties which she had encountered as a result of her decision to undergo gender reassignment surgery and her subsequent change of sex.

The second applicant, Miss Rachel Horsham, born in 1946, was registered at birth as being of the male sex. She moved to Amsterdam and underwent gender reassignment surgery on 21 May 1992. She experienced difficulties in getting the British consulate in Amsterdam to allow a change of photograph and the inscription of her new name in her passport. She was unable to amend her original birth certificate in the UK to record her sex as female. She stated that she was forced to live in exile and would not be able to marry and live a married life with her male partner in the UK.

The applicants complained that the failure of the respondent State to recognise in law that they were of female sex interfered with their rights under A 8 and A 12.

Comm found in respect of the first applicant by majority (15–1) V 8, (9–7) no separate issue under 12, unanimously no separate issue under 14, unanimously NV 13. In respect of the second applicant by majority (15–1) V 8, (10–6) no separate issue under 12, unanimously no separate issue under 14, unanimously NV 13.

Court found by majority (11–9) NV 8, (18–2) NV 12, unanimously NV 14+8, unanimously not necessary to examine 13.

Judges: Mr R Bernhardt (jpd), President, Mr Thór Vilhjálmsson (jpd), Mr F Matscher, Mr A Spielmann (jpd), Mr J De Meyer (jc), Mr N Valticos (jc), Mrs E Palm (jpd), Mr AN Loizou, Mr JM Morenilla (jc), Sir John Freeland (c), Mr MA Lopes Rocha, Mr L Wildhaber (jpd/declaration), Mr J Makarczyk (jpd), Mr K Jungwiert, Mr P Kûris, Mr J Casadevall (pd), Mr P Van Dijk (d), Mr T Pantiru, Mr M Voicu (jpd), Mr V Butkevych.

The issue raised by the applicants before the Court was not that the respondent State should abstain from acting to their detriment, but that it had failed to take positive steps to modify a system which they claimed operated to their prejudice. The essence of their complaints concerned the continuing insistence by the authorities on the determination of gender according to biological criteria alone and the immutability of the gender information once it was entered on the register of births. No scientific or legal developments in the area of transsexualism had been shown since the *Cossey* judgment and the Court was accordingly not persuaded that it should depart from its *Rees*

and *Cossey* decisions. The respondent State could rely on a margin of appreciation to defend its continuing refusal to recognise in law a transsexual's post-operative gender. For the Court, it continued to be the case that transsexualism raised complex scientific, legal, moral and social issues, in respect of which there was no generally shared approach among the Contracting States. In addition, the detriment suffered by the applicants in being obliged to disclose pre-operative gender in certain contexts was not of sufficient seriousness as to override the respondent State's margin of appreciation in that area. The situations in which the applicants might be required to disclose their pre-operative gender did not occur with a degree of frequency which could be said to impinge to a disproportionate extent on their right to respect for their private lives. Moreover, the respondent State had endeavoured to some extent to minimise intrusive inquiries as to their gender status by allowing transsexuals to be issued with driving licences, passports and other types of official documents in their new name and gender, and that the use of birth certificates as a means of identification was officially discouraged. Despite the Court's statements in the *Rees* and *Cossey* cases on the importance of keeping the need for appropriate legal measures in this area under review having regard in particular to scientific and societal developments, it appeared that the respondent State had not taken any steps to do so. The fact that a transsexual was able to record his or her new sexual identity on a driving licence or passport or to change a first name were not innovative facilities. Even if there had been no significant scientific developments since the date of the *Cossey* judgment which made it possible to reach a firm conclusion on the aetiology of transsexualism, it was nevertheless the case that there was an increased social acceptance of transsexualism and an increased recognition of the problems which post-operative transsexuals encountered. In finding no breach of A 8 in this case, the Court reiterated that the area needed to be kept under review by Contracting States. The applicants had not established that the respondent State had a positive obligation under A 8 of the Convention to recognise in law their post-operative gender. Accordingly, there was no breach of that provision in the instant case.

The right to marry guaranteed by A 12 referred to the traditional marriage between persons of opposite biological sex. Furthermore, A 12 laid down that the exercise of that right should be subject to the national laws of the Contracting States. The limitations thereby introduced must not restrict or reduce the right in such a way or to such an extent that the very essence of the right was impaired. However, the legal impediment in the UK on the marriage of persons who were not of the opposite biological sex could not be said to have an effect of that kind. The attachment to the traditional concept of marriage which underpinned A 12 of the Convention provided sufficient reason for the continued adoption by the respondent State of biological criteria for determining a person's sex for the purposes of marriage. The inability of either applicant to contract a valid marriage under the domestic law of the respondent State having regard to the conditions imposed by the domestic legislation could not be said to constitute a violation of A 12.

A 14 afforded protection against discrimination in the enjoyment of the rights and freedoms safeguarded by the other substantive provisions of the Convention. However, not every difference in treatment would amount to a violation of A 14. It had to be established that other persons in an analogous or relevantly similar situation enjoyed preferential treatment, and that there was no reasonable or objective justification for that distinction. Contracting States enjoyed a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justified a different treatment in law. The Court had already concluded that the respondent State had not overstepped its margin of appreciation in not according legal recognition to a transsexual's post-operative gender. In reaching that conclusion, it was satisfied that a fair balance continued to be struck between the need to safeguard the interests of transsexuals such as the applicants and the interests of the community in general and that the situations in which the applicants might be required to disclose their pre-operative gender did not occur with a degree of frequency which could be said to impinge to a disproportionate extent on their right to respect for their private lives. Those considerations, which were equally encompassed in the notion of 'reasonable and objective justification' for the purposes of A 14 of the Convention, had also to be seen as justifying the

difference in treatment which the applicants experienced irrespective of the reference group relied on. Therefore no violation has been established under A 14.

The applicants stated that they did not wish to pursue their complaints under A 13, the Court did not consider it necessary therefore to examine that head of complaint.

Cited: B v F (25.3.1992), Cossey v UK (27.9.1990), Rees v UK (17.10.1986), Stubbings and Others v UK (22.10.1996), X, Y and Z v UK (22.4.1997).

Sibson v United Kingdom (1994) 17 EHRR 193 93/16

[Application lodged 17.10.1988; Commission report 10.12.1991; Court Judgment 20.4.1993]

Mr Dennis Sibson was employed by Courtaulds Northern Spinning Ltd (CNS) from November 1973 as a heavy goods vehicle driver. He was based at its depot at Greengate. He had been a member of the Transport and General Workers Union (TGWU) and its branch secretary from 1981 to 1984. Following an allegation against him by Mr D of having 'milked the funds' of the union and the rejection of his complaint by the TGWU branch adjudication panel, he resigned from TGWU and joined the United Road Transport Union instead. There was disagreement between the applicant and some of his fellow drivers and the threat of strike action. Negotiations were held. The applicant was offered the choice of rejoining TGWU or being employed on driving work not based at Greengate but at Chadderton. The applicant stated that he would rejoin the union only if he received an apology from Mr D. At a final meeting on 8 November 1985 the applicant declined to accept either of the alternatives then put before him and suggested that the management should dismiss him. He lodged with the Industrial Tribunal a complaint of unfair dismissal. By decision of 21 July 1986, the Industrial Tribunal unanimously accepted the complaint of unfair dismissal. That decision was upheld by the Employment Appeal Tribunal. An appeal by CNS was allowed on 25 March 1988 by the Court of Appeal. He complained that the compulsion imposed on him to join TGWU or to move to another depot was contrary to his rights under A 11.

Comm found by majority (8–6) NV 11.

Court found by majority (7–2) NV 11.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr C Russo (d), Mrs E Palm, Mr AN Loizou, Mr JM Morenilla (d), Mr F Bigi, Sir John Freeland, Mr MA Lopes Rocha.

The Government's preliminary objections of non-exhaustion were closely linked to those that would have to be examined if it proved necessary to determine whether there had been such a failure and they were therefore joined to the merits.

As the Court had previously held, although compulsion to join a particular trade union might not always be contrary to the Convention, a form of such compulsion which, in the circumstances of the case, struck at the very substance of the freedom of association guaranteed by A 11 would constitute an interference with that freedom. The applicant did not object to rejoining TGWU on account of any specific convictions as regards trade union membership (he did in fact join another union instead). He would have rejoined TGWU had he received a form of apology acceptable to him. The present case was not one in which a closed shop agreement was in force. The applicant was not faced with a threat of dismissal involving loss of livelihood but had the possibility of going to work at the nearby Chadderton depot, to which his employers were contractually entitled to move him; their offer to him in that respect was not conditional on his rejoining TGWU; and it was not established that his working conditions there would have been significantly less favourable than those at the Greengate depot. Having regard to those various factors, the applicant was not subjected to a form of treatment striking at the very substance of the freedom of association guaranteed by A 11. There had accordingly been no violation of that provision. In those circumstances, it was not necessary to determine the other questions.

Cited: Young, James and Webster v UK (13.8.1981).

Sidiropoulos and Others v Greece (1999) 27 EHRR 633 98/50

[Application lodged 16.11.1994; Commission report 11.4.1997; Court Judgment 10.7.1998]

Mr Christos Sidiropoulos, an electrician, Mr Petros Dimtsis, a teacher, Mr Stavros Anastassiadis, a farmer, Mr Anastassios Boules, a farmer, Mr Dimitrios Seltsas, a dentist and Mr Stavros Sovislis, a farmer, all lived in northern Greece, on the border of the Former Yugoslav Republic of Macedonia. They claimed to be of 'Macedonian' ethnic origin and to have a 'Macedonian national consciousness' and decided with others to form a non-profit-making association called 'Home of Macedonian Civilisation'. The association's headquarters were to be at Florina. According to clause 2 of its memorandum of association, the association's objects were '(a) the cultural, intellectual and artistic development of its members and of the inhabitants of Florina in general and the fostering of a spirit of co-operation, solidarity and love between them; (b) cultural decentralisation and the preservation of intellectual and artistic endeavours and traditions and of the civilisation's monuments and, more generally, the promotion and development of their folk culture; and (c) the protection of the region's natural and cultural environment'. Their application for registration of their association under the name of 'Home of Macedonian Civilisation' was refused by the Florina Court of First Instance. Their appeal to the Salonika Court of Appeal was dismissed as was their subsequent appeal to the Court of Cassation.

Comm found unanimously V 11, not necessary to consider 6 and 14, no separate issue under 9 and 10.

Court unanimously dismissed the Government's preliminary objections, found V 11, not necessary to rule on 6(1), 9, 10 and 14.

Judges: Mr R Bernhardt, President, Mr C Russo, Mr N Valticos, Mr I Foighel, Mr Jm Morenilla, Mr L Wildhaber, Mr D Gotchev, Mr U Lôhmus, Mr V Butkevych.

A 11, notwithstanding its autonomous role and particular sphere of application, could also be considered in the light of A 9 and 10. The protection of personal opinion afforded by those articles in the shape of freedom of conscience and freedom of expression was also one of the purposes of freedom of association as guaranteed by A 11. The applicants' complaints under A 9, 10 and 14 went to the very substance of A 11, so that in the national courts the applicants did rely on grounds of equivalent effect within the meaning of the Court's case-law. As to the complaints under A 6(1), inasmuch as they concerned the way in which the national courts used certain evidence to refuse the application to register the association, they were identical with those raised by the applicants under A 11. The preliminary objection of failure to exhaust domestic remedies was therefore dismissed. There was nothing in the relevant association's memorandum of association to warrant the conclusion that the association relied on the Convention to engage in activity or perform acts aimed at the destruction of any of the rights and freedoms set forth in it. The Government's preliminary objection of abuse of the right of individual petition was therefore dismissed.

The Greek courts' refusal to register the applicants' association amounted to an interference by the authorities with the applicants' exercise of their right to freedom of association; the refusal deprived the applicants of any possibility of jointly or individually pursuing the aims they had laid down in the association's memorandum of association and of thus exercising the right in question. The interference was prescribed by law, as the Civil Code allowed the courts to refuse an application to register an association where they found that the validity of its memorandum of association was open to question. Having regard to the situation prevailing in the Balkans at the time and to the political friction between Greece and the Former Yugoslav Republic of Macedonia (FYROM), the Court accepted that the interference in issue was intended to protect national security and prevent disorder. The right to form an association was an inherent part of the right set forth in A 11, even if that article only made express reference to the right to form trade unions. That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest was one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning. The way in which national legislation enshrined that freedom and its practical application by the authorities revealed the state of democracy in the

country concerned. States had a right to satisfy themselves that an association's aim and activities were in conformity with the rules laid down in legislation, but they had to do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions. The exceptions set out in A 11 were to be construed strictly; only convincing and compelling reasons could justify restrictions on freedom of association. In determining whether a necessity within the meaning of A 11(2) existed, States had only a limited margin of appreciation. The aims of the association called 'Home of Macedonian Civilisation', as set out in its memorandum of association, were exclusively to preserve and develop the traditions and folk culture of the Florina region. Such aims appeared to be perfectly clear and legitimate. The press articles in question, which had a decisive influence on the outcome of the proceedings, showed that they reported matters some of which were unconnected with the applicants and drew inferences derived from a subjective assessment by the authors of the articles. Relying on those articles and having regard to the political dispute that then dominated relations between Greece and the FYROM, the national courts held that the applicants and the association they wished to found represented a danger to Greece's territorial integrity. That statement, however, was based on a mere suspicion as to the true intentions of the association's founders and the activities it might have engaged in once it had begun to function. Greek law did not lay down a system of preventive review for setting up non-profit-making associations. The Civil Code allowed the courts merely to review lawfulness and not to review desirability. Under the Civil Code, the Court of First Instance could order that the association should be dissolved if it subsequently pursued an aim different from the one laid down in its memorandum of association or if its functioning proved to be contrary to law, morality or public order. The refusal to register the applicants' association was disproportionate to the objectives pursued. That being so, there had been a violation of A 11.

The applicants' complaints under A 6(1) were largely the same as those raised under A 11 and therefore, having regard to its decision in relation to that article, it was not necessary to examine A 6(1).

The complaint under A 9, 10 and 14 related to the same facts as the ones based on A 11 and it was not therefore necessary to consider it.

Present judgment constituted just satisfaction for the non-pecuniary damage sustained. Costs and expenses (GRD 4,000,000).

Cited: Saïdi v F (20.9.1993), United Communist Party of Turkey and Others v TR (30.1.1998), Young, James and Webster v UK (13.8.1981).

Siega and seven others v Italy 00/19

[Application lodged 27.2.1997; Court Judgment 25.1.2000]

The applicants, Siega Maurizio, Gasparotto Liliana, Pischedda Lorenzo, Zanette Luciana, Tramontina Loretta, Petozzi Gloriano, Colle Antonello, Piccini Onelia, complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 14 November 1987 and ended on 8 March 1997. It had lasted more than nine years and three months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 20,000,000 to each applicant), costs and expenses (ITL 500,000).

Cited: Bottazzi v I (28.7.1999).

Sigurdur A Sigurjónsson v Iceland (1993) 16 EHRR 462 93/29

[Application lodged 22.12.1989; Commission report 15.5.1992; Court Judgment 30.6.1993]

Mr Sigurdur A Sigurjónsson was a taxi driver in Reykjavik. He was granted a licence to operate a taxicab by the licence issuers. He refused to join Frami Automobile Association. As a consequence, on 30 June 1986, his licence was revoked. On 18 September 1986 he instituted proceedings against both the Committee and the Ministry before the Civil Court of Reykjavik, seeking a declaration that the revocation was null and void. The Civil Court dismissed his claim and a subsequent appeal to the Supreme Court was rejected. The applicant complained that the obligation to be a member of the automobile association on pain of losing his licence constituted a violation of A 11.

Comm found by majority (17–1) V 11, unanimously not necessary to examine 9 and 10, NV 13.

Court found by majority (8–1) V 11, unanimously not necessary to examine 9, 10 or 13.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson (d), Mr B Walsh, Mr R Macdonald, Mrs E Palm, Mr JM Morenilla, Mr F Bigi, Mr G Mifsud Bonnici, Mr J Makarczyk.

There was not sufficient evidence for Frami to be regarded as a public law association outside the ambit of A 11. It performed certain functions which were to some extent provided for in the applicable legislation and which served not only its members but also the public at large. However, the role of supervision of the implementation of the relevant rules was entrusted primarily to another institution, namely the Committee, which in addition had the power to issue licences and to decide on their suspension and revocation. Frami was established under private law and enjoyed full autonomy in determining its own aims, organisation and procedure. Regard also was had to its articles. It was predominantly a private law organisation and had to be therefore considered an 'association' for the purposes of A 11. It was not necessary to decide whether Frami could also be regarded as a trade union as the right to form and join trade unions was an aspect of the wider right to freedom of association, rather than a separate right. The measures complained of constituted an interference with his right to freedom of association. It was not contested that the impugned membership obligation was prescribed by law and pursued a legitimate aim, namely the protection of the rights and freedoms of others. The applicant was subjected to a form of compulsion which was rare within the Contracting States and which, on the face of it, had to be considered incompatible with A 11. Frami had a role that served not only the occupational interests of its members but also the public interest, and its performance of the supervisory functions in question must have been facilitated by the obligation of every licence-holder within the association's area to be a member. However, the Court was not convinced that compulsory membership of Frami was required in order to perform those functions. Supervision of the implementation of the relevant rules lay with the Committee and membership was not the only conceivable way of compelling the licence-holders to carry out such duties and responsibilities as might be necessary for the relevant functions. Nor had it been established that there was any other reason that would have prevented Frami from protecting its members' occupational interests in the absence of the compulsory membership imposed on the applicant despite his opinions. Although the reasons adduced by the Government could be considered relevant, they were not sufficient to show that it was necessary to compel the applicant to be a member of Frami, on pain of losing his licence and contrary to his own opinions. In particular, notwithstanding Iceland's margin of appreciation, the measures complained of were disproportionate to the legitimate aim pursued. Consequently, there had been a violation of A 11.

Having found a violation of A 11 and taken account of A 9 and 10 in the context of A 11, it was not necessary to consider those articles.

Before the Court the applicant stated that he accepted the Commission's conclusion that there had been no violation of A 13, accordingly the Court did not find it necessary to examine the matter of its own motion.

Legal fees and expenses (ISK 2,134,401 less FF 14,863). No compensation sought for damage.

Cited: Le Compte, Van Leuven and De Meyere v B (23.6.1981), Schmidt and Dahlström v S (6.2.1976), Sibson v UK (20.4.1993), Soering v UK (7.7.1989), Young, James and Webster v UK (13.8.1981).

Silva Pontes v Portugal (1994) 18 EHRR 156 94/11

[Application lodged 16.1.1989; Commission report 11.12.1992; Court Judgment 23.3.1994]

Mr Virgílio da Silva Pontes was a bank employee. On 12 November 1975 the car he was driving, in which Mr José Gonçalves Martins Moreira was a passenger, was in collision with another vehicle. As a result of his injuries the applicant remained in hospital until 31 May 1976. He underwent several operations including one in London in December 1978. He suffered from a 58% permanent disability. On 20 December 1977 the applicant and Mr Martins Moreira instituted civil proceedings in the Evora Court of First Instance against the owner, driver, the company on whose behalf the journey was undertaken, and the insurance company. On 5 February 1987 the Supreme Court delivered its judgment and on 28 October 1987 the applicant asked the Evora Court of First Instance to order the payment of the part of the damages awarded to them by the Court of Appeal which had already been calculated. An out of court settlement was reached in December 1989. The applicant complained of the length of the proceedings

Comm found by majority (18–1) V 6(1).

Court unanimously dismissed the Government's preliminary objection, found A 6(1) applicable, by majority (8–1) V 6(1).

Judges: Mr R Ryssdal, President, Mr A Spielmann, Mr SK Martens, Mrs E Palm, Mr AN Loizou, Mr JM Morenilla (d), Mr MA Lopes Rocha, Mr L Wildhaber, Mr J Makarczyk.

If the national law of a State made provision for proceedings consisting of two stages – one when the court ruled on the existence of an obligation to pay and another when it fixed the amount owed – it was reasonable to consider that, for the purposes of A 6(1), a civil right was not 'determined' until the amount had been decided. The determination of a right entailed deciding not only on the existence of that right, but also on its scope or the manner in which it may be exercised, which would evidently include the calculation of the amount due. In the present case, at the stage of the declaratory proceedings, the Evora court awarded Mr Silva Pontes and reserved for the subsequent enforcement proceedings the matter of the reimbursement of the transport costs incurred in order to receive medical treatment after the accident. The Evora Court of Appeal dismissed the applicant's appeal, but the Supreme Court awarded him an additional sum, likewise to be determined in the course of the enforcement proceedings, for damage resulting from his disability. Thus the enforcement proceedings were not intended solely to enforce an obligation to pay a fixed amount; they also served to determine important elements of the debt itself. Those proceedings had therefore to be regarded as the second stage of the proceedings which began on 20 December 1977. It followed that the dispute over the applicant's right to damages would only have been resolved by the final decision in the enforcement proceedings. As the applicant complained of the length of the proceedings taken as a whole and not of a flaw affecting only the first stage, the out-of-court settlement concluded on 19 December 1989 denoted the final domestic decision. The preliminary objection that the application was out of time was therefore dismissed.

A 6 applied to the first stage of the proceedings and, having regard to its reasoning in relation to the preliminary objection, the Court was of the view that it also applied to the second stage.

The period to be taken into consideration did not begin to run when the action was first brought before the relevant court on 20 December 1977, but only on 9 November 1978, when the Convention entered into force with regard to Portugal. It ended on 19 December 1989, the date on which the out-of-court settlement was concluded. It therefore lasted 11 years and one month. The reasonableness of the length of proceedings had to be determined in the light of the circumstances of the case and with reference to the criteria laid down in the Court's case-law, in particular the

complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute. Special diligence was called for in determining compensation for the victims of road accidents. The Court noted the similarity between the applicant's position and that of Mr Martins Moreira, his co-plaintiff in those proceedings. There was no reason to depart from the considerations set forth in the judgment of 26 October 1988. The length of the declaratory proceedings was accordingly in itself already excessive. The period subsequent to the decision of the Supreme Court of 5 February 1987 only made the proceedings even longer. Accordingly, it was not necessary to examine it in detail. There had been a violation of A 6(1).

Damages (by majority (8–1) PTE 1,500,000), costs and expenses ((8–1) PTE 200,000).

Cited: Guincho v P (10.7.1984), Martins Moreira v P (26.10.1988), Moreira de Azevedo v P (23.10.1990, Pudas v S (27.10.1987), X v F (31.3.1992).

Silva Rocha v Portugal 96/55

[Application lodged 28.6.1990; Commission report 16.5.1995; Court Judgment 15.11.1996]

Mr Serafim da Silva Rocha was remanded in custody for the offences of aggravated homicide and illegal possession of weapons. On 13 July 1990 the Oporto Criminal Court held that, on account of his mentally disturbed state, the applicant was not criminally responsible and was dangerous. It accordingly ordered that he be detained for a minimum of three years in a psychiatric institution. His detention was extended. He left hospital on 8 March 1994. He complained that he was unable to have the lawfulness of his continued detention reviewed at reasonable intervals.

Comm found it by majority (25–3) V 5(4).

Court found by majority (6–3) NV 5(4).

Judges: Mr R Ryssdal (c), President, Mr L-E Pettiti (d), Mr C Russo (d), Mr J De Meyer, Mr N Valticos (d), Mr SK Martens, Mr I Foighel (c), Mr MA Lopes Rocha (c), Mr P Kûris.

The Oporto Criminal Court found that the established facts constituted the offences of which the applicant had been accused and that, on account of the mental disturbance from which he suffered, he could not be held criminally responsible and was at the same time dangerous. It was for those reasons that it ordered, in accordance with the Criminal Code, his detention in a psychiatric institution for a minimum period of three years. The applicant was accordingly lawfully detained pursuant to a decision which, in the circumstances of the case, was both a conviction by a competent Court within the meaning of A 5(1)(a) and a security measure taken in relation to a person of unsound mind within the meaning of A 5(1)(e). The seriousness of the offences together with the risk that he represented for himself as well as for others could reasonably justify his being removed from society for at least three years. For that period the review required by A 5(4) was incorporated in the detention decision taken in this case by the Oporto Criminal Court. It was therefore not until those three years had elapsed that the applicant's right to take proceedings by which the lawfulness of his detention be decided by a court at reasonable intervals took effect. The legislation applied to the applicant provided for a periodic and automatic judicial review after two years and made it possible for the person detained to apply to the court at any moment to have the detention measure lifted. After the judgment of 13 July 1990 judicial reviews took place on several occasions. The intervals between the different reviews were not excessive. The applicant was discharged as soon as he had ceased to be regarded as dangerous. Therefore, the applicant had the possibility of having the lawfulness of his detention reviewed at reasonable intervals and that there had therefore been no violation of A 5(4).

Cited: X v UK (5.11.1981).

Silver and Others v United Kingdom (1983) 5 EHHR 347 83/2

[Applications lodged 20.11.1972, 1.2.1973, 2.6.1975, 20.3.1975, 28.10.1974, 8.7.1975 and 5.4.1975; Commission report 11.10.1980; Court Judgment 25.3.1983 (merits), 24.10.1983 (A 50)]

The principal complaint of all seven applicants, Mr Reuben Silver, Mr Clifford Dixon Noe, Mrs Judith Colne, Mr James Henry Tuttle, Mr Gary Cooper, Mr Michael McMahon, and Mr Desmond Roy Carne, was that the control of their mail by the prison authorities constituted a breach of their right to respect for correspondence and of their freedom of expression, guaranteed by A 8 and 10. They also alleged that, contrary to A 13, no effective domestic remedy existed for the breaches. In addition, Mr Silver claimed that he had been denied access to the courts on account of the refusal of two petitions for permission to seek legal advice. The applicants variously complained of breach of A 6(1), 8, 10 and 13.

Comm found by a series of votes (with one exception unanimous) V 8; not necessary to pursue a further examination under 10; unanimously in the case of Mr Silver's right of access to the civil courts V 6(1), and by a majority (14–1) V 13.

Court held unanimously V 6(1), V 8, V 13, not necessary to examine the case under 10 or the 6(1) and 10 aspects of 13.

Judges: Mr G Wiarda, President, Mr Thór Vilhjálmsson (A 50 declaration), Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Sir Vincent Evans, Mr C Russo.

Mr Silver claimed that the refusal of a petition in 1972 to the Home Secretary for permission to seek legal advice constituted a denial of access to the courts, in violation of A 6(1). The Government conceded such a violation of A 6(1), and the Court so held.

The applicants claimed that the stopping or delaying of 64 letters violated A 8. It was not disputed that there were 'interferences by a public authority' with the exercise of the applicants' right to respect for their correspondence. Such interferences entailed a violation if they did not fall within one of the exceptions provided for in para 2. The law had to be adequately accessible: the citizen had to be able to have an indication that was adequate, in the circumstances, of the legal rules applicable to a given case. The Prison Act and the Rules met this criterion, but the Orders and Instructions were not published. A norm could not be regarded as a 'law' unless it was formulated with sufficient precision to enable the citizen to regulate his conduct: he had to be able, with advice if necessary, to foresee, to a degree that was reasonable in the circumstances, the consequences which a given action may entail. A law which conferred a discretion had to indicate the scope of that discretion. However, it was impossible to attain absolute certainty in the framing of laws. Those points were of particular weight in the circumstances of the present case involving in the context of imprisonment, the screening of approximately 10 million items of correspondence in a year. It would scarcely be possible to formulate a law to cover every eventuality. The operation of the correspondence control system was not merely a question of practice that varied in each individual instance: the Orders and Instructions established a practice which had to be followed save in exceptional circumstances. In those conditions, although those directives did not themselves have the force of law, they could be taken into account in assessing whether the criterion of foreseeability was satisfied in the application of the Rules. The expression 'in accordance with the law' did not mean that the safeguards which were necessary had to be enshrined in the very text which authorised the imposition of restrictions. The question of safeguards against abuse was closely linked with the question of effective remedies and the Court preferred to take this issue into account in the wider context of A 13. The Court considered the individual circumstances of a lot of letters. It saw no reason to doubt that each interference had an aim that was legitimate under A 8. The Contracting States enjoyed a certain, but not unlimited margin of appreciation, but it was for the Court to give the final ruling on whether they were compatible with the Convention. The phrase 'necessary in a democratic society' meant that the interference must correspond to a 'pressing social need' and be 'proportionate to the legitimate aim pursued'. Those paragraphs of articles of the Convention which provided for an exception to a

right guaranteed were to be narrowly interpreted. In assessing whether an interference with the exercise of the right of a convicted prisoner to respect for his correspondence was 'necessary' for one of the aims set out in A 8(2), regard had to be paid to the ordinary and reasonable requirements of imprisonment. Some measure of control over prisoners' correspondence was called for and was not of itself incompatible with the Convention. Examining the facts of the case, the Court held that a number of instances of interference were not necessary. When in any particular instance subordinate prison authorities were in doubt as to how they should exercise their supervisory functions regarding prisoners' correspondence, they had to be able to seek instructions from higher authority. The stopping of some letters by Mr Silver, Mr Noe and Mrs Colne was both in accordance with the law and justifiable as necessary in a democratic society. These interferences therefore did not constitute a violation of A 8. However, the stopping of the 57 remaining letters was not necessary in a democratic society, and there was a violation of A 8 in each case.

The applicants also submitted that the control of their mail by the prison authorities constituted a breach of their right to freedom of expression, guaranteed by A 10. The Court held that since, in the context of correspondence, the right to free expression was guaranteed by A 8, it was not necessary to pursue a further examination of the matter in the light of A 10.

The applicants alleged that there existed no effective remedy in respect of their claims under A 6(1), 8 and 10 and that they were therefore victims of a violation of A 13. Having regard to the decision on A 6(1) there was no need to examine Mr Silver's complaint concerning the refusal of his 1972 petition under A 13, as the requirements of that article were less strict than, and were here absorbed by, those of the former. The same did not apply to the A 8 aspects of the applicants' complaints, especially as the Court had decided to consider in the context of A 13 the question of safeguards against abuse of the powers to control prisoners' correspondence. Where an individual had an arguable claim to be the victim of a violation of Convention rights, he should have a remedy before a national authority in order both to have his claim decided and to obtain redress. The authority may not necessarily be a judicial authority but, if it was not, its powers and the guarantees which it afforded were relevant in determining whether the remedy before it was effective. Although no single remedy may itself entirely satisfy the requirements of A 13, the aggregate of remedies provided for under domestic law may do so. Neither A 13 nor the Convention in general lay down any given manner for ensuring within their internal law the effective implementation of any of the provisions of the Convention. The application of A 13 in a given case depended upon the manner in which the Contracting State had chosen to discharge its obligation directly to secure to anyone within its jurisdiction the rights and freedoms. In the present case the remedies were an application to the Board of Visitors, an application to the Parliamentary Commissioner for Administration, a petition to the Home Secretary and the institution of proceedings before the English courts. The first two channels did not constitute an effective remedy for the present purposes: the Board of Visitors could not enforce its conclusions nor could it entertain applications from individuals who were not in prison. The Parliamentary Commissioner had no power to render a binding decision granting redress. The Home Secretary could not be considered to have a sufficiently independent standpoint to satisfy the requirements of A 13: as the author of the directives in question, he would in reality be judge in his own cause. The position, however, would be otherwise if the complainant alleged that a measure of control resulted from a misapplication of one of those directives. In such cases a petition to the Home Secretary would in general be effective to secure compliance with the directive, if the complaint was well-founded. The English courts were endowed with a certain supervisory jurisdiction over the exercise of the powers conferred on the Home Secretary and the prison authorities by the Prison Act and the Rules. However, their jurisdiction was limited to determining whether or not those powers have been exercised arbitrarily, in bad faith, for an improper motive or in an *ultra vires* manner. The applicants made no allegation that the interferences with their correspondence were contrary to English law. The majority of the measures complained of were incompatible with the Convention. To that extent there could be no effective remedy as required by A 13 and

consequently there was a violation of that Article. To the extent, however, that the norms were compatible with A 8, the aggregate of the remedies available satisfied the requirements of A 13, at least in those cases in which it was possible for a petition to be submitted to the Home Secretary.

Costs and expenses assessed.

Cited (merits): Golder v UK (21.2.1975), Handyside v UK (7.12.1976), Ireland v UK (18.1.1978), Klass and Others v D (6.9.1978), National Union of Belgian Police (27.10.1975), Sporrong and Lönnroth v S (23.9.1982), Sunday Times v UK (26.4.1979), Swedish Engine Drivers' Union (6.2.1976), Van Droogenbroeck v B (24.6.1982), X v UK (5.11.1981).

(A 50): Airey v IRL (6.2.1981), Dudgeon (24.2.1983), Eckle v D (21.6.1983), X v UK (18.10.1982), Young, James and Webster (18.10.1982), Zimmermann and Steiner (13.7.1983).

Simonetti v Italy 91/67

[Application lodged 16.7.1987; Commission report 5.3.1991; Court Judgment 3.12.1991]

Mr Spartaco Simonetti was unemployed. On 21 January 1984 he took proceedings before the Rome magistrates' court against the Istituto Nazionale della Previdenza Sociale in order to establish his entitlement to a disability pension. At a hearing on 26 April 1989 the court dismissed the appeal. The text of the judgment was lodged with the registry on 20 April 1990. The applicant complained of the length of the proceedings.

Comm found by majority (10–1) V 6(1).

Court unanimously struck case out of the list.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr SK Martens.

Despite several reminders from the registry, the applicant showed no interest in the proceedings before the Court. The Court considered that there had been in this case an implied withdrawal which constituted a fact of a kind to provide a solution of the matter. The Court discerned no reason of public policy for continuing the proceedings. It recalled its previous case-law in which it had reviewed the reasonableness of the length of civil proceedings in various Contracting States. Accordingly, the case was struck out of the list.

Cited: Brigandì v I (19.2.1991), Caleffi v I (24.5.1991), Capuano v I (25.6.1987), Owners' Services Ltd v I (28.6.1991), Pugliese (No 2) v I (24.5.1991), Santilli v I (19.2.1991), Vocaturo v I (24.5.1991), Zanghì v I (19.2.1991).

Sinagoga v Italy 00/141

[Application lodged 10.12.1996; Court Judgment 28.4.2000]

Mr Domenico Sinagoga complained of the length of proceedings before the Audit Court.

Judges: Mr M Pellonpää, President, Mr B Conforti, Mr G Ress, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mrs N Vajic.

The period to be taken into consideration began on 29 August 1983 and ended on 1 June 1996. It had lasted more than 12 years and nine months at one level of jurisdiction.

Non-pecuniary damage (ITL 30,000,000).

Cited: Bottazzi v I (28.7.1999)

Singh v United Kingdom (1996) 22 EHRR 1 96/9

[Application lodged 25.1.1994; Commission report 11.10.1994; Court Judgment 21.2.1996]

Mr Prem Singh, then aged 15, was convicted on 19 February 1973, at Leeds Crown Court, of the murder of a 72-year-old woman. He received a mandatory sentence of detention 'during Her Majesty's pleasure'. In October 1990, having served the punitive part of his sentence ('tariff'), he was released on licence. On 11 March 1991 he was arrested in connection with offences of

deception and of using threatening behaviour. He denied the allegations. On 21 March 1991 his life licence was revoked and he was detained. On 2 March 1992 the criminal charges against him were dismissed. However, the Parole Board declined to recommend his release. In July 1994 the Parole Board recommended his release; however, the Secretary of State was not prepared to accept the recommendation and did not agree to his release. He appealed and his case was reconsidered. His provisional date for release was eventually set for 18 March 1996. He complained that he not had the lawfulness of his continued detention determined by a court and that the Parole Board in its powers and procedures failed to offer the requisite safeguards.

Comm found unanimously V 5(4).

Court unanimously found V 5(4).

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr R Macdonald, Mr A Spielmann, Mr N Valticos, Mrs E Palm, Mr F Bigi, Sir John Freeland, Mr P Jambrek.

As the applicant's complaint of the secretive and unfair manner in which his tariff had been established was not dealt with by the Commission and his punitive period had expired, the Court did not consider it necessary to examine that complaint.

On all the evidence, the applicant's sentence, after the expiration of his tariff, was more comparable to a discretionary life sentence. The decisive ground for the applicant's continued detention was and continued to be his dangerousness to society, a characteristic susceptible to change with the passage of time. Accordingly, new issues of lawfulness may arise in the course of detention and the applicant was entitled under A 5(4) to take proceedings to have those issues decided by a court at reasonable intervals. A 5(4) did not guarantee a right to judicial control of such scope as to empower the court on all aspects of the case, including questions of expediency, to substitute its own discretion for that of the decision-making authority; the review, nevertheless, had to be wide enough to bear on those conditions which, according to the Convention, were essential for the lawful detention of a person subject to the special type of deprivation of liberty ordered against the applicant. The Parole Board did not satisfy the requirements of A 5(4). It could not order the release of a prisoner. In addition, the lack of adversarial proceedings before the Parole Board also prevented it from being regarded as a court or court-like body for the purposes of A 5(4). In matters of such crucial importance as the deprivation of liberty and where questions arose which involved, for example, an assessment of the applicant's character or mental state, it could be essential to the fairness of the proceedings that the applicant be present at an oral hearing. In a situation such as that of the applicant, where a substantial term of imprisonment may be at stake and where characteristics pertaining to his personality and level of maturity were of importance in deciding on his dangerousness, A 5(4) required an oral hearing in the context of an adversarial procedure involving legal representation and the possibility of calling and questioning witnesses. Proceedings for judicial review did not provide a substitute as A 5(4) presupposed the existence of a procedure in conformity with its requirements without the necessity of instituting separate legal proceedings in order to bring it about. In addition, the applicant's possibility of obtaining an oral hearing by way of proceedings for judicial review was not sufficiently certain to be regarded as satisfying the requirements of A 5(4). There had been a violation of A 5(4) in that the applicant, after the expiry of his tariff, was unable to bring the case of his continued detention during Her Majesty's pleasure or of his re-detention following the revocation of his licence, before a court with the powers and procedural guarantees satisfying that provision.

Present judgment constituted sufficient just satisfaction for any non-pecuniary damage sustained. Legal costs and expenses (GBP 13,000 less FF 15,421).

Cited: E v N (29.8.1990), Kremzow v A (21.9.1993), Powell and Rayner v UK (21.2.1990), Thynne, Wilson and Gunnell v UK (25.10.1990), Weeks v UK (2.3.1987), Wynne v UK (18.7.1994).

Skärby v Sweden (1991) 13 EHRR 90 90/15

[Application lodged 26.6.1986; Commission report 16.3.1989; Court Judgment 28.6.1990]

Mrs Ingegärd Skärby, Mrs Rigmor Skärby, Mrs Majken Skärby, Mr Bertil Skärby, Mr Rolf Skärby and Mrs Lena Hedman, were the children and heirs of Christian and Maria Skärby. The dispute concerned the applicants' attempts to build on farm land belonging to them in an area designated as being of national interest from the point of view of natural resources and cultural values. Their application to the Building Committee for a building permit for a house and two garages on the property, in an area designated as a nature park, was rejected on 24 March 1986. In so far as the decision implied a refusal to grant an exemption, it could not be appealed against. The applicants alleged, *inter alia*, that Swedish law did not provide them with access to a court to challenge the decision prohibiting them from constructing a building at a specific site on their property

Comm found by majority (12–5) V 6(1).

Court found unanimously no jurisdiction to examine 8, 17, P1A1, found by majority (5–2) V 6(1).

Judges: Mr R Ryssdal (d), President, Mr J Cremona, Mrs D Bindschedler-Robert, Mr J Pinheiro Farinha (d), Mr C Russo, Mr A Spielmann, Mrs E Palm.

The applicants complaints concerning A 8, 17 and 18 and P1A1 had been rejected by the Commission as manifestly ill-founded. Accordingly, the Court did not have jurisdiction to examine them.

In order to decide whether there was a dispute over a right, the Court had first to ascertain whether there was a dispute over a right which could be said, at least on arguable grounds, to be recognised under domestic law. The dispute had to be genuine and serious; it could relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings had to be directly decisive for the right in question. The present dispute concerned the right to choose the site of a new building, a right provided for in Swedish law. A dispute within the meaning of A 6 could therefore in principle arise if the lawfulness of a decision affecting that right were questioned. The fact that an exemption could be refused made no difference in that respect. The Building Committee did not enjoy unfettered discretion; it was bound by generally recognised legal and administrative principles. In so far as the applicants could arguably claim that the Building Committee's refusal conflicted with those principles, a dispute could arise in the present case. That being so, it made no difference that the applicants did not exercise the right, claimed by them, to build a house on the site of their choice. The dispute was a serious one. The applicants claimed to have been discriminated against; in addition, they complained that the authorities had been guided by extraneous considerations and improper motives. They thereby sought in substance to contest the lawfulness of the decision of 24 March 1986. There was therefore a genuine and serious dispute concerning a right. The right in question was a civil right within the meaning of A 6. That finding was not affected by the Government's assertion that the dispute concerned only a minor question, the location of the building to be constructed. In sum, A 6(1) applied to the present case. The Government did not put forward any arguments on the question of the applicants' submission, that it had not been possible for them to challenge the refusal to grant an exemption from the building plan in a court satisfying the requirements of A 6(1). The 1959 Ordinance did not provide for any remedy against the Building Committee's rejection of an application. There had been a violation of A 6(1).

Non-pecuniary damage (by majority (6–1) SEK 30,000 to six applicants), costs and expenses (unanimously SEK 77,408).

Cited: Allan Jacobsson v S (25.10.1989), Powell and Rayner v UK (21.2.1990), Pudas v S (27.10.1987).

Skoogström v Sweden (1985) 7 EHRR 263 84/11

[Application lodged 20.10.1978; Commission report 15.7.1983; Court Judgment 2.10.1984]

Mr Owe Skoogström ran a hotel-restaurant business and was detained in police custody on suspicion of having committed various offences in connection with the management of the business, of which he was later convicted. He claimed under A 5(3) that he had neither been brought before a judge or other officer authorised by law to exercise judicial power, nor brought to trial within a reasonable time.

Comm found unanimously V 5 (3).

Court by majority (4–3) struck the case from the list.

Judges: Mr G Wiarda (jd), President, Mr R Ryssdal (jd), Mr W Ganshof van der Meersch (jd), Mr G Lagergren, Mr E García de Enterría, Sir Vincent Evans, Mr R Bernhardt.

Court took formal note of the friendly settlement (State to pay SEK 5,000 for the applicant's legal costs, publish the Commission's report and amend the relevant legislation to bring it into conformity with the Convention) and struck the case out of the list.

Slimane-Kaïd v France 00/11

[Application lodged 10.11.1994; Court Judgment 25.1.2000]

Mr Mohamed Slimane-Kaïd was the director of two public limited companies which entered into contractual relations with a third enterprise, the IVECO company. The latter made a complaint and the applicant was prosecuted for fraud causing losses to IVECO. He was found guilty and subsequently ordered to make payment to IVECO. His appeal against that decision was rejected. He complained that during the proceedings before the Court of Cassation neither the judge rapporteur's report nor the avocat général's conclusions were communicated to him before the hearing.

Court found unanimously V 6(1).

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr P Kûris, Mrs F Tulkens, Mr K Jungwiert, Mrs HS Greve, Mr K Traja.

In the *Reinhardt and Slimane-Kaïd* judgment, the Court found a violation of A 6 on the basis of the same complaints. The Court held that communication of the judge rapporteur's report and draft judgment to the avocat général only, in the light of the influence the latter could have over the former, created an imbalance to the detriment of the applicants which was incompatible with the rule of fair trial. The Court criticised the fact that the avocat général's conclusions were not communicated to the applicants. The Court found that there appeared to be no development in the proceedings in the Criminal Division and therefore found no grounds to depart from the conclusions it had reached in that judgment. In those circumstances there had been a violation of A 6(1).

Present judgment constituted sufficient just satisfaction for alleged non-pecuniary damage suffered. Costs and expenses (FF 20,000).

Cited: Arvois v F (23.11.1999), Hertel v CH (25.8.1998), Reinhardt and Slimane-Kaïd v F (31.3.1998).

Smith and Ford v United Kingdom (2000) 29 EHRR 493 99/57

[Applications lodged 18.8.1997, 10.12.1997; Court Judgment 29.9.1999]

Mr David Smith and Mr Darren Ford were serving in the British Army. Mr Smith was tried by a general court-martial and Mr Ford was tried by a district court-martial, both courts-martial having been convened pursuant to the Army Act 1955. Mr Smith was found guilty of, *inter alia*, four disciplinary offences of conduct to the prejudice of good order and military discipline contrary to s 69 of the 1955 Act which provided for a maximum sentence of two years' imprisonment. He was

sentenced to be dismissed from the army. Mr Ford was found guilty of, *inter alia*, three counts of common assault contrary to the Criminal Justice Act 1988 and was sentenced to six months' imprisonment. The applicants' subsequent petitions and appeals, as far as the full Courts-Martial Appeal Court, were unsuccessful. They complained that they did not have a fair or public hearing by an independent and impartial tribunal established by law.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Sir Nicolas Bratza, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mrs HS Greve, Mr K Traja.

Noting the potential penalty and the sentence imposed, together with the nature of the charges, the Court considered that the applicants' court-martial proceedings involved the determination of charges of a criminal nature within the meaning of A 6(1). The Court recalled its previous judgments in which it had found that general courts-martial convened pursuant to the Army Act 1955 and district courts-martial convened pursuant to the Air Force Act 1955 did not meet the requirements of independence and impartiality set down by A 6(1) in view, in particular, of the central part played in its organisation by the convening officer. The Court could find no reason to distinguish the present cases from the earlier cases as regards the part played by the convening officer in the organisation of their courts-martial. Accordingly, the applicants' courts-martial did not meet the independence and impartiality requirements of A 6(1) of the Convention. The applicants were faced with, *inter alia*, charges of a serious and criminal nature and were therefore entitled to a first instance tribunal complying with the requirements of A 6(1), such organisational defects in their courts-martial could not be corrected by any subsequent review procedure. Accordingly, and for the reasons expressed in detail in its previous case-law, the courts-martial which dealt with the applicants' case were not independent and impartial within the meaning of A 6(1) and could not therefore guarantee either of the applicants a fair trial.

In view of that conclusion, it was not necessary also to examine the complaints of the applicants that the courts-martial were not public or established by law.

No claim for compensation, costs or expenses submitted.

Cited: Cable and Others v UK (18.2.1999), Coyne v UK (24.9.1997), Findlay v UK (25.2.1997), Garyfallou AEBE v GR (24.9.1997), Huvig v F (24.4.1990).

Smith and Grady v United Kingdom (2000) 29 EHRR 493 99/52

[Applications lodged 9.9.1996, 6.9.1996; Court Judgment 27.9.1999]

Ms Jeanette Smith joined the Royal Air Force as an enrolled nurse. She subsequently obtained the rank of senior aircraft woman and was recommended for promotion. Following an allegation by an unidentified female caller the applicant admitted that she was homosexual. An investigation commenced and the applicant was questioned. The investigation report was sent to the applicant's commanding officer who, on 10 August 1994, recommended the applicant's administrative discharge. On 16 November 1994 the applicant received a certificate of discharge from the armed forces. Mr Graeme Grady joined the Royal Air Force at the rank of aircraftman serving as a trainee administrative clerk. He achieved the rank of sergeant and worked as a personnel administrator, he was posted to Washington at the British Defence Intelligence Liaison Service (North America). In May 1993 the applicant, who was married with two children, told his wife that he was homosexual. His security clearance was suspended, an investigation was opened, and he was questioned. He initially denied he was homosexual but after detailed questioning and search of his accommodation he admitted his homosexuality. Following the investigators' report, the applicant was administratively discharged with effect from 12 December 1994. The applicants' application to the High Court for judicial review of the decisions to discharge them from the armed forces was dismissed. Their appeals to the Court of Appeal were dismissed on 3 November 1995. Their appeals to the Industrial Tribunal claiming unfair dismissal and sexual discrimination were dismissed. They complained that the investigations into their homosexuality and their subsequent

discharge from the Royal Air Force on the sole ground that they were homosexual, in pursuance of the Ministry of Defence's absolute policy against homosexuals in the British armed forces, constituted a violation of their right to respect for their private lives protected by A 8.

Court found unanimously V 8, no separate issue under 14+8, NV 3 or 14+3, not necessary to examine 10 or 14+10, V 13.

Judges (merits and A 41): Mr J-P Costa, President, Sir Nicolas Bratza, Mr L Loucaides (pc/pd), Mr P Kûris, Mr W Fuhrmann, Mrs HS Greve, Mr K Traja.

The investigations by the military police into the applicants' homosexuality, which included detailed interviews with each of them and with third parties on matters relating to their sexual orientation and practices, together with the preparation of a final report for the armed forces' authorities on the investigations, constituted a direct interference with the applicants' right to respect for their private lives. Their consequent administrative discharge on the sole ground of their sexual orientation also constituted an interference with that right. The Ministry of Defence policy excluding homosexuals from the armed forces was in accordance with the law. The interferences could be said to pursue the legitimate aims of the interests of national security and the prevention of disorder. An interference would be considered necessary in a democratic society for a legitimate aim if it answered a pressing social need and, in particular, was proportionate to the legitimate aim pursued. When the relevant restrictions concerned a most intimate part of an individual's private life, there had to exist particularly serious reasons before such interferences could satisfy the requirements of A 8(2). When the core of the national security aim pursued was the operational effectiveness of the armed forces, it was accepted that each State was competent to organise its own system of military discipline and enjoyed a certain margin of appreciation in that respect. However, the national authorities could not rely on such rules to frustrate the exercise by individual members of the armed forces of their right to respect for their private lives, which right applied to service personnel as it did to others within the jurisdiction of the State. Moreover, assertions as to a risk to operational effectiveness had to be substantiated by specific examples. The sole reason for the investigations conducted and for the applicants' discharge was their sexual orientation. As it concerned a most intimate aspect of an individual's private life, particularly serious reasons by way of justification were required. The interferences were especially grave in this case. The investigation process was of an exceptionally intrusive character. The administrative discharge of the applicants had a profound effect on their careers and prospects. The absolute and general character of the policy which led to the interferences in question was striking. The policy resulted in an immediate discharge from the armed forces once an individual's homosexuality was established and irrespective of the individual's conduct or service record. The core argument of the Government in support of the policy was that the presence of open or suspected homosexuals in the armed forces would have a substantial and negative effect on morale and, consequently, on the fighting power and operational effectiveness of the armed forces. However, there was a lack of concrete evidence to substantiate the alleged damage to morale and fighting power that any change in the policy would entail. No convincing or weighty reasons had been offered by the Government to justify the policy against homosexuals in the armed forces or, therefore, the consequent discharge of the applicants from those forces. Neither the investigations conducted into the applicants' sexual orientation, nor their discharge on the grounds of their homosexuality in pursuance of the Ministry of Defence policy, were justified under A 8(2). Accordingly, there had been a violation of A 8.

The applicants' complaints that they were discriminated against on grounds of their sexual orientation by reason of the existence and application of the policy of the Ministry of Defence, amounted in effect to the same complaint, albeit seen from a different angle, that had already been considered in relation to A 8 and accordingly, the complaints under A 14+8 did not give rise to any separate issue.

Ill-treatment had to attain a minimum level of severity to fall within the scope of A 3 of the Convention. The assessment of that minimum was relative and depended on all of the

circumstances of the case, such as the duration of the treatment and its physical or mental effects. Treatment could be considered degrading if it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance. Moreover, it was sufficient if the victim was humiliated in his or her own eyes. The investigation and discharge together with the blanket nature of the policy of the Ministry of Defence were of a particularly grave nature. The Court would not exclude that treatment which was grounded upon a predisposed bias on the part of a heterosexual majority against a homosexual minority of the nature described above could, in principle, fall within the scope of A 3. Although the policy, together with the investigation and discharge which ensued, were undoubtedly distressing and humiliating for each of the applicants, having regard to all the circumstances of the case, the treatment did not reach the minimum level of severity which would bring it within the scope of A 3. Accordingly, there had been no violation of A 3 taken alone or in conjunction with A 14.

The silence imposed on the applicants as regards their sexual orientation, together with the consequent and constant need for vigilance, discretion and secrecy in that respect with colleagues, friends and acquaintances as a result of the chilling effect of the Ministry of Defence policy, could constitute an interference with their freedom of expression. However, the subject matter of the policy and, consequently, the sole ground for the investigation and discharge of the applicants, was their sexual orientation, which was an essentially private manifestation of human personality. The freedom of expression element of the present case was subsidiary to the applicants' right to respect for their private lives which was principally at issue. Consequently, it was not necessary to examine the applicants' complaints under A 10 either taken alone or in conjunction with A 14.

Although the applicants invoked A 13 in relation to all of their complaints, it was the applicants' right to respect for their private lives which was principally at issue in the present case. In such circumstances, the applicants' complaints under A 13 of the Convention were more appropriately considered in conjunction with A 8. Even if the complaints of the applicants were before and considered by the domestic courts, the threshold at which the High Court and the Court of Appeal could find the Ministry of Defence policy irrational was placed so high that it effectively excluded any consideration by the domestic courts of the question of whether the interference with the applicants' rights answered a pressing social need or was proportionate to the national security and public order aims pursued, principles which lay at the heart of the Court's analysis of complaints under A 8. In such circumstances, the applicants had no effective remedy in relation to the violation of their right to respect for their private lives guaranteed by A 8 of the Convention. Accordingly, there had been a violation of A 13.

First applicant: by majority (6–1), non-pecuniary damage (GBP 19,000), pecuniary damage (GBP 59,000). Second applicant: by majority (6–1), non-pecuniary damage (GBP 19,000), pecuniary damage (GBP 40,000), costs and expenses of domestic proceedings (GBP 200), costs and expenses of the proceedings before the Convention organs (GBP 34,000 less the amounts paid by the Council of Europe in legal aid to the first applicant).

Cited: Abdulaziz, Cabales and Balkandali v UK (28.5.1985), Dudgeon v UK (22.10.1981), Engel and Others v NL (8.6.1976), Grigoriades v GR (25.11.1997), Ireland v UK (18.1.1978), Kalaç v TR (1.7.1997), Kokkinakis v GR (25.5.1993), Larissis and Others v GR (24.2.1998), Lustig-Prean and Beckett v UK (27.9.1999), Norris v IRL (26.10.1988), Soering v UK (7.7.1989), Tyrer v UK (25.4.1978), Vereinigung Demokratischer Soldaten Österreichs and Gubi v A (19.12.1994), Vilvarajah and Others v UK (30.10.1991), Vogt v D (26.9.1995).

Socialist Party and Others v Turkey (1999) 27 EHRR 51 98/40

[Application lodged 31.12.1992; Commission report 26.11.1996; Court Judgment 25.5.1998]

The Socialist Party, the first applicant, was a political party formed on 1 February 1988. Mr Ilhan Kirit and Mr Dogu Perinçek, the second and third applicants, were respectively Chairman and former Chairman of the Party. On the day of its formation, its constitution and programme were submitted to the office of Principal State Counsel at the Court of Cassation for assessment of their

compatibility with the Constitution and Law No 2820 on the regulation of political parties. The Principal State Counsel at the Court of Cassation obtained an order from the Constitutional Court dissolving the Party on the ground that its activities encouraged separatism. The order entailed *ipso jure* the liquidation of the party and the transfer of its assets to the Treasury. As a consequence of the order the founders and managers of the party were banned from holding similar office in any other political body. The applicants complained that the measures had infringed their right to freedom of association.

Comm found unanimously V 11, NV 6(1) no separate issue under 9 and 10, not necessary to consider separately the complaints under 14 and 18, P1A1 and P1A3.

Court found unanimously V 11, not necessary to determine 6(1), 9, 10, 14, 18, P1A1, P1A3.

Judges: Mr R Bernhardt, President, Mr F Gölcüklü, Mr F Matscher, Mr C Russo, Mr N Valticos, Mrs E Palm, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla, Sir John Freeland, Mr AB Baka, Mr MA Lopes Rocha, Mr L Wildhaber, Mr J Makarczyk, Mr P Kûris, Mr U Lôhmus, Mr P Van Dijk.

Political parties were a form of association essential to the proper functioning of democracy and in view of the importance of democracy in the Convention system, there could be no doubt that political parties came within the scope of A 11. An association, including a political party, was not excluded from the protection afforded by the Convention simply because its activities were regarded by the national authorities as undermining the constitutional structures of the State and calling for the imposition of restrictions. The Party's dissolution amounted to an interference in the applicants' right to freedom of association. The interference was prescribed by law as the measures ordered by the Constitutional Court were based on the Constitution and the Law on the regulation of political parties. The dissolution pursued the aim of national security. A 11 had to be considered in the light of A 10. Political parties had an essential role in ensuring pluralism and the proper functioning of democracy. Having analysed Mr Perinçek's statements, the Court found nothing in them that could be considered a call for the use of violence, an uprising or any other form of rejection of democratic principles. Although the phrases were directed at citizens of Kurdish origin and constituted an invitation to them to rally together and assert certain political claims, there was no trace of any incitement to use violence or infringe the rules of democracy. In that regard, the relevant statements were scarcely any different from those made by other political groups that were active in other countries of the Council of Europe. The statements put forward a political programme with the essential aim being the establishment, in accordance with democratic rules, of a federal system in which Turks and Kurds would be represented on an equal footing and on a voluntary basis. Admittedly, reference was made to the right to self-determination of the 'Kurdish nation' and its right to 'secede'; however, read in their context, the statements using these words did not encourage secession from Turkey but sought rather to stress that the proposed federal system could not come about without the Kurds' freely given consent, which should be expressed through a referendum. The fact that such a political programme was considered incompatible with the current principles and structures of the Turkish State did not make it incompatible with the rules of democracy. It was of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that called into question the way a State was currently organised, provided that they did not harm democracy itself. Mr Perinçek was acquitted in the National Security Courts where he had been prosecuted in respect of the same statements. In determining whether a necessity within the meaning of A 11(2) existed, the Contracting States had only a limited margin of appreciation. The interference in question was radical: the Socialist Party was dissolved with immediate and permanent effect, its assets were liquidated and transferred *ipso jure* to the Treasury and its leaders banned from carrying on certain similar political activities. Measures as severe as those could only be applied in the most serious cases. It had not been established how, in spite of the fact that in making them their author declared attachment to democracy and expressed rejection of violence, the statements in issue could be considered to have been in any way responsible for the problems which terrorism posed in Turkey. In view of the findings, there was no need to bring A 17 into play, as nothing in the statements warranted the

conclusion that their author relied on the Convention to engage in activity or perform acts aimed at the destruction of any of the rights and freedoms set forth in it. Therefore, the dissolution of the Socialist Party was disproportionate to the aim pursued and consequently unnecessary in a democratic society and there had been a violation of A 11.

As the applicants' complaints under A 9, 10, 14 and 18 related to the same facts, the Court considered it unnecessary to examine them separately.

The measures complained of under P1 were incidental effects of the Socialist Party's dissolution, which the Court had held to amount to a breach of A 11. Consequently it was unnecessary to consider those complaints separately.

In view of the conclusion concerning compliance with A 11 it was not necessary to examine the complaint under A 6(1).

Non-pecuniary damage (FF 50,000 each to Mr Perinçek and Mr Kirit). No evidence submitted in support of claims for pecuniary damage, costs and expenses.

Cited: Hadjianastassiou v GR (16.12.1992), Pressos Compania Naviera SA and Others v Belgium (A 50) (3.7.1997), Saïdi v F (20.9.1993), United Communist Party of Turkey and Others v TR (30.1.1998), Vogt v D (26.9.1995), Zana v TR (25.11.1997).

Société Stenuit v France (1992) 14 EHRR 509 92/38

[Application lodged 20.12.1984; Commission report 30.5.1991; Court Judgment 27.2.1992]

The applicant company was fined for anti-competitive behaviour. It appealed unsuccessfully. The company complained that the proceedings brought against it by the Minister of Economic and Financial Affairs infringed A 6(1).

Comm found unanimously V 6(1).

Court unanimously struck case out of the list.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr A Spielmann, Mr SK Martens, Mr JM Morenilla, Mr AB Baka.

The applicant company informed the Court of its wish to 'withdraw'. French regulations had evolved since the application had been made in 1984 in respect of facts which themselves dated back to 1981. Although the applicant's decision did not strictly speaking constitute a withdrawal, since it was not taken by a party to the case in view of the fact that Protocol 9 had not yet come into force, it was in any event a 'fact of a kind to provide a solution of the matter' and the Court discerned no reason of public policy for continuing the proceedings.

Cited: Owners' Services Ltd v I (28.6.1991).

Söderbäck v Sweden (2000) 29 EHRR 95 98/93

[Application lodged 17.12.1991; Commission report 22.10.1997; Court Judgment 28.10.1998]

Mr Per Söderbäck worked as a bus driver. He met KW in 1980. On 19 September 1982 KW gave birth to a daughter, M, of whom the applicant was the father. The applicant visited KW and the child at the maternity ward on one occasion. In the following months he met M twice at KW's home. He also attended M's christening. During the spring of 1983, he once looked after M for about an hour. No further contacts took place between the applicant and his daughter that year. The applicant maintained that he gave up his attempts to see M, in part because he felt obstructed by KW, in part because his continued commitment to the daughter had been undermined by difficulties in his job. He had also had problems with alcohol. In 1983 KW met MW, they began to live together in May 1983 and married in January 1989. The applicant met his daughter once in 1984. He wished to see her more often but KW allegedly opposed further contact. There was further limited contact. In November 1988, MW applied to the District Court for permission to adopt M. The applicant objected. The District Court held a hearing on 12 December 1989 during which it heard the applicant and MW. By decision of 22 December 1989, the court granted MW

permission to adopt M. On 5 February 1991 the Svea Court of Appeal upheld the District Court's decision. On 19 June 1991 the Supreme Court refused leave to appeal. He complained that the decision to grant, without his consent, permission to adopt his daughter had constituted a violation of his right to respect for family life.

Comm found by majority (10–5) V 8.

Court found unanimously NV 8.

Judges: Mr Thór Vilhjálmsson, President, Mrs E Palm, Mr I Foighel, Mr R Pekkanen, Mr Jm Morenilla, Mr L Wildhaber, Mr D Gotchev, Mr M Voicu, Mr V Butkevych.

When the adoption was granted, there existed certain ties between the applicant and M. A 8 was applicable. The adoption order amounted to an interference with the applicant's right to respect for family life. The adoption was in accordance with the law and pursued the legitimate aim of protecting the rights and freedoms of the child. The Court distinguished the approach employed in the *Johansen v Norway* judgment. Although the adoption in the present case had the legal effect of totally depriving the applicant of family life with his daughter, it concerned the links between a natural father and a child who had been in the care of her mother since she was born. During the period under consideration, the contacts between the applicant and the child were infrequent and limited in character and when the adoption was granted he had not seen her for quite some time. When the adoption was granted by the District Court in December 1989, *de facto* family ties had existed between the mother and the adoptive father for five and a half years, until they married in January 1989, and between him and M for six and a half years. The adoption consolidated and formalised those ties. Against that background, and having regard to the assessment of the child's best interests made by the domestic courts, as well as to the limited relations that the applicant had with M during the relevant period, the Court was satisfied that the decision fell within the margin of appreciation. Given the aims sought to be achieved by allowing the adoption to go ahead, it could not be said that the adverse effects it had on the applicant's relations with the child were disproportionate. Accordingly, there had been no violation of A 8.

Cited: Johansen v N (7.8.1996), Keegan v IRL (26.5.1994).

Soering v United Kingdom (1989) 11 EHHR 439 89/15

[Application lodged 8.7.88; Commission report 19.1.89; Court Judgment 7.7.89]

Mr Jens Soering was a German national detained in prison in England pending extradition to the United States of America to face charges of capital murder in the State of Virginia. The Government of the Federal Republic of Germany also sought the applicant's extradition in respect of the same murders. The US Government requested that its application take preference to that of the FRG, and the UK Government proceeded with the US extradition request. The UK Government requested an assurance from the US Government that the death penalty, if imposed, would not be carried out. An assurance was made that representations would be made to the sentencing judge that it was the UK Government's wish that the death penalty should not be imposed or carried out, although it was indicated that no further assurances would be made, and that the death penalty would be sought by the Virginian authorities. Following extradition proceedings, the Secretary of State ordered the applicant's surrender to the US, although that transfer was delayed pending proceedings before the Commission and the Court. The applicant stated that should the UK Government require that he be deported to the FRG (where there was no death penalty) he would not oppose such an order. The applicant claimed that there was a serious likelihood that he would be sentenced to death if extradited to the US. He maintained that in the circumstances and having regard to the 'death row phenomenon' (including a wait of six to eight years before execution) he would thereby be subjected to inhuman and degrading treatment and punishment contrary to A 3. He also claimed that his extradition would violate A 6(3)(c) because of the absence of legal aid in the State of Virginia to pursue various appeals, and that he had no

effective remedy under UK law in respect of his complaint under A 3, such that this was a breach of A 13.

Comm found by a majority (7–4) V 13, (6–5) NV 3, unanimously NV 6(3)(c).

Court held unanimously V 3 if extradited, NV 6(3)(c), no jurisdiction 6(1) and (3)(d), and NV 13.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer (c), Mr JA Carrillo Salcedo, Mr N Valticos, Mr SK Martens, Mrs E Palm, Mr I Foighel.

Whilst it was not normally for the Convention institutions to pronounce on the existence or otherwise of potential violations of the Convention, where an applicant claimed that a decision to extradite him would, if implemented, be contrary to A 3 by reason of its foreseeable consequences in the requesting country, a departure from this principle was necessary, in view of the serious and irreparable nature of the alleged suffering risked, in order to ensure the effectiveness of the safeguard provided by that article. The decision by a Contracting State to extradite a fugitive may give rise to an issue under A 3 where substantial grounds had been shown for believing that the person concerned, if extradited, faced a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country. This inevitably involved an assessment of conditions in the requesting country against the standards of A 3, although there was no question of adjudicating on or establishing the responsibility of the receiving country. Whilst capital punishment was permitted under certain conditions by A 2, the circumstances relating to a death sentence could give rise to an issue under A 3. The manner in which it was imposed or executed, the personal circumstances of the condemned person and a disproportionality to the gravity of the crime committed, as well as the conditions of detention awaiting execution, were examples of factors capable of bringing the treatment or punishment within the proscription under A 3. For any prisoner condemned to death, some element of delay between imposition and execution of the sentence and the experience of severe stress in conditions necessary for strict incarceration were inevitable. Although the machinery of justice to which the applicant would be subject in the US was in itself neither arbitrary nor unreasonable and had a number of procedural safeguards, having regard to the very long period of time the condemned spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty, and to the personal circumstances of the applicant, especially his age and mental state at the time of the offence, the applicant's extradition to the US would expose him to a real risk of treatment going beyond the A 3 threshold. It was a relevant consideration that in this case the legitimate purpose of extradition could be achieved by another means which would not involve suffering of such exceptional intensity or duration, namely extradition to the FRG.

The A 6 claim in respect of lack of legal aid to mount collateral challenges on the conviction, whilst it might exceptionally arise in an extradition case, failed on the facts. There was no jurisdiction to determine new complaints based on A 6(1) and (3)(d) raised about the extradition proceedings before the magistrate which had not been raised before the Commission.

There were sufficient remedies available to the applicant through judicial review to mean that there was no violation of A 13.

Costs and expenses (GBP 26,752.80 and FF 5,030.60).

Cited: Abdulaziz, Cabales and Balkandali v UK (28.5.1985), Ireland v UK (18.1.1978), Artico v I (13.5.1980), Kjeldsen, Busk Madsen and Pedersen v DK (7.12.1976), Tyrer v UK (25.4.1978), Klass and Others v D (6.9.1978), Schiesser v CH (4.12.1979), Johnston and Others v IRL (18.12.1986), Boyle and Rice v UK (27.4.1988), Colozza v I (12.2.1985), Silver and Others v UK (25.3.1983), Swedish Engine Drivers' Union (6.2.1976), Dudgeon v UK (24.2.1983), Le Compte, Van Leuven and De Meyere v B (18.10.1982).

Soldani v Italy 97/60

[Application lodged 6.5.1993; Commission report 28.11.1995; Court Judgment 2.9.1997]

Mrs Maria Teresa Soldani was an assistant psychologist at the co-ordination bureau of the National Centre for the Prevention of Accidents. On 11 February 1983 she applied to the Lazio Regional Administrative Court for judicial review of five decisions in which the Treasury had refused to appoint her to a post in a higher category than the one she held, although she had been in second or third place on the reserve lists published each time such posts had fallen vacant. In a judgment of 17 June 1987 the Administrative Court allowed her application. The Treasury appealed to the Consiglio di Stato. In a judgment of 30 March 1993, the text of which was deposited with the registry on 12 May 1993, the Consiglio di Stato dismissed the appeal as being ill-founded. She complained of the length of proceedings.

Comm found by majority (23–6) V 6.

Court found by majority (8–1) 6(1) NA.

Judges: Mr R Bernhardt, President, Mr C Russo, Mr N Valticos, Mr R Pekkanen (d), Mr AB Baka, Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr P Kûris, Mr E Levits.

In the law of many Member States of the Council of Europe there was a basic distinction between civil servants and employees governed by private law. That had led the Court to hold that disputes relating to the recruitment, careers and termination of service of civil servants are as a general rule outside the scope of A 6(1). In the present case the applicant sought only judicial review of a series of decisions in which the Treasury had refused to appoint her to a post in a higher category than the one she held. The dispute raised by her thus clearly related to her career and did not concern a 'civil' right within the meaning of A 6(1). Accordingly, A 6(1) was not applicable in the case.

Cited: Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993), Neigel v F (17.3.1997).

Soumare v France 98/65

[Application lodged 2.3.1993; Commission report 14.1.1997; Court Judgment 24.8.1998]

Mr Abdourahim Soumare, a Malian national, was arrested in Paris and remanded in custody on 22 January 1988 in connection with a heroin-trafficking operation involving five other people. On 10 November 1989 Bobigny Criminal Court sentenced him to 10 years' imprisonment and made an order permanently excluding him from French territory. It also ordered confiscation of the drugs that had been seized and imposed a fine jointly on the applicant and the other convicted defendants in lieu of confiscation and ordered them to pay a like amount, equal to the value of the unlawfully imported substances, to the customs authorities. The court ordered the applicant's continued detention for a period not exceeding the maximum period for imprisonment in default, which was two years, until the customs' penalties had been paid. The applicant's appeal to the Court of Cassation was dismissed on 10 June 1991. His application to the Ministry of Justice to be transferred to Mali to complete his sentence was rejected on the ground that the customs fine had not been paid. On several occasions he sought a settlement with the customs authorities but was unsuccessful. His applications with the tribunal de grande instance to have the order for his imprisonment in default discharged, as he was insolvent, were rejected. The case was referred to the Paris Court of Appeal which dismissed the application for discharge. He complained that he had not been able to have a court rule on the lawfulness of his detention under the order for his imprisonment in default.

Comm found by majority (25–4) V 5(4).

Court unanimously dismissed the Government's preliminary objection, found by majority (8–1) V 5(4).

Judges: Mr R Bernhardt, President, Mr L-E Pettiti (d), Mr R Pekkanen, Mr AN Loizou, Mr U Lôhmus, Mr E Levits, Mr T Pantiru, Mr M Voicu, Mr V Butkevych.

The Government's preliminary objection of non-exhaustion was closely linked to the question of whether an appeal to the Court of Cassation would have been effective and, therefore, to the merits of the complaint that there has been a breach of A 5(4). Consequently, the preliminary objection was considered with the merits.

On 10 June 1991 the Paris Court of Appeal sentenced the applicant to 10 years' imprisonment and imposed a customs fine coupled with an order for his imprisonment in default, intended to secure payment. After he had served his prison sentence, the applicant was held in detention for approximately six months, from 22 June 1994 to 16 January 1995, under the order for imprisonment in default, because he had not paid the customs fine. As regards the first period of detention, which began on 22 January 1988 and ended on 21 June 1994, the supervision required by A 5(4) of the Convention was incorporated in the Paris Court of Appeal's decision passing sentence. It was therefore only subsequently that the applicant's right to 'take proceedings before a court' to obtain a ruling on the lawfulness of his imprisonment in default arose. The lawfulness of the deprivation of liberty depended on the applicant's solvency, a factor which could evolve with time. The need for supervision was made even greater by the fact that the applicant's release was largely dependent upon financial agreements or arrangements with the customs authorities. The customs authorities had wide powers to settle. It was accordingly essential that when an issue of freedom of the individual was referred to them, the judges of the judicial order should have the widest possible powers to consider it. For the purposes of A 7, imprisonment in default constituted a penalty and such imprisonment subsequent to the serving of the main sentence may consequently be considered to be separate detention for the purposes of A 5(4). The tribunal de grande instance referred the applicant's application to have the order for his imprisonment in default discharged on the basis that he was insolvent, to the Paris Court of Appeal, which had sentenced him. That court dismissed the application on the ground that it had no jurisdiction. The Court did not consider that it had to determine questions of French law, or express a view on the appropriateness of the domestic courts' choice of policy as regards case-law. The domestic law may be considered to have been uncertain at the material time and the case-law on the subject recent and in the formative stage. The fact that the Paris Court of Appeal expressly relied on a decision of the Court of Cassation in dismissing as unfounded in law the application to have the order discharged was a decisive factor in instilling in the applicant the belief that it would be pointless to seek satisfaction through an appeal to the Court of Cassation. The existence of a remedy had to be sufficiently certain, failing which it would lack the accessibility and effectiveness required for the purposes of A 5(4). Further, if the applicant had appealed to the Court of Cassation, his appeal, being a criminal appeal, would have been considered by the Criminal Division, which, at the material time, had not yet aligned its case-law with that of the Commercial Division. The application to the urgent applications judge to determine whether the applicant was solvent could have been effective for the purposes of A 5(4) only if the Paris Court of Appeal had accepted that it had jurisdiction. The effective enjoyment of the right guaranteed by A 5(4) was not secured with a sufficient degree of certainty at the material time. Consequently, the Government's preliminary objection was dismissed; in addition, there had been a violation of A 5(4).

Present judgment constituted sufficient just satisfaction for the alleged damage, costs and expenses claim dismissed.

Cited: Brualla Gómez de la Torre v E (19.12.1997), Jamil v F (8.6.1995), Sakik and Others v TR (26.11.1997), Thynne, Wilson and Gunnell v UK (25.10.1990), Van Droogenbroeck v B (24.6.1982), Vasilescu v RO (22.5.1998), Weeks v UK (2.3.1987), X v UK (5.11.1981).

Spacek sro v Czech Republic 99/79

[Application lodged 22.11.1994; Commission report 15.4.1998; Court Judgment 9.11.1999]

Spacek sro was a limited liability company. On 22 April 1993 the Prague 5 Finance Office notified the applicant company that it was required to pay additional income tax, including a penalty, for

the 1991 tax year because its predecessor company had not increased the income tax base for the 1991 tax year by including certain assets as required by the Regulations on the procedure for passing from single to double-entry book-keeping. Those Regulations had been published by the Ministry of Finance in a Financial Bulletin on 30 May 1991. The applicant company's appeals to the Finance Ministry and the Prague Municipal Court were rejected and a constitutional appeal was dismissed on 2 June 1994 by the Constitutional Court as being ill-founded. The applicant complained that the imposition of additional tax on it based on administrative provisions which had never been published or announced in the Official Gazette violated P1A1.

Comm found by majority (27–2) NV P1A1.

Court unanimously dismissed the Government's preliminary objections, found NV P1A1.

Judges: Mr J-P Costa, President, Mr P Kûris, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mrs HS Greve, Mr K Traja.

The Government's objection that the applicant company could not claim to be a 'victim' within the meaning of A 34 was not raised, as it could have been, when the admissibility of the application was being considered by the Commission. There was therefore an estoppel. Neither could the fact that the applicant company was the subject of bankruptcy proceedings, instituted against it by the Czech judicial authorities on 16 March 1998, affect its status as a 'victim' in respect of the complaints it submitted to the Commission on 22 November 1994.

The assessment of additional income tax and the penalty imposed on the applicant company by the Czech tax authorities constituted an interference by a public authority with the applicant company's enjoyment of its possessions. In the present case, only the question of the lawfulness of the interference with the applicant company's rights, within the meaning of the second paragraph of P1A1, was at issue. Taxation, as an interference with the rights guaranteed in P1A1, was justified under the second paragraph of P1A1. The main question in the present case was the publicity afforded to the principles governing the calculation of the income tax base upon which the amount of income tax payable was to be determined. When speaking of 'law', P1A1 alluded to the same concept to be found elsewhere in the Convention, a concept which comprised statutory law as well as case-law. It implied qualitative requirements, notably those of accessibility and foreseeability. At the relevant time the taxation of private companies was governed by the Income Tax Act, as amended. That Act and the subsequent amending legislation were published in the Official Gazette. The obligation for businesses to keep accounts in compliance with prescribed accounting principles was laid down by s 25 of the Private Business Activities Act. In addition, the Ministry of Finance issued the Rules, which defined two possible forms of book-keeping, and the Regulations, which established, *inter alia*, the obligation for businesses to increase their income tax base when they passed from single to double-entry book-keeping. Although intended for the public, neither the Rules nor the Regulations were published in full or announced in the Official Gazette in the form of a 'decree' or 'ruling'. They could not, therefore, constitute legislative or regulatory instruments binding on citizens and legal entities in general under the Official Gazette Act. The term 'law' was to be understood in its substantive sense and not in its formal one. The Convention did not contain any specific requirements as to the degree of publicity to be given to a particular legal provision. The Financial Bulletin was created for the purpose of informing the public about measures adopted by the Ministry of Finance and was given the same publicity as the Official Gazette and there was no requirement that such measures be published in the Official Gazette itself. The predecessor of the applicant company had applied the accounting principles included in the Rules which were published in the previous Financial Bulletin and had thus accepted the Financial Bulletin as an official public source of binding regulations, which it had followed for the purposes of keeping its accounts in compliance with accounting principles. It had been aware of the way in which the Ministry of Finance published its accounting principles and could easily have sought information about any possible transitional provisions, if necessary with the advice of specialists. Taking into consideration that the applicant company as a legal entity, contrary to an individual taxpayer, could and should have consulted the competent specialists, the publication of

the Regulations in the Financial Bulletin was sufficient. The Regulations were adequately accessible and foreseeable, and the interference complained of had a sufficient legal basis in Czech law to comply with the requirements of the second paragraph of P1A1. Accordingly, there was no violation of P1A1.

Cited: Cantoni v F (15.11.1996), Gasus Dosier- und Fördertechnik GmbH v NL (23.2.1995), Huvig v F (24.4.1990), Kruslin v F (24.4.1990), Nikolova v BG (25.3.1999), SW and CR v UK (22.11.1995), Zana v TR (25.11.1997).

Spadea and Scalabrino v Italy (1996) 21 EHRR 482 95/30

[Application lodged 15.4.1987; Commission report 9.5.1994; Court Judgment 28.9.1995]

Mr Giovanni Spadea was a lawyer and Mrs Michelangela Scalabrino was a university teacher. In April 1982 they bought two adjacent flats with the aim of making their home there. The former owner of the flats had let them to a Mrs B and a Mrs Z, who paid a rent subject to public-authority control. In a writ served on 13 October 1982, the applicants gave the tenants of the flats notice to quit when the leases expired, on 31 December 1983, and summoned them to appear before the Milan magistrate. The magistrate formally confirmed the notices to quit, and fixed the date of eviction. Pursuant to a Law of 5 April 1985, the magistrate suspended enforcement of the evictions until 30 January 1986. On 14 March 1986, the applicants began proceedings to enforce the orders for possession, as the tenants had still not complied with them. The tenants refused to leave, they were elderly ladies of modest means who had asked Milan City Council to allocate them low-rent flats. The relevant Law suspended the enforcement of evictions. Attempts by the bailiff to enforce the orders for possession were unsuccessful. In August 1988, Mrs Z died and the applicants regained possession of one of the flats. Mrs B left the other in February 1989. In the meantime, the applicants had been obliged to buy another flat. They complained of interference with their property and discrimination between owners of residential property and tenants, and between owners of residential property and owners of non-residential property.

Comm found by majority (21–2) NV P1A1, NV 14+P1A1.

Court unanimously dismissed the Government's preliminary objection, found NV P1A1, NV 14+P1A1.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr SK Martens, Mr AN Loizou, Mr L Wildhaber, Mr G Mifsud Bonnici.

The applicants' complaint under A 6 was outside the scope of the case as defined by the Commission's decision on admissibility.

Under the Italian legal system, an individual was not entitled to apply directly to the Constitutional Court for review of the constitutionality of a law. Accordingly, such an application could not be a remedy whose exhaustion was required under A 26. As the applicants did not satisfy the conditions laid down in the relevant law to apply to the Prefect for police assistance or, in the event of his refusing it, to the administrative courts in order to challenge his decision, it followed that such a remedy would have had no prospects of success. The objection of non-exhaustion was therefore dismissed.

In the present case there was neither a *de facto* expropriation nor a transfer of property. At all times the applicants retained the possibility of alienating their property and were paid the rents regularly. As the implementation of the measures in question meant that the tenants continued to occupy the flats, it undoubtedly amounted to control of the use of property. Accordingly, the second paragraph of P1A1 was applicable. The legislative provisions suspending evictions during the period from 1984 to 1988 were prompted by the need to deal with the large number of leases which expired in 1982 and 1983 and by the concern to enable the tenants affected to find acceptable new homes or obtain subsidised housing. To have enforced all evictions simultaneously would undoubtedly have led to considerable social tension and jeopardised public order. Therefore the impugned legislation had a legitimate aim in the general interest, as required by the second paragraph of P1A1. An interference had to strike a fair balance between the demands of the

general interest of the community and the requirements of the protection of the individual's fundamental rights. There had to be a reasonable relationship of proportionality between the means employed and the aim pursued. The only reason for the evictions was that the leases on the flats had expired; none of the exceptions to the suspension of enforcement applied to the applicants. In addition, Mrs B and Mrs Z, who were elderly ladies of modest means, had asked Milan City Council to allocate them low-rent flats. Admittedly, the applicants had to buy another flat and did not recover their property until one of the tenants died and the other left of her own accord. However, regard being had to the legitimate aim pursued, the legislative measures adopted by the Italian State and criticised by the applicants could not be considered disproportionate in view of the margin of appreciation permitted under the second paragraph of P1A1. By adopting emergency measures, the Italian legislature was reasonably entitled to consider, having regard to the need to strike a fair balance between the interests of the community and the right of landlords, and of the applicants in particular, that the means chosen were appropriate to achieve the legitimate aim pursued. The restriction on the applicants' use of their flats resulting from the provisions in question was not contrary to the requirements of the second paragraph of P1A1. There had therefore been no breach of that article.

A 14 would be breached where, without objective and reasonable justification, persons in relevantly similar situations were treated differently. With regard to the first part of the complaint, the Court noted that it raised the question whether the emergency measures complained of were proportionate to their aim, a point already considered in connection with P1A1. As for the difference in treatment vis-à-vis the owners of non-residential property, the distinction drawn between those two classes of person for the purpose of enforcing evictions was objective and reasonable given the aim of the legislation – to protect tenants during a serious housing shortage – and the use made of the properties, one category being let as housing and the other used mainly as commercial premises. Therefore, there had been no breach, in the instant case, of A 14 read in conjunction with P1A1.

Cited: Brincat v I (26.11.1992), Brozicek v I (19.12.1989), Fredin v S (No 1) (18.2.1991), James and Others v UK (21.2.1986), Mellacher and Others v A (19.12.1989), Padovani v I (26.2.1993), Sporrong and Lönnroth v S (23.9.1982).

Sporrong and Lönnroth v Sweden (1983) 5 EHRR 35, (1985) 7 EHRR 256 82/5

[Application lodged 15.8.1975; Commission report 8.10.1980; Court Judgment 23.9.1982 (merits), 18.12.1984 (A 50)]

The applications related to the effects of long-term expropriation permits and prohibitions on construction on the estate of the late Mr Sporrong and on Mrs Lönnroth, in their capacity as property owners. The applicants complained, *inter alia*, of interference with their right to peaceful enjoyment of their possessions.

Comm found by majority (10–2 with four abstentions) V 13, (10–3) NV P1A1, (11–5) NV 6(1), unanimously NV 14, 17 and 18.

Court found by majority (10–9) V P1A1 as regards both applicants, unanimously not necessary also to 17+P1A1 and 18+P1A1, unanimously NV 14+P1A1, by majority (12–7) V 6(1) as regards both applicants, unanimously not necessary to examine A 13.

Judges (merits): Mr G Wiarda, President, Mr M Zekia (jd P1A1), Mr J Cremona (c6(1)/jd P1A1), Mr Thór Vilhjálmsson (d6(1)/jd P1A1), Mr W Ganshof Van Der Meersch, Mrs D Bindschedler-Robert, Mr G Lagergren (d6(1)/jd P1A1), Mr L Liesch, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha (jd6(1)), Mr E García De Enterría, Mr L-E Pettiti, Mr B Walsh (pd), Sir Vincent Evans (jd6(1)/jd P1A1), Mr R Macdonald (jd6(1)/jd P1A1), Mr C Russo, Mr R Bernhardt (jd6(1)/jd P1A1), Mr J Gersing (jd6(1)/jd P1A1).

Judges (A 50): Mr G Wiarda, President, Mr J Cremona (declaration), Mr Thór Vilhjálmsson (jd), Mr W Ganshof van der Meersch, Mrs D Bindschedler-Robert, Mr G Lagergren (jd), Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr E García de Enterria, Mr L-E Pettiti, Mr B Walsh (jd), Sir Vincent Evans (jd), Mr R Macdonald, Mr C Russo, Mr R Bernhardt (declaration), Mr J Gersing (jd).

The expropriation permits and prohibitions on construction in question were lawful in themselves. Although the expropriation permits left intact in law the owners' right to use and dispose of their possessions, they nevertheless in practice significantly reduced the possibility of its exercise. The prohibitions on construction undoubtedly restricted the applicants' right to use their possessions. P1A1 comprised three distinct rules. The first rule, which was of a general nature, enounced the principle of peaceful enjoyment of property; it was set out in the first sentence of the first paragraph. The second rule covered deprivation of possessions and subjected it to certain conditions; it appeared in the second sentence of the same paragraph. The third rule recognised that the States were entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deemed necessary for the purpose; it was contained in the second paragraph. There was an interference with the applicants' right of property and the consequences of that interference were undoubtedly rendered more serious by the combined use, over a long period of time, of expropriation permits and prohibitions on construction. The Swedish authorities did not proceed to an expropriation of the applicants' properties. However, full enjoyment of the applicants' right of property was impeded for a total period of 25 years in the case of the Sporrong Estate and of 12 years in the case of Mrs Lönnroth. The two series of measures created a situation which upset the fair balance which should be struck between the protection of the right of property and the requirements of the general interest: the Sporrong Estate and Mrs Lönnroth bore an individual and excessive burden which could have been rendered legitimate only if they had had the possibility of seeking a reduction of the time-limits or of claiming compensation. Yet at the relevant time Swedish law excluded those possibilities. The permits in question, whose consequences were aggravated by the prohibitions on construction, therefore violated P1A1 as regards both applicants. In view of the foregoing, it was not necessary to determine whether the prohibitions on construction, taken alone, also infringed P1A1.

Having found that there was a breach of P1A1, it was not necessary also to examine the case under A 17 and 18.

The applicants' argument under 14+P1A1 that they had been victims of discrimination as compared with two categories of owners, namely those whose properties were not expropriated and those whose properties were expropriated in an manner consistent with Swedish law and the Convention, was not supported by any evidence in the material before the Court.

The expropriation permits affecting the applicants' properties related to a civil right and, as regards their period of validity, gave rise to a dispute, within the meaning of A 6(1). It had to be ascertained whether the applicants could have instituted legal proceedings to challenge the lawfulness of the decisions of the City Council and of the Government concerning the issue or extension of the long-term expropriation permits. In so far as the decisions of the City of Stockholm had come to the applicants' knowledge, they could have referred the matter to the County Administrative Board and then, if necessary, to the Supreme Administrative Court. However, the requests were only preparatory steps which, in themselves, did not at that stage interfere with a civil right nor did their lawfulness necessarily depend on the same criteria as the lawfulness of the final decisions taken by the Government in that respect. Admittedly, owners could challenge the lawfulness of the Government's decisions by requesting the Supreme Administrative Court to re-open the proceedings. However, they had in practice to rely on grounds identical or similar to those set out in the Code of Judicial Procedure. Furthermore, that was an extraordinary remedy and was exercised but rarely. When considering the admissibility of such an application, the Supreme Administrative Court did not examine the merits of the case; at that stage, it therefore did not undertake a full review of measures affecting a civil right. It was only where the Supreme Administrative Court had declared the application admissible that such a review could be effected, either by that court itself or, if it had referred the case back to a court or authority previously dealing with the matter, by the latter court or authority. In short, the said remedy did not meet the requirements of A 6(1). Thus the applicants could not be heard by a tribunal competent to determine all the aspects of the matter.

Having regard to its decision on A 6(1) it was not necessary to examine the case under A 13 as its requirements were less strict than, and were here absorbed by, those of A 6(1).

Damage (by majority (12–5) SEK 800,000 to the Sporrong Estate and SEK 200,000 to Mrs Lönnroth), costs and expenses ((13–4) SEK 723,865.75 less FF 24,103 to the Sporrong Estate and Mrs Lönnroth jointly).

Cited: Airey v IRL (9 .10.1979), 'Belgian Linguistic' case (23.7.1968), De Wilde, Ooms and Versyp v B (18.6.1971), Golder v UK (21.2.1975), König v D (28.6.1978), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Marckx v B (13.6.1979), Ringeisen v A (16.7.1971), Van Droogenbroeck v B (24.6.1982), Zimmermann and Steiner v CH (A 50: 13.7.1983).

Spurio v Italy 97/50

[Application lodged 31.8.1992; Commission report 28.11.1995; Court Judgment 2.9.1997]

Mr Carlo Spurio was a nurse in a public hospital. On 19 September 1980 the applicant, who asserted that from 1973 to 1976 he had worked as a specialist nurse although he had been recruited on the basic grade, asked the hospital administration, which had previously refused, to promote him to specialist nurse, to pay him the difference between the salary he had received and the salary to which in his view he was entitled. In a memorandum of 10 December 1980 the administration refused his request. On 23 June 1981 he applied to the Marches Regional Administrative Court for a declaration that the hospital administration's conduct had been unlawful and that he was entitled to be paid the difference in salary. On 24 June 1992 the Administrative Court dismissed the applicant's claim on the grounds that it was unsubstantiated and ill-founded, the text of the judgment was deposited with the registry on 9 October 1992. He complained of the length of proceedings.

Comm found by majority (28–1) V 6(1).

Court found by majority (8–1) A 6(1) not applicable.

Judges: Mr R Bernhardt, President, Mr C Russo, Mr N Valticos, Mr R Pekkanen (d), Mr AB Baka, Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr P Kûris, Mr E Levits.

Disputes relating to the recruitment, careers and termination of service of civil servants were as a general rule outside the scope of A 6(1). In the instant case the applicant was essentially seeking a declaration by the Administrative Court that his employer, a public hospital, had acted unlawfully in refusing to recognise that from 1973 to 1976 he had performed the duties of a specialist nurse. The dispute raised by him thus clearly related to his career and did not concern a 'civil' right within the meaning of A 6(1). Regarding his claim for payment of the difference in salary, the award of such compensation by the administrative courts was directly dependent on a prior finding that the employer had acted unlawfully. Accordingly, A 6(1) was not applicable in the case.

Cited: Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993), Neigel v F (17.3.97), Scollo v I (28.9.1995).

Sramek v Austria (1985) 7 EHRR 351 84/12

[Application lodged 19.9.1979; Commission report 8.12.1982; Court Judgment 22.10.1984]

Mrs Viera Sramek, a US citizen living in Munich, wished to build a holiday residence in Hopfgarten, Austria. Following a hearing in camera at which the applicant was present but unrepresented, the Regional Real Property Transactions Authority (RRPTA) refused to approve the transfer of title on the grounds that the contract was contrary to social and economic interests given the imminent danger of foreign domination in the municipality. Her appeal to the Constitutional Court was dismissed on 3 March 1979. She complained that she had not received a fair and public hearing by an independent and impartial tribunal established by law.

Comm found by majority (11–1) V 6(1).

Court found by majority (13–2) V 6(1).

Judges: Mr G Wiarda, President, Mr R Ryssdal, Mr J Cremona, Mr Thór Vilhjálmsson, Mr W Ganshof van der Meersch (c), Mrs D Bindschedler-Robert, Mr D Evrigenis (c), Mr F Gölcüklü, Mr F Matscher, Mr E Garcia de Enterria (d), Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans (d), Mr C Russo, Mr J Gersing (d).

A 6 was applicable as the outcome of the proceedings at issue was decisive for private rights and obligations. The RRPTA was a 'tribunal' for the purposes of the Article: its function was to determine matters within its competence on the basis of rules of law, following proceedings conducted in a prescribed manner. The length of the term of office of members of the RRPTA and the limited possibility of their removal satisfied the requirements of the article. The powers of the appointment of the members of the RRPTA did not give cause to doubt the member's independence and impartiality. The Regional Authority was composed of a farmer, who was the elected mayor of a municipality in the Tyrol, as chairman; a judge of the Innsbruck Court of Appeal; another farmer, sitting as an agricultural expert; a lawyer; and three civil servants from the Office of the Land Government, one of whom acted as rapporteur. There were no difficulties with the independence and impartiality of the judge, the agricultural expert, the lawyer or the person who, by reason of his experience in real estate matters, acted as chairman of the Regional Authority and happened to be a mayor. With regard to the three civil servants from the Office of the Land Government, the Land Government represented by the Transactions Officer, acquired the status of a party when they appealed to the Regional Authority against the first-instance decision in the applicant's favour, and one of the three civil servants in question had the Transactions Officer as his hierarchical superior. Although the Transactions Officer could not take advantage of his hierarchical position to give to the rapporteur instructions to be followed in the handling of cases, appearances could be of importance in determining whether a tribunal could be considered to be independent. Where, as in the present case, a tribunal's members included a person who was in a subordinate position, in terms of his duties and the organisation of his service, vis-à-vis one of the parties, litigants might entertain a legitimate doubt about that person's independence. Such a situation seriously affected the confidence which the courts had to inspire in a democratic society. There was accordingly a violation of A 6(1).

In view of the above conclusion it was not necessary to rule on the applicant's further complaint that she did not receive a fair hearing in public.

Costs and expenses (ATS 100,000).

Cited: Buchholz v D (6.5.1981); Campbell and Fell v UK (28.6.1984); Guincho v P (10.7.1984); König v D (28.6.1978); Piersack v B (1.10.1982); Ringeisen v A (16.7.1971); Zimmermann and Steiner v CH (13.7.1983).

Stallinger and Kuso v Austria (1998) 26 EHRR 81 97/21

[Applications lodged 16.11.1988, 27.2.1989; Commission report 7.12.1995; Court Judgment 23.4.1997]

Mr Alois and Mrs Amalia Stallinger and Mr Johann and Mrs Elisabeth Kuso were farmers. Their land was involved in agricultural land-consolidation proceedings. Their appeals against the consolidation scheme were dismissed by the Land Reform Board, which included civil servants and judges. Their subsequent appeals to the Constitutional Court and Administrative Court were rejected. They complained that the land reform boards could not be regarded as independent and impartial tribunals established by law and that they did not have a public hearing.

Comm found unanimously NV 6 as regards an independent and impartial tribunal established by law, V 6 as regards right to a public hearing, NV 6 as regards right to a fair hearing.

Court found unanimously NV 6(1) as regards an independent and impartial tribunal, V 6(1) on account of the lack of a public hearing before the Administrative Court.

Judges: Mr R Bernhardt, President, Mr F Matscher, Mr C Russo, Mrs E Palm, Mr I Foighel, Mr J Makarczyk, Mr D Gotchev, Mr P Jambrek, Mr P Kûris.

With regard to the membership of and procedure before land reform boards, the legal situation obtaining in the present case was identical to that examined in the case of *Ettl and Others*. The expert members of the Board were needed in cases concerning land consolidation, which was an

operation that raised issues of great complexity and affected not only the owners directly concerned but the community as a whole. The adversarial nature of the proceedings before the boards was unaffected by the participation of the 'civil-servant experts'. The applicants had failed to identify any convincing reason why the Court should depart from its case-law. The Court therefore found no breach of the applicants' right under A 6(1) to have their case determined by an independent and impartial tribunal.

Hearings in civil matters were subject in principle to a reservation Austria made when ratifying the Convention. The provisions of the Administrative Court Act came into force in 1982, whereas Austria ratified the Convention and made the reservation under A 6 in 1958. Only laws then in force in the State's territory could be the subject of a reservation. The applicants' complaint that the Administrative Court did not hold a hearing was not excluded from review on account of the Austrian reservation, since the provision on which the refusal to hold such a hearing was based was not in force at the time the reservation was made.

Only hearings in the Administrative Court were at stake, hearings before land reform boards not being open to the public. The practice of the Administrative Court was not to hear the parties unless one of them asked it to do so. The applicants expressly requested an oral hearing in the Administrative Court. That was refused on the ground that it was not likely to clarify the case further. Since the Government had not identified any exceptional circumstances that might have justified dispensing with a hearing, the Court considered that the Administrative Court's refusal amounted to a violation of the applicants' A 6 right to a public hearing.

The applicants' complaint that they were never summoned to the *in situ* inspection of the land by the expert members of the Regional Board was not pursued before the Court, which saw no reason to entertain it of its own motion.

Present judgment constituted just satisfaction for any non-pecuniary damage sustained. Costs and expenses (ATS 120,000).

Cited: Albert and Le Compte v B (10.2.1983), Ettl and Others v A (23.4.1987), Fischer v A (26.4.1995), Ortenberg v A (25.11.1994).

Stamoulakatos v Greece (1994) 17 EHRR 479 93/43

[Application lodged 18.7.1986; Commission report 20.5.1992; Court Judgment 26.10.1993]

Mr Nicolas Stamoulakatos was a journalist. He had been convicted by criminal courts in 1979 and 1980 of insulting the authorities, fraudulent conversion of securities, slander, forgery and uttering. He stated that he left Greece in May 1979; he was extradited from Belgium to Greece in December 1985. He was imprisoned and was conditionally released on 7 April 1987. He appealed against the judgments of the Criminal Court and sought retrials. His appeals to the Athens Court of Appeal and the Court of Cassation were dismissed. He complained that he had not been properly summoned to appear in the proceedings which led to his conviction and that he had therefore been unable to defend himself against the charges against him.

Comm found by majority (10–4) V 6(1) and 6(3).

Court found unanimously it could not deal with the merits of the case.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr N Valticos, Mrs E Palm, Mr AN Loizou, Mr F Bigi, Mr L Wildhaber.

Greece's acceptance of the right of individual petition took effect on 20 November 1985. The breach of which the applicant complained originated in three convictions dating from 1979 and 1980. Divorcing the appeals and applications from the events which gave rise to them would, in the instant case, be tantamount to rendering Greece's declaration (in respect of A 25) nugatory. It was reasonable to infer from the declaration that Greece could not be held to have violated its obligations for not affording any possibility of a retrial to those who had been convicted *in absentia* before 20 November 1985. The Government's objection was well-founded.

Stamoulakatos v Greece (No 2) 97/91

[Application lodged 1.4.1995; Commission report 4.9.1996; Court Judgment 26.11.1997]

On 23 February 1987 Mr Nicolas Stamoulakatos submitted to the Prefecture of Athens an application for a disability pension on the grounds that he had been tortured during the dictatorship and had suffered irreparable damage to his health as a result. On 23 May 1988 the Pensions Regulatory Service rejected the applicant's application. His appeal was rejected by the Audit Court. There were further appeals and hearings. He complained of the length of proceedings.

Comm found by majority (12–1) V 6(1), not necessary also to examine A 13.

Court unanimously dismissed the Government's preliminary objections, found V 6(1), not necessary to examine A 13.

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr R Macdonald, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mrs E Palm, Mr K Jungwiert, Mr E Levits.

Under A 26, normal recourse should be had by an applicant to remedies which were available and sufficient to afford redress in respect of the breaches alleged. The Government had not shown that the Audit Court would have considered giving the applicant's case priority had he made such a request. It followed that the Court could not find that such a remedy would have been effective. The preliminary objection of non-exhaustion of domestic remedies was accordingly dismissed. Although the applicant's claim before the domestic court was based on the allegation that his condition was caused by torture suffered between 1967 and 1974, the Court only had to examine the complaint relating to the length of the judicial proceedings brought by the applicant with a view to securing a pension. Greece accepted the right of individual petition on 20 November 1985. The proceedings in issue were brought after that date. The objection of lack of competence *ratione temporis* was therefore dismissed.

The right to a pension was a civil right and A 6(1) was accordingly applicable.

The period to be taken into consideration began on 14 June 1988, the date on which the applicant lodged an appeal with the Audit Court. It had not yet ended as no final judgment had so far been delivered. It amounted to some nine and a half years thus far. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities, it was also necessary to take account of what was at stake for the applicant in the litigation. The case was not especially complex. The applicant could not be held responsible for the length of the proceedings. There had been delays on the part of the authorities for which the workload of the plenary Audit Court did not provide a justification, Contracting Parties being under an obligation to ensure that their judicial authorities complied with the requirements of A 6. Bearing in mind the overall length of time taken by the proceedings, namely nine and a half years already, and the importance of what was at stake for the applicant, namely his entitlement to a disability pension and thus a significant portion of his livelihood, the length of proceedings went beyond what could be considered reasonable under A 6(1). There had accordingly been a violation of that provision.

It was not necessary to examine the present case under A 13 in addition to A 6.

Non-pecuniary damage (GRD 1,000,000). Not established any costs in domestic proceedings, applicant presented own case before Commission and Court.

Cited: Akdivar and Others v TR (16.9.1996), Brincat v J (26.11.1992), Georgiadis v GR (29.5.1997), Pauger v A (28.5.1997), Philis v GR (No 2) (27.6.1997), Schouten and Meldrum v NL (9.12.1994).

Stanford v United Kingdom 94/5

[Application lodged 8.1.1990; Commission report 21.10.1992; Court Judgment 23.2.1994]

Mr Bryan Stanford was committed for trial by jury at the Crown Court in Norwich on seven counts arising out of his relationship with a young girl: indecent assault, two counts of rape, unlawful sexual intercourse, kidnapping and two counts of making a threat to kill. The trial, before a High Court judge and a jury, took place from 8 June to 15 June 1988. Throughout the trial the applicant, who sat in a glass-fronted dock, was represented by solicitor and counsel. His counsel had been in practice for 13 years and specialised in criminal work. He was found guilty and sentenced to 10 years imprisonment. The applicant's application for leave to appeal against his conviction on the ground, *inter alia*, that at his trial he could not hear the proceedings was refused. He complained that he had not received a fair trial.

Comm found by majority (11–7) NV 6.

Court found unanimously NV 6.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr J De Meyer, Mr R Pekkanen, Sir John Freeland, Mr J Makarczyk, Mr D Gotchev.

It was not in dispute that the applicant had difficulties in hearing some of the evidence given during the trial. A 6, read as a whole, guaranteed the right of an accused to participate effectively in a criminal trial. In general that included, *inter alia*, not only his right to be present, but also to hear and follow the proceedings. Such rights were implicit in the notion of an adversarial procedure and could also be derived from the guarantees contained in A 6(3)(c), (d) and (e). Neither the applicant nor the legal representatives sought to bring his hearing difficulties to the attention of the trial judge at any stage throughout the six-day hearing. The applicant had mentioned his problems to a prison officer and subsequently to his lawyers. However, the officer was neither a court official nor an officer of the court. Moreover, counsel, who had lengthy experience in handling criminal cases, chose for tactical reasons to remain silent about the difficulties and there was nothing to indicate that, as subsequently claimed, the applicant disagreed with this decision. The State could not normally be held responsible for the actions or decisions of an accused's lawyer. It followed from the independence of the legal profession that the conduct of the defence was essentially a matter between the defendant and his representatives. The Contracting States were required to intervene only if a failure by counsel to provide effective representation was manifest or sufficiently brought to their attention. That was not the position in the present case. Expert reports which were carried out both before and after the applicant's complaint indicated that, apart from a minimal loss of sound due to the glass screen, the acoustic levels in the courtroom were satisfactory. The applicant was represented by a solicitor and counsel who had no difficulty in following the proceedings and who would have had every opportunity to discuss with the applicant any points that arose out of the evidence which did not already appear in the witness statements. The transcript of the trial revealed that he was ably defended by his counsel and that the trial judge's summing up to the jury fairly and thoroughly reflected the evidence presented to the court. In addition, the Court of Appeal could not reasonably have been expected in the circumstances to correct an alleged shortcoming in the trial proceedings which had not been raised before the trial judge. In the circumstances of the case there had been no failure by the UK to ensure that the applicant received a fair trial. There had thus been no breach of A 6(1).

Cited: Barberà, Messegué and Jabardo v E (6.12.1988), Colozza v I (12.2.1985), Edwards v UK (16.12.1992), Imbrioscia v CH (24.11.1993).

Starace v Italy 00/133

[Application lodged 4.11.1996; Court Judgment 27.4.2000]

In 1990, GC and VA filed a complaint against Mr Andrea Starace and another person in relation to the publication, in the review 'Atenapoli' on 23 March 1990, of an article. Criminal proceedings

were instituted by the Naples Public Prosecutor's Office for libel. On 27 October 1990 the Naples Public Prosecutor summoned the applicant and two other persons to appear before the Naples District Court on 23 November 1990. In May 1996 the applicant was convicted for libel and sentenced to a fine and damages. His appeal to the Court of Appeal was rejected. He further appealed to the Court of Cassation which, in a judgment of 5 May 1998, filed with the court registry on 23 June 1998, held that the charge against the applicant had become time-barred and consequently annulled the order imposing a fine on him. The applicant complained of the length of the proceedings.

Court found unanimously V 6(1).

Judges: Mr C Rozakis, President, Mr M Fischbach, Mr B Conforti, Mr P Lorenzen, Mrs M Tsatsa-Nikolovska, Mr Ab Baka, Mr E Levits.

The period to be taken into consideration began on 27 October 1990, the date of the committal for trial issued by the Naples Public Prosecutor's Office, and ended on 23 June 1998, when the Court of Cassation's judgment was filed with the registry. The proceedings had lasted seven years, seven months and 27 days. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case. There were four periods of delay, the length of which had not been justified by the State's authorities amounting to a total of more than three years and six months. There had been adjournments of hearings postponed at the applicant's request and hearings which did not take place by reason of a lawyers' strike. The case was not complex. Even if the applicant might be considered to be responsible for some of the delays, that could not justify the length of the periods in between individual hearings and certainly not the total duration of the proceedings. The Government did not provide any convincing explanation for the delays. In the circumstances, the period taken to consider the case failed to satisfy the reasonable time requirement. There had accordingly been a breach of A 6(1).

Non-pecuniary damage (ITL 14,000,000), costs and expenses (ITL 5,000,000).

Cited: Pélissier and Sassi v F (25.3.1999), Philis v GR (No 2) (27.6.1997), Portington v GR (23.9.1998), Zana v TR (25.11.1997).

Steel and Others v United Kingdom (1999) 28 EHRR 603 98/81

[Application lodged 31.5.1994; Commission report 9.4.1997; Court Judgment 23.9.1998]

The first applicant, Ms Helen Steel, took part in a protest against a grouse shoot on 22 August 1992. She walked in front of an armed member of the shoot, thus physically preventing him from firing. She was arrested and detained for approximately 44 hours prior to being brought before a magistrates' court and then released. At the subsequent hearing, she was fined GBP 70 in respect of an offence under the Public Order Act 1986 and, in respect of the breach of the peace, she was ordered to agree to be bound over for 12 months in the sum of GBP 100. When she refused, she was imprisoned for 28 days. Her appeal to the Teesside Crown Court was unsuccessful.

The second applicant, Ms Rebecca Lush, took part in a protest against the building of an extension to a motorway. She placed herself in front of a JCB digger in order to impede the engineering works. She was arrested and detained for approximately 17 hours prior to being brought before a magistrates' court, and was subsequently imprisoned for seven days after refusing to agree to be bound over.

The third, fourth and fifth applicants, Ms Andrea Needham, Mr David Polden, and Mr Christopher Cole, attended a Conference Centre on 20 January 1994, where the 'Fighter Helicopter II' Conference was being held, in order to protest against the sale of fighter helicopters. The protest took the form of handing out leaflets and holding up banners saying: 'Work for Peace and not War'. They were arrested and detained for approximately seven hours before being brought before a magistrate. The proceedings were adjourned. On 25 February 1994, when the proceedings were

resumed, the prosecution decided not to call any evidence and the magistrates dismissed the case against the applicants.

The applicants complained that the concept of breach of the peace and the power to bind over were not sufficiently clearly defined for their detention to be prescribed by law, that their detention did not fall into any of the categories set out in A 5(1), and that, because of the immunity of magistrates from civil proceedings, they had been denied a right to compensation in breach of A 5(5). They also complained of violations of A 10 and 11, arising from the uncertainty inherent in the concept of breach of the peace and the power to bind over and the disproportionality of the restrictions on their freedom to protest.

Comm found unanimously NV 5(1), (3) or (5), NV 6(1), (2) or (3), NV 10 as regards the first and second applicants, V 10 as regards the third, fourth and fifth applicants, not necessary to examine 11, NV 13.

Court found unanimously not necessary to examine 5(3), 6(2), 6(3) (b) and (c), 11 or 13, by majority (7–2) NV 5(1) in respect of the arrest and initial detention of the first applicant, unanimously NV 5(1) in respect of the arrest and initial detention of the second applicant, unanimously NV 5(1) in respect of the arrests and detention of the third, fourth and fifth applicants, by majority (8–1) NV 5(1) in respect of the detention of the first and second applicants for refusing to agree to be bound over, unanimously NV 5(5), NV 6(3)(a), (5–4) NV 10 in respect of the first applicant (7–1) NV 10 in respect of the second applicant, unanimously V 10 in respect of the third, fourth and fifth applicants.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson (jpd), Mr F Gölcüklü, Mr N Valticos (jpd), Mrs E Palm (jpd), Sir John Freeland, Mr J Makarczyk (jpd), Mr K Jungwiert, Mr T Pantiru.

The complaints under A 5 (3), 6(2) and 6(3) (b) and (c) were not pursued before the Court, which saw no reason to consider them of its own motion.

Breach of the peace amounted to a 'criminal offence' for the purposes of the Convention, and the applicants' arrests and detention before being brought to the magistrates' courts fell within the scope of A 5(1)(c). The expressions 'lawful' and 'in accordance with a procedure prescribed by law' in A 5(1) stipulated not only full compliance with the procedural and substantive rules of national law, but also that any deprivation of liberty be consistent with the purpose of A 5 and not arbitrary. In addition, given the importance of personal liberty, it was essential that the applicable national law met the standard of 'lawfulness' set by the Convention, which required that all law, whether written or unwritten, be sufficiently precise to allow the citizen to foresee, to a degree that was reasonable in the circumstances, the consequences which a given action might entail. The national courts that dealt with these cases were satisfied that each applicant had caused or had been likely to cause a breach of the peace and the Court saw no reason to disagree. It followed that the arrests and initial detention of the first and second applicants complied with English law. There was no evidence to suggest that those deprivations of liberty were arbitrary. Therefore, there had been no violation of A 5(1) in respect of the arrests and initial detention of the first and second applicants. The protest of the third fourth and fifth applicants was entirely peaceful. There did not appear to anything in their behaviour which could have justified the police in fearing that a breach of the peace was likely to be caused. In the absence of any national decision on the question, the Court was not satisfied that their arrests and subsequent detention for seven hours complied with English law so as to be 'lawful' within the meaning of A 5(1). Therefore there had been a violation of A 5(1) in respect of the third, fourth and fifth applicants.

The first and second applicants, in being committed to prison for refusing to be bound over, were detained for non-compliance with the order of a court, as was permitted by A 5(1)(b). The elements of breach of the peace were adequately defined by English law. Therefore the applicants could reasonably have foreseen that, if they acted in a manner the natural consequence of which would be to provoke others to violence, they might be ordered to be bound over to keep the peace, and if they refused so to be bound over, they might be committed to prison. The orders were expressed in rather vague and general terms; the expression 'to be of good behaviour' was particularly imprecise and offered little guidance to the person bound over as to the type of conduct which would amount to a breach of the order. However, in each applicant's case the binding-over order

was imposed after a finding that she had committed a breach of the peace. Given the context, it was sufficiently clear that the applicants were being requested to agree to refrain from causing further, similar, breaches of the peace during the ensuing months. There was no evidence to suggest that the magistrates acted outside their jurisdiction or that the binding-over orders or the applicants' subsequent detention failed to comply with English law for any other reason. It followed that there has been no violation of A 5(1) in respect of the detention of the first and second applicants following their refusal to be bound over.

A 5(5) guaranteed an enforceable right to compensation to those who had been the victims of arrest or detention in contravention of the other provisions of A 5. In view of the finding that there was no violation of A 5(1) in respect of the first and second applicants, A 5(5) was not applicable in those cases. In respect of the third, fourth and fifth applicants, however, it would have been open to those applicants to bring civil actions for damages against the police. They therefore had at their disposal an enforceable right to compensation and accordingly A 5(5) was not violated in that case.

As breach of the peace amounted to an offence for the purposes of the Convention, A 6(3)(a) was applicable. The details contained in the charge-sheets given to the first and second applicants were sufficient to comply with that article. It followed that there had been no violation of A 6(3)(a).

The protests of the first and second applicants constituted expressions of opinion within the meaning of A 10. The measures taken against the applicants were, therefore, interferences with their right to freedom of expression. With regard to the third, fourth and fifth applicants, their arrests and detention constituted interferences with their A 10 rights. The measures taken against the first and second applicants were lawful within the meaning of A 5(1), but those taken against the third, fourth and fifth applicants were not. Since the requirement under A 10(2) that an interference with the exercise of freedom of expression be 'prescribed by law' was similar to that under A 5(1) that any deprivation of liberty be 'lawful', it followed that the arrests and detention of the first and second applicants were 'prescribed by law' under A 10(2) but that those of the third, fourth and fifth applicants were not. The applicant's arrest and initial detention pursued the legitimate aims of preventing disorder and protecting the rights of others. The subsequent committal to prison of the first and second applicant was intended not only to deter future breaches of the peace, but also pursued the aim of maintaining the authority of the judiciary. Given dangers and risk of disorder inherent in first and second applicants' protest activities, the actions of police in arresting and detaining them before bringing them to court was not disproportionate. Neither was their imprisonment following refusal to be bound over, given the importance of deterrence and maintaining the authority of the judiciary. The measures taken against the third, fourth and fifth applicants were not 'lawful' or 'prescribed by law', the Court not having been satisfied that the police had grounds reasonably to apprehend that the applicants' peaceful protest would cause a breach of the peace. The interference with the exercise by the applicants of their right to freedom of expression was disproportionate to the aims of preventing disorder and protecting the rights of others, and was not, therefore, necessary in a democratic society. Therefore, the measures taken against the first and second applicants did not give rise to any violation of A 10, while those taken against the third, fourth and fifth applicants did.

The complaint under A 11 did not raise any issues not already examined in the context of A 10 and it was therefore unnecessary to consider it.

The applicants did not submit any argumentation in respect of the complaint under A 13 to the Court. The Court did not consider it necessary to consider it of its own motion.

Non-pecuniary damage (GBP 500 to each of the third, fourth and fifth applicants), costs and expenses (to the third, fourth and fifth applicants, GBP 20,000 less FF 46,747).

Cited: Benham v UK (10.6.1996), Brozicek v I (19.12.1989), Chorherr v A (25.8.1993), Halford v UK (25.6.1997), Incal v TR (9.6.1998), Larissis and Others v GR (24.2.1998), Olsson v S (No 1) (24.3.1988), Open Door and Dublin Well Woman v IRL (29.10.1992), SW v UK (22.11.1995), Stallinger and Kuso v A (23.4.1997), Sunday Times v UK (No 1) (26.4.1979).

Stefanelli v Republic of San-Marino 00/58

[Application lodged 13.1.1997; Court Judgment 8.2.2000]

Mrs Sylviane Stefanelli was detained in connection with proceedings relating to the unlawful marketing of products. The investigation was conducted by a commissioner who held a public hearing for examining the witnesses. Without holding a public hearing nor seeing the applicant, on 19 June 1996, the first instance judge sentenced her to four years and six months imprisonment and ordered preventive measures because she was considered dangerous. The applicant appealed. The appeal judge upheld her conviction but reduced the sentence. She complained of the fairness of the proceedings.

Judges: Mr CL Rozakis, President, Mr M Fischbach, Mr L Ferrari Bravo, Mr G Bonello, Mrs V Stráznická, Mr AB Baka, Mr E Levits.

The hearing at first instance had been held before the commissioner, who had only investigative duties. The same had happened on appeal. As a result the proceedings had taken place without a hearing at first instance and on appeal before a judicial officer called up on to take a decision on the merits. There had been a violation of A 6(1).

Non-pecuniary damage (ITL 10,000,000), costs and expenses (ITL 9,000,000).

Cited: Jan-Åke Andersson v S (29.10.1991), Fejde v S (29.10.1991), Serre v F (29.9.1999).

Steffano v Italy 92/23

[Application lodged 16.6.1986; Commission report 5.12.1990; Court Judgment 27.2.1992]

Mrs Silvia Steffano was a trainee lawyer. From 30 June to 28 July 1982 she served as an 'expert' on an examinations board for the upper secondary examinations and received the remuneration prescribed by law for all members of such boards. Her application to the Provincial Director of Education for a payment calculated on the basis of a teacher's monthly salary was rejected on 17 September 1982. On 13 November 1982 she applied to the Lombardy Regional Administrative Court to establish her claim to the requested additional remuneration. On 29 January 1988 the Administrative Court dismissed her claim. The text of the decision was lodged with the court registry on 17 October 1988. On 13 April 1989 she appealed to the Consiglio di Stato. At the date of the European Court judgment no further information was presented of the Consiglio di Stato's decision. Subsequent to the Court's judgment it was informed that the Consiglio di Stato had dismissed the applicant's appeal by a decision of 5 July 1991, filed with the registry on 30 January 1992. She complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 13 November 1982 when the proceedings were instituted in the Lombardy Regional Administrative Court. It would end when the text of the decision of the Consiglio di Stato was filed with the registry, or ended when that occurred, if it already had done. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. With regard to the excessive workload of the Lombardy Regional Administrative Court, A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. In the administrative court the applicant had to wait more than five years, despite her repeated requests, for the date of the hearing to be fixed. In addition, no investigative measure was taken during that period and more than eight and a half months elapsed before the judgment was filed. The applicant then took almost six months to lodge an appeal, for which period the State was not responsible. As regards the Consiglio di Stato,

neither the applicant nor the other participants in the Strasbourg proceedings provided the Court with sufficient details for it to be able to determine whether that body displayed due diligence. Nevertheless, the Court could not regard as reasonable a total duration which at 16 July 1991 was already more than eight and a half years, six of which were for the first-instance proceedings alone. There had therefore been a violation of A 6(1).

Present judgment constituted sufficient just satisfaction in respect of the non-pecuniary damage alleged.

Cited: Vocaturo v I (24.5.1991).

Stjerna v Finland (1997) 24 EHRR 194 94/42

[Application lodged 11.3.1991; Commission report 8.7.1993; Court Judgment 25.11.1994]

In March 1989 the applicant applied to a County Administrative Board for permission to change his surname to 'Tawaststjerna'. He claimed that his ancestors had used that name and that he had always felt it an injustice only to bear half of the original name. He also claimed that the use of his surname gave rise to practical difficulties as it was an old Swedish form, was not well known and was difficult to pronounce; this meant that it was frequently misspelt. In addition, he claimed, his name had given rise to a pejorative nickname in Finnish. The Advisory Committee on Names rejected his request. He then asked for his name to be changed to 'Tavaststjerna'. That was also refused. He appealed to the Supreme Administrative Court which upheld the Board's decision. The applicant complained that the refusal by the Finnish authorities to grant his request for a change of surname violated his right to respect for private life under A 8.

Comm found by a majority (12–9) NV 8, and unanimously NV 14+8.

Court held unanimously NV 8 and NV 14+8.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr I Foighel, Mr R Pekkanen, Mr JM Morenilla, Mr L Wildhaber (c).

A 8 did not contain any explicit reference to names. However, since it constituted a means of personal identification and a link to a family, an individual's name did concern his or her private and family life. The fact that there might exist a public interest in regulating the use of names was not sufficient to remove the question of a person's name from the scope of private and family life, which had been construed as including, to a certain degree, the right to establish relationships with others. The subject-matter of the complaint fell within the ambit of A 8.

The refusal of the authorities to allow the applicant to adopt a specific new surname could not necessarily be considered an interference in the exercise of his right to respect for his private life, as would have been, eg, an obligation on him to change surname. However, although the essential object of A 8 was to protect the individual against arbitrary interference by the public authorities with his or her exercise of the right protected, there might in addition be positive obligations inherent in an effective respect for private life. The boundaries between the State's positive and negative obligations under A 8 did not lend themselves to precise definition, although the applicable principles were similar. In both contexts regard had to be had to the fair balance to be struck between the competing interests of the individual and of the community. The Contracting States enjoyed a wide margin of appreciation. The Court was not satisfied on the evidence before it that the alleged difficulties in the spelling and pronunciation of the name were very frequent or any more significant than those experienced by a large number of people in Europe. In any event, in the view of the Advisory Committee on Names, the use of the proposed name involved similar practical difficulties to those associated with the current name. The national authorities were in principle better placed to assess the level of inconvenience relating to the use of one name rather than another within their national society, and no sufficient grounds were adduced to justify the Court coming to a conclusion different from that of the Finnish authorities. Although the applicant's current name might have given rise to a pejorative nickname, this was not a specific feature of his name, since many names lent themselves to distortion. Therefore, the sources of inconvenience the applicant complained of were not sufficient to raise an issue of failure to respect

private life under A 8(1). The refusal therefore did not constitute a lack of respect for his private life, and accordingly there was no violation of that article.

For the purposes of A 14, a difference of treatment was discriminatory if it had no objective and reasonable justification, that is, if it did not pursue a legitimate aim or if there was not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting States enjoyed a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justified a different treatment in law. The Court was not convinced that the applicant was subjected to discriminatory treatment. His complaint that one of his ancestors was born out of wedlock did not appear to have had any bearing on the refusal. The reason for refusal seemed to have been that the name could not be said to have been in 'established' use in the family, a condition for acquisition of a surname under Finnish law. The justification advanced by the Government appeared objective and reasonable. There was no violation of A 14 taken together with A 8.

Cited: Burghartz v CH (22.2.1994), Handyside v UK (7.12.1976), Hokkanen v SF (23.9.1994), Inze v A (28.10.1987), Keegan v IRL (26.5.1994), Olsson v S (No 2) (27.11.1992).

Stocké v Germany (1991) 13 EHRR 839 91/24

[Application lodged 20.9.1985; Commission report 12.10.1989; Court Judgment 19.3.1991]

Mr Walter Stocké was the owner of a building firm which went bankrupt in 1975. In 1976 he was held in custody on suspicion of tax offences. In November 1977 the court ordered that he should be re-detained as he had not complied with the conditions of his provisional release. In order to avoid arrest, he fled to Switzerland and then to Strasbourg in France. In November 1977 an international request for the location of his whereabouts was issued. In 1978 Mr Köster, a police informer, tricked the applicant into re-entering Germany and he was arrested. He complained that he had been a victim of collusion between the German authorities and Mr Köster for the purpose of bringing him back to the Federal Republic of Germany against his will with a view to arresting him and that the circumstances of his arrest made it and his detention both on remand and after conviction unlawful. He also asserted that those circumstances had deprived him of a fair trial.

Comm found by majority (12–1) NV 5(1), NV 6(1).

Court found unanimously NV 5 or 6.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr F Gölcüklü, Mr F Matscher (c), Sir Vincent Evans, Mr C Russo, Mr R Bernhardt, Mr J De Meyer, Mr SK Martens.

The applicant was induced by a trick to board a plane chartered by Mr Köster, although he had been warned that they were going to fly over a small part of German territory. After being arrested by the German police immediately after the plane landed at Saarbrücken, he lodged a complaint in France and in the Federal Republic of Germany, alleging false imprisonment. The Commission examined nine witnesses and did not consider their evidence to be inconsistent or unreliable. Neither the facts found by the Commission nor the circumstances of the case as a whole established that the cooperation that there had unquestionably been between the German prosecuting authorities and Mr Köster had extended to unlawful activities abroad. The establishment and verification of the facts was primarily a matter for the Commission. Accordingly, it was only in exceptional circumstances that the Court would use its powers in this area. Having regard to the conclusions reached by the French and German authorities, after thorough investigations, to the evidence of the numerous witnesses already heard by the Commission as set out in its report in a summary whose accuracy had not been challenged, and to the fact that the Commission deemed it unnecessary to hear further evidence, the Court saw no reason to entertain the applicant's request to examine further witnesses. It was not necessary to examine whether, if the activities abroad had been deemed unlawful, the applicant's arrest in the Federal Republic of Germany would have violated the Convention. There had been no violation of A 5 or A 6.

Stögmüller v Austria (1979–80) 1 EHRR 155 69/1

[Application lodged 1.8.1962; Commission report 9.2.1967; Court Judgment 10.11.1969]

Mr Ernst Stögmüller was employed as an inspector for an insurance company. He subsequently founded his own private limited company. He was also a pilot. Following investigations he was charged with fraud and usury and remanded in custody on the grounds of danger of absconding and danger of suppression of evidence. He was detained for over two years and his applications for release were rejected. Following his trial he was sentenced to severe imprisonment, with one night of sleeping-hard and one day's fasting each year, on 19 counts of aggravated usury, one count of usury, 19 counts of aggravated fraud and seven counts of aggravated fraudulent conversion. He was also ordered to pay damages to his victims. He complained about his detention on remand.

Comm found by majority (8–3) V 5(3).

Court found unanimously V 5(3).

Judges: Mr H Rolin, President, Mr A Holmbäck, Mr A Verdross (jc), Mr G Balladore Pallieri, Mr M Zekia, Mr J Cremona, Mr S Bilge (jc).

It was essentially on the basis of the reasons given in the decisions on the applications for release pending trial, and of the true facts mentioned by the applicant in his appeals, that the Court was called upon to decide whether or not there has been a violation of the Convention. A 5(1)(c) authorised arrest or detention for the purpose of bringing 'before the competent legal authority' on the mere grounds of the existence of reasonable suspicion that the person arrested had committed an offence and it was clear that the persistence of such suspicions was a condition *sine qua non* for the validity of the continued detention of the person concerned. A 5(3) clearly implied, however, that the persistence of suspicion did not suffice to justify, after a certain lapse of time, the prolongation of the detention. However, in examining the question whether A 5(3) had been observed, the Court had to consider and assess the reasonableness of the grounds which persuaded the judicial authorities to decide, in the case which was brought before the Court, on the serious departure from the rules of respect for individual liberty and of the presumption of innocence which was involved in every detention without a conviction. For that purpose, the Court took into account the facts established by the decisions of the said authorities and the non-refuted facts advanced by the person concerned. A 5(3) referred only to persons charged and detained. It implied that there had to be special diligence in the conduct of the prosecution of the cases concerning such persons. The reasonable time mentioned in that provision could be distinguished from that provided for in A 6. On the other hand, even if the duration of the preliminary investigation was not open to criticism, that of the detention should not exceed a reasonable time. A 5(3) appeared as an independent provision which produced its own effects whatever may have been the facts on which the arrest was grounded or the circumstances which made the preliminary investigation as long as it was. The Court was not restricted to consideration of the period of detention prior to the lodging of the Commission application. The Government did not rely on the objection of non-exhaustion before the Commission. On the question of whether the proceedings instituted could embrace complaints concerning facts which occurred after the lodging of the application, international law, to which A 26 referred explicitly, was far from conferring on the rule of exhaustion an inflexible character. International law only imposed the use of the remedies which were not only available to the persons concerned but were also sufficient, that is to say capable of redressing their complaints. In matters of detention while on remand, it was in the light of the circumstances of the case that the question was, in appropriate cases, to be assessed whether and to what extent it was necessary, pursuant to A 26, for the detained applicant, who had exhausted the remedies before the Commission declared his application admissible, to make, later on, further appeals to the national courts in order to make it possible to examine, at international level, the reasonableness of his continued detention. But such question only arose if the examination of the reasons given by the national courts in their decisions

on the appeals made before the lodging of the application had not led to the conclusion that, at that date, the detention had exceeded a reasonable time. If the opposite was the case it was clear that the detention while on remand which was held to have exceeded a reasonable time on the day when the application was lodged had to be found, except in extraordinary circumstances, to have necessarily kept such character throughout the time for which it was continued. As that was the conclusion which the Court had reached in the present case, there was no need for the Court to examine separately the applicant's complaints concerning the period of detention which followed the lodging of the application. With regard to the danger of repetition of the offences, the applicant had allegedly continued his fraudulent activities even after his first release. However, he had sold his company thus giving up his occupation of money-lender in order to become an aviator. However, from March 1961 he did not appear to have committed any further offences. Therefore, the existence of a danger of repetition of the offences could not be upheld in the circumstances of the case. With regard to the danger of his absconding, it was submitted that he had to expect a heavy sentence and that his pilot's licence and his father's aeroplane enabled him to go abroad at any time. However, during the first period of his provisional release he had gone abroad by plane on several occasions and had always returned to Austria. The danger of an accused absconding did not result just because it is possible or easy for him to cross the frontier: there had to be a whole set of circumstances, particularly, the heavy sentence to be expected or the accused's particular distaste of detention, or the lack of well-established ties in the country, which gave reason to suppose that the consequences and hazards of flight would seem to him to be a lesser evil than continued imprisonment. But that was not the situation of the present applicant. The Vienna Court of Appeal found, in its decision of 10 November 1961, that there was no danger of his absconding and his provisional release was granted afterwards on provision of security. In those circumstances, the Court considered that, at least from that date, there was no danger of absconding sufficient to justify the keeping of the applicant in detention. The second application for provisional release, which was made on 6 December 1961, should therefore have been granted. The same arguments applied to the two sets of criminal proceedings faced by the applicant. With regard to the argument that the applicant had made further applications and appeals in his case, those were made in November 1962 and at that time the length of his detention had already ceased to be reasonable.

A 50 reserved for the applicant, should the occasion arise, to apply for it.

Cited: Lawless v IRL (1.7.1961), Neumeister v A (27.6.1968), Wemhoff v D (27.6.1968).

Stran Greek Refineries and Stratis Andreadis v Greece (1995) 19 EHRR 293 94/44

[Application lodged 20.11.1987; Commission report 12.5.1993; Court Judgment 9.12.1994]

Mr Stratis Andreadis was the sole shareholder in Stran Greek Refineries. Under the terms of a contract concluded on 22 July 1972 with the Greek State, Mr Andreadis undertook to construct a crude oil refinery in the Megara region. The Government ratified the contract by Legislative Decree No 1211/1972. However, the project stagnated because the State failed to fulfil its obligation and, in November 1973, the Megara police ordered that the work should cease. Prior to the termination of the contract, Stran had incurred expenditure in connection with the scheme. On 10 November 1978, Stran brought an action in the Athens Court of First Instance for a declaration that the State should pay it compensation for breach of its obligations during the period of validity of the contract. In a preliminary decision, the court ruled against the State. On 12 June 1980, the State filed an arbitration petition. The arbitration court made its award in favour of the applicants. The State's application to the Athens Court of First Instance to set aside the arbitration award was dismissed, as was its appeal to the Court of Appeal. On 15 December 1986, the State appealed to the Court of Cassation. The case was adjourned at the State's request, on the ground that a draft law concerning the case in question was before Parliament. On 22 May 1987, Parliament enacted Law No 1701/1987 on the compulsory participation of the State in private undertakings and the redemption of shares. The Law stated, *inter alia*, that on termination of contracts under

consideration, all their terms, conditions and clauses, including the arbitration clause, were repealed and the arbitration tribunal no longer had jurisdiction, that any principal or ancillary claims against the Greek State were time-barred and any court proceedings at whatever level pending at the time of the enactment of the statute, in respect of claims within its meaning were declared void. The First Division of the Court of Cassation found the new Law unconstitutional. The Court of Cassation sitting in plenary found that the new measure was not unconstitutional. The applicants complained that they had not had a fair trial within a reasonable time and that they were victims of P1A1.

Comm found unanimously V 6(1) as regards the right to a fair trial, by majority (12–2) NV 6(1) as regards the length of the proceedings, unanimously V P1A1.

Court unanimously dismissed the Government's preliminary objection, found V 6(1) as regards the right to a fair trial, NV 6(1) as regards the length of the proceedings, V P1A1.

Judges: Mr R Ryssdal, President, Mr B Walsh, Mr R Macdonald, Mr C Russo, Mr N Valticos, Mr SK Martens, Mr R Pekkanen, Mr F Bigi, Mr L Wildhaber.

The Court took cognisance of preliminary objections in so far as the State in question had already raised them, at least in substance and with sufficient clarity, before the Commission, in principle at the stage of the initial examination of admissibility. When a State relied on the exhaustion rule, it had to indicate with sufficient clarity the effective remedies to which the applicants had not had recourse; it was not for the Convention bodies to cure of their own motion any shortcomings or lack of precision in the respondent States' arguments. Regarding the Government's claim that the applicants had chosen arbitration and failed to exhaust statutory remedies, it was the Government that had initially contested the jurisdiction of the ordinary courts and opted for arbitration as a means of resolving the dispute. There was therefore estoppel in respect of the preliminary objection.

The concept of 'civil rights and obligations' was not to be interpreted solely by reference to the respondent State's domestic law. A 6(1) applied irrespective of the status of the parties, of the nature of the legislation which governed the manner in which the dispute was to be determined and of the character of the authority which had jurisdiction in the matter. It was enough that the outcome of the proceedings should be decisive for private rights and obligations. The applicants' right under the arbitration award was pecuniary in nature, as had been their claim for damages allowed by the arbitration court. Their right to recover the sums awarded by the arbitration court was therefore a civil right within the meaning of A 6, whatever the nature, under Greek law, of the contract between the applicants and the Greek State. It followed that the outcome of the proceedings brought in the ordinary courts by the State to have the arbitration award set aside was decisive for a 'civil right'. A 6(1) was accordingly applicable.

The Court had regard to both the timing and manner of the adoption of Law No 1701/1987. The legislature's intervention in the present case took place at a time when judicial proceedings in which the State was a party were pending. The principle of the rule of law and the notion of fair trial enshrined in A 6 precluded any interference by the legislature with the administration of justice designed to influence the judicial determination of the dispute. The wording of the new measure effectively excluded any meaningful examination of the case by the Court of Cassation. Once the constitutionality of the measures had been upheld by the Court of Cassation in plenary session, the court's decision became inevitable. The State had infringed the applicants' rights under A 6(1) by intervening in a manner which was decisive to ensure that the imminent outcome of proceedings in which it was a party was favourable to it. There had therefore been a violation of A 6(1).

The relevant period began on 20 November 1985 when the Greek declaration accepting the right of individual petition took effect. In order to determine the reasonableness of the period of time which elapsed after that date, regard had to be had to the stage which the case had reached at that time. Only the proceedings concerning the validity of the arbitration award, which commenced on 2 May 1985, could be taken into account. The whole of the period in question had to be taken into consideration. It ended on 11 April 1990, when the judgment of the Court of Cassation declaring

the arbitration award void was delivered. It therefore lasted four years, four months and 20 days. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The proceedings in the Athens Court of First Instance and the Court of Appeal lasted 18 months, about six of which were prior to the Greek declaration under A 25. Those proceedings were not open to criticism. The proceedings in the Court of Cassation lasted more than three years, a period that was justified in view of the need to take account of Law No 1701/1987, and above all the fact that the Code of Civil Procedure required a division of the Court of Cassation to refer a case to the plenary court if it refused to apply a law on the ground that it was unconstitutional. There had therefore been no violation of A 6(1) in respect of length of proceedings.

In order to determine whether the applicants had a 'possession' for the purposes of P1A1, the Court had to ascertain whether the judgment of the Athens Court of First Instance and the arbitration award had given rise to a debt in their favour that was sufficiently established to be enforceable. At the moment when Law No 1701/1987 was passed, the arbitration award of 27 February 1984 conferred on the applicants a right in the sums awarded. Admittedly, that right was revocable, since the award could still be annulled, but the ordinary courts had by then already twice held – at first instance and on appeal – that there was no ground for such annulment. Accordingly, that right constituted a possession within the meaning of P1A1. There was an interference with the applicants' right of property as guaranteed by P1A1. It was impossible for them to secure enforcement of an arbitration award having final effect and under which the State was required to pay them specified sums in respect of expenditure that they had incurred in seeking to fulfil their contractual obligations or even for them to take further action to recover the sums in question through the courts. The interference in question was neither an expropriation nor a measure to control the use of property; it fell to be dealt with under the first sentence of the first paragraph of P1A1. It was necessary for the Greek State to terminate a contract which it considered to be prejudicial to its economic interests. However, the unilateral termination of a contract did not take effect in relation to certain essential clauses of the contract, such as the arbitration clause. To alter the machinery set up by enacting an authoritative amendment to such a clause would make it possible for one of the parties to evade jurisdiction in a dispute in respect of which specific provision was made for arbitration. The State was therefore under a duty to pay the applicants the sums awarded against it at the conclusion of the arbitration procedure, a procedure for which it had itself opted and the validity of which had been accepted until the day of the hearing in the Court of Cassation. By choosing to intervene at that stage of the proceedings in the Court of Cassation by a law which invoked the termination of the contract in question in order to declare void the arbitration clause and to annul the arbitration award of 27 February 1984, the legislature upset, to the detriment of the applicants, the balance that had to be struck between the protection of the right of property and the requirements of public interest. There had accordingly been a violation of P1A1.

Pecuniary damage (GRD 116,273,442, USD 16,054,165 and FF 614,627), costs and expenses (GBP 125,000).

Cited: Barberà, Messegué and Jabardo v E (6.12.1988), Billi v I (26.2.1993), Dombo Beheer BV v NL (27.10.1993), Editions Périscope v F (26.3.1992), Allan Jacobsson v S (25.10.1989), Sporrong and Lönnroth v S (23.9.1982), Sunday Times v UK (No 1) (6.11.1980), Vendittelli v I (18.7.1994).

Stubbings and Others v United Kingdom (1997) 23 EHRR 213 96/40

[Applications lodged 14.5.1993, 14.6.1993; Commission report 22.2.1995; Court Judgment 22.10.1996]

Ms Leslie Stubbings was born on 29 January 1957. She alleged that she was sexually assaulted by Mr Webb, the adoptive father with whom she had been placed by the local authority, between 1959 and 1971 and that his son had forced her to have sexual intercourse with him on two occasions in 1969. Since 1976 she had experienced severe psychological problems, which have led to her admission to hospital on three occasions. On 18 August 1987 she commenced proceedings against her adoptive parents and brother, seeking damages for the alleged assaults. Her claim was

dismissed by the High Court, Court of Appeal and House of Lords as time-barred under the Limitation Act 1980. The limitation period for such actions was three years.

Ms JL was born in 1962. She alleged that between 1968 and September 1979 she was frequently abused by her father, who took pornographic photographs of her and subjected her to serious assaults of a sexual nature. Following the decision of the House of Lords in *Stubbings v Webb*, her civil claim against her father was discontinued on the advice of counsel that it had become time-barred in 1986, six years after her 18th birthday.

Ms JP was born in 1958. Between the ages of five and seven she attended a State primary school and recalled sexual abuse, including rape, by the Deputy Headmaster, during that period. She commenced proceedings for damages against the Deputy Headmaster in February 1992 but discontinued the action following the decision of the House of Lords in *Stubbings v Webb*, because her claim had become time-barred in January 1982.

Ms DS was born in 1962. Between 1968 and 1977 she was allegedly subjected to repeated sexual assaults by her father, including acts of rape. On 15 March 1991 her father pleaded guilty to a charge of indecent assault based on his abuse of her and was sentenced to one year's probation. She instituted civil proceedings against him on 14 August 1992. Her action was discontinued on 24 May 1993 following the House of Lords' judgment in *Stubbings v Webb*, since her claim had been brought outside the six-year time-limit held in that case to apply.

All the applicants complained that they were denied access to a court in respect of their claims for compensation for psychological injury caused by childhood sexual abuse because of the operation of the Limitation Act 1980, in violation of A 6(1), and that the difference in the rules applied to themselves and other types of claimants was discriminatory.

Comm found unanimously V 14+6(1), not necessary to examine 6(1) or 8 or 14+8.

Court found by majority (7–2) NV 6(1), unanimously NV 8, by majority (8–1) NV 14+6(1) or 14+8.

Judges: Mr R Bernhardt, President, Mr F Gölcüklü, Mr R Macdonald (so), Mr N Valticos, Mr I Foighel (so), Mr R Pekkanen, Mr JM Morenilla, Sir John Freeland, Mr J Makarczyk.

A 6(1) embodied the right to a court, of which the right of access, the right to institute proceedings before a court in civil matters, constituted one aspect. However, that right was not absolute, but might be subject to limitations. Limitation periods in personal injury cases were a common feature of the domestic legal systems of the Contracting States and served several important purposes. The English law of limitation allowed the applicants six years from their 18th birthdays in which to initiate civil proceedings. In addition, subject to the need for sufficient evidence, a criminal prosecution could be brought at any time and, if successful, a compensation order could be made. Thus, the very essence of the applicants' right of access to a court was not impaired. The time-limit in question was not unduly short. Moreover, the rules applied were proportionate to the aims sought to be achieved when it was considered that if the applicants had commenced actions shortly before the expiry of the period, the courts would have been required to adjudicate on events which had taken place approximately 20 years earlier. The Contracting States enjoyed a margin of appreciation in deciding how the right of access to court should be circumscribed. The UK legislature had devoted a substantial amount of time and study to the consideration of those questions. There had been a developing awareness in recent years of the range of problems caused by child abuse and its psychological effects on victims, and it was possible that the rules on limitation of actions applying in member States of the Council of Europe might have to be amended to make special provision for this group of claimants in the near future. However, since the very essence of the applicants' right of access was not impaired and the restrictions in question pursued a legitimate aim and were proportionate, it was not for the Court to substitute its own view for that of the State authorities as to what would be the most appropriate policy in that regard. Accordingly, taking into account in particular the legitimate aims served by the rules of limitation in question and the margin of appreciation afforded to States in regulating the right of access to a court, there had been no violation of A 6(1).

A 8 was clearly applicable to the complaints, which concerned private life, a concept which covered the physical and moral integrity of the person. Although the object of A 8 was essentially that of protecting the individual against arbitrary interference by the public authorities, it did not merely compel the State to abstain from such interference: there might, in addition to this primary negative undertaking, be positive obligations inherent in an effective respect for private or family life. There were different ways of ensuring respect for private life and the nature of the State's obligation would depend on the particular aspect of private life that was in issue. Sexual abuse was unquestionably an abhorrent type of wrongdoing, with debilitating effects on its victims. Children and other vulnerable individuals were entitled to State protection, in the form of effective deterrence, from such grave types of interference with essential aspects of their private lives. In the instant case, however, such protection was afforded. The abuse of which the applicants complained was regarded most seriously and subject to severe maximum penalties. Provided sufficient evidence could be secured, a criminal prosecution could have been brought at any time and could still be brought. In principle, civil remedies were also available provided they were sought within the statutory time-limit. Accordingly, in view of the protection afforded by the domestic law against the sexual abuse of children and the margin of appreciation allowed to States in these matters, there had been no violation of A 8.

A 14 afforded protection against discrimination in the enjoyment of the rights and freedoms safeguarded by the other substantive provisions of the Convention. However, not every difference in treatment would amount to a violation of this article. It had to be established that other persons in an analogous or relevantly similar situation enjoyed preferential treatment, and that there was no reasonable or objective justification for the distinction. Contracting States enjoyed a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justified a different treatment in law. As between the applicants and victims of other forms of deliberate wrongdoing with different psychological after-effects, there was no disparity in treatment, because the same rules of limitation were applied to each group. The victims of intentionally and negligently inflicted harm could not be said to be in analogous situations for the purposes of A 14. In any domestic judicial system there might be a number of separate categories of claimant, classified by reference to the type of harm suffered, the legal basis of the claim or other factors, who were subject to varying rules and procedures. In the instant case, different rules had evolved within the English law of limitation in respect of the victims of intentionally and negligently inflicted injury. Different considerations might apply to each of those groups. It would be artificial to emphasise the similarities between these groups of claimants and to ignore the distinctions between them for the purposes of A 14. Even if a comparison could properly be drawn between the two groups of claimants in question, the difference in treatment might be reasonably and objectively justified by reference to their distinctive characteristics. It was quite reasonable, and fell within the margin of appreciation afforded to the Contracting States in those matters, to create separate regimes for the limitation of actions based on deliberately inflicted harm and negligence, since, for example, the existence of a civil claim might be less obvious to victims of the latter type of injury. Accordingly, there was no violation of A 14+6(1) or 14+8.

Cited: Ashingdane v UK (28.5.1985), Bellet v F (4.12.1995), Fredin v S (No 1) (18.2.1991), Rasmussen v DK (28.11.1984), Van der Mussele v B (23.11.1983), X and Y v NL (26.3.1985).

Styranowski v Poland 98/96

[Application lodged 24.7.1995; Commission report 3.12.1997; Court Judgment 30.10.1998]

Mr Szczepan Styranowski was a judge. He retired in May 1991. The amount of his pension was calculated by the Social Security Board. On 17 December 1991 he appealed against a decision of the Social Security Board reducing his pension. His case was dismissed by the Regional Court on 16 January 1996. He complained of the length of proceedings.

Comm found by majority (10–5) V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Bernhardt, President, Mr F Matscher, Mr I Foighel, Mr AB Baka, Mr J Makarczyk, Mr E Levits, Mr J Casadevall, Mr P Van Dijk, Mr M Voicu.

The period to be taken into consideration began not on 17 December 1991, when the applicant filed a compensation claim with the Olsztyn District Court, but on 1 May 1993, when the declaration whereby Poland recognised the right of individual petition for the purposes of A 25 took effect. The period ended on 16 January 1996 when the Regional Court dismissed the applicant's appeal. In determining the reasonableness of the length of time in question, regard had to be had to the state of the case on 1 May 1993. The proceedings lasted four years and one month, out of which two years, eight months and 16 days were taken into consideration by the Court. The reasonableness of the length of the proceedings had to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation. Even though the case involved a measure of procedural complexity on account of the need to transfer the case between different courts, it could not be said that that in itself justified the length of the compensation proceedings. Neither could the nature of the substantive issues raised by the applicant's claim justify the length of the proceedings. The applicant's conduct did not contribute to the length of the proceedings; he had behaved in a diligent manner and on several occasions requested that the proceedings in his case be expedited. It took over four years to decide the compensation claim arising from the reduction of the applicant's pension. There were two periods of inactivity which resulted in delays in the proceedings lasting respectively seven months and six days and almost eight months. As no explanation had been provided for those periods of inactivity, the delays had to be attributed to the national authorities. The compensation proceedings originated from and were based on the reduction of the applicant's pension. Therefore, in view of his age, the proceedings were of undeniable importance for him. Accordingly, what was at stake for the applicant called for an expeditious decision on his claim. There was an unreasonable delay in dealing with the applicant's case and there had accordingly been a violation of A 6(1) in that the applicant's civil right was not determined within a reasonable time.

Non-pecuniary damage (PLN 15,000).

Cited: Proszak v PL (16.12.1997), Süßmann v D (16.9.1996).

Sunday Times v United Kingdom (1979–80) 2 EHRR 245 79/1

[Application lodged 19.1.1974; Commission report 18.5.1977; Court Judgment 26.4.1979 (merits), 6.11.1980 (A 50)]

As a result of the severe deformities suffered by children of women who had taken the Distillers Company drug known as thalidomide, prescribed as a sedative during pregnancy, legal proceedings were commenced. Reports concerning the deformed children had appeared regularly in *The Sunday Times* since 1967, and in 1968 it criticised the settlements concluded in that year. The newspaper announced that in a future article it would trace how the tragedy occurred. On 17 November 1972, the High Court granted the Attorney-General's application for an injunction restraining publication of the future article on the ground that it would constitute contempt of court. Following an appeal, the injunction was discharged by the Court of Appeal on 16 February 1973, but restored in modified form on 24 August 1973 following the House of Lords' decision of 18 July allowing a further appeal by the Attorney-General. The injunction was discharged on 23 June 1976 and four days later, the contentious article was published. The applicants claimed that the injunction to restrain them from publishing an article in *The Sunday Times* dealing with thalidomide children and the settlement of their compensation claims in the United Kingdom constituted a breach of A 10.

Comm found by majority (8–5) V 10, unanimously NV 14+10 or 18+10.

Court found by majority (11–9) V 10, unanimously NV 14+10, not necessary to examine 18.

Judges (merits): Mr G Balladore Pallieri, President, Mr G Wiarda (jd), Mr H Mosler, Mr M Zekia (c), Mr J Cremona (jd), Mr P O'Donoghue (c), Mrs H Pedersen, Mr Thór Vilhjálmsson (jd), Mr R Ryssdal (jd), Mr W Ganshof van der Meersch (jd), Sir Gerald Fitzmaurice (jd), Mrs D Bindschedler-Robert (jd), Mr D Evrigenis (c), Mr P-H Teitgen, Mr G Lagergren, Mr L Liesch (jd), Mr F Gölcüklü, Mr F Matscher (jd), Mr J Pinheiro Farinha, Mr E Garcia de Enterria.

Judges (A 50): Mr G Balladore Pallieri, President, Mr G Wiarda, Mr H Mosler, Mr M Zekia, Mr J Cremona, Mr W Ganshof van der Meersch, Sir Gerald Fitzmaurice (d), Mrs D Bindschedler-Robert, Mr D Evrigenis, Mr P-H Teitgen, Mr G Lagergren, Mr L Liesch (d), Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha (d), Mr E Garcia de Enterria.

There was an interference by public authority in the exercise of the applicants' freedom of expression. Such an interference entailed a violation of A 10 if it did not fall within one of the exceptions provided for in A 10(2). The word 'law' in the expression 'prescribed by law' covered not only statute, but also unwritten law. The requirements were first that the law had to be adequately accessible: the citizen had to be able to have an indication that was adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm could not be regarded as a 'law' unless it was formulated with sufficient precision to enable the citizen to regulate his conduct: he had to be able – if need be with appropriate advice – to foresee, to a degree that was reasonable in the circumstances, the consequences which a given action might entail. The applicants were not without an indication that was adequate in the circumstances of the existence of the principles at issue. Even if there were doubts concerning the precision with which that principle was formulated at the relevant time, the applicants were able to foresee, to a degree that was reasonable in the circumstances, a risk that publication of the draft article might fall foul of the principle. The interference with the applicants' freedom of expression was thus prescribed by law within the meaning of A 10(2). The interference with the applicants' freedom of expression had the aim of maintaining the authority of the judiciary, an aim that was legitimate under A 10(2). A 10(2) left Contracting States a margin of appreciation but did not give them unlimited power of appreciation. The task of the Court was not to take the place of the competent national courts but rather to review under A 10 the decisions they delivered in the exercise of their power of appreciation. The article was couched in moderate terms and presented both sides of the argument. The effect of the article, if published, would have varied from reader to reader. Accordingly, even to the extent that the article might have led some readers to form an opinion on the negligence issue, that would not have had adverse consequences for the authority of the judiciary, especially since there had been a nationwide campaign in the meantime. The injunction had been discharged in 1976 when there were still outstanding not only some of the parents' actions but also an action between Distillers and their insurers involving the issue of negligence. The thalidomide disaster was a matter of undisputed public concern. A 10 guaranteed not only the freedom of the press to inform the public, but also the right of the public to be properly informed. The families of numerous victims of the tragedy, who were unaware of the legal difficulties involved, had a vital interest in knowing all the underlying facts and the various possible solutions. It was artificial to attempt to divide the 'wider issues' and the negligence issue. The question of where responsibility for such a tragedy lay was also a matter of public interest. The facts did not cease to be a matter of public interest merely because they formed the background to pending litigation. By bringing to light certain facts, the article might have served as a brake on speculative and unenlightened discussion. Having regard to all the circumstances of the case, the interference complained of did not correspond to a social need sufficiently pressing to outweigh the public interest in freedom of expression. The reasons for the restraint imposed on the applicants were not sufficient under A 10(2). That restraint proved not to be proportionate to the legitimate aim pursued; it was not necessary in a democratic society for maintaining the authority of the judiciary. There had accordingly been a violation of A 10.

A 14 safeguarded those placed in comparable situations, from all discrimination in the enjoyment of the rights and freedoms in the Convention and Protocols. The fact that no steps were taken against other newspapers was not sufficient evidence that the injunction granted against the applicant newspaper constituted discrimination contrary to A 14. With regard to the debates in

Parliament, the press and parliamentarians could not be considered to be placed in comparable situations since their respective duties and responsibilities were essentially different. Furthermore, the parliamentary debate of 29 November 1972 did not cover exactly the same ground as the proposed Sunday Times article. There had therefore been no violation of A 14 taken together with A 10.

The applicant did not maintain the claim under A 18 before the Court which accepted the Commission's opinion that there had been no breach of A 18 taken in conjunction with A 10 and did not consider that it was necessary for it to examine that question.

Costs and expenses (by majority (13–3) GBP 22,626.78).

Cited: 'Belgian Linguistic' case (9.2.1967), Golder v UK (21.2.1975), Handyside v UK (7.12.1976), Ireland v UK (18.1.1978), Kjeldsen, Busk Madsen and Pedersen v DK (7.12.1976), Klass and Others v D (6.9.1978), König v D (28.6.1978), National Union of Belgian Police (27.10.1975), Neumeister v A (27.6.1968), Ringeisen v A (16.7.1971), Stögmüller v A (10.11.1969), Wemhoff v D (27.6.1968).

Sunday Times (No 2) v United Kingdom (1992) 14 EHRR 229 91/48

[Application lodged 31.7.1987; Commission report 12.7.1990; Court Judgment 26.11.1991]

The applicant newspapers published some details of a book, *Spycatcher*, by Mr Peter Wright. The book concerned the memoirs of the author, a former M15 (security service) member. Injunctions were granted in June 1986 to prevent further publication. On 27 April 1987, The Independent newspaper published a summary of the *Spycatcher* allegations. The Court of Appeal considered the injunction binding on all British media. On 12 July 1987, *The Sunday Times* began serialisation of the book. On 30 July 1987, the House of Lords held the injunctions should continue. The book was published in the USA in July 1987 and subsequently in Australia in October 1987 following unsuccessful proceedings by the Attorney General.

Comm found unanimously V 10, NV 13, 14+10.

Court found unanimously V 10 NV 13, NV 14+10.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer, Mr N Valticos, Mr SK Martens, Mrs E Palm, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi, Mr A Baka.

The interference (interlocutory injunction) was prescribed by law with legitimate aims under A 10(2) of maintaining the authority of the judiciary, including protecting national security. Regarding the period 30 July 1987 to 13 October 1988, the book had been published in the US and the material was no longer confidential. The further aim of preserving confidence in the Security Service was not sufficient to justify continued interference or legitimately used to punish Mr Wright and set an example to others. The continuation of the interference prevented newspapers exercising their right and duty to provide information of legitimate public concern which was already available and so V 10 during that period.

Regarding discrimination, foreign newspapers were subject to the same restrictions as the Observer and Guardian and so there was no difference in treatment.

Regarding A 13, the effectiveness of a remedy did not depend on the certainty of the outcome. There was no obligation to incorporate the Convention in to domestic law. A 13 did not guarantee a remedy allowing the State's law to be challenged before national authorities on the grounds of being contrary to the Convention.

Costs and expenses (GBP 100,000 to applicants jointly).

Cited: Sunday Times v UK (26.4.197), Handyside v UK (7.12.1976), Oberschlik v A (23.5.1991), Lingens v A (8.7.1986), Markt Intern v D (20.11.1989), Weber v CH (22.5.1990), Fredin v S (18.2.1991), Soering v UK (7.7.1990), James and Others v UK (21.2.1986), Granger v UK (28.3.1990).

Sur v Turkey 97/75

[Application lodged 15.3.1993; Commission report 3.9.1996; Court Judgment 3.10.1997]

Mr Abdullah Sur worked in a jeweller's shop in Istanbul. It was alleged that, when asked by a customer to melt down some pieces of gold, he had added some copper to the gold he had been given, thus devaluing it. Following a complaint by the customer concerned, the applicant was arrested and taken into police custody at the security police headquarters. He lodged a complaint with the Istanbul public prosecutor against the police officers who had questioned him during his detention in police custody. He accused them of ill-treating him in order to extract a confession. He asserted in particular that he had been blindfolded for part of the time, that he had been beaten with sticks and fists and that electric shocks had been administered to his hands, feet and testicles. The public prosecutor, having noted that the applicant had not been able to identify the police officers who had allegedly inflicted the ill-treatment, ordered the discontinuation of the proceedings. The applicant complained of the ill-treatment inflicted by police officers while he was in police custody and of the fact that he had not had an effective remedy, in that the public prosecutor dealing with his complaint against those officers had discontinued the proceedings against them.

Comm found unanimously V 3.

Court unanimously struck case out of list.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr L-E Pettiti, Mr C Russo, Mr A Spielmann, Sir John Freeland, Mr MA Lopes Rocha, Mr D Gotchev, Mr P Kûris.

The Court took formal note of the friendly settlement reached by the Government and the applicant. There was no reason of public policy to proceed with the case. The Court recalled its previous case-law, clarifying the nature and extent of the obligations undertaken in this area by the Contracting States.

FS (Payment 100,000 FF to applicant, applicant's legal fees 15,000 FF).

Cited: Aksoy v TR (18.12.1996), Ribitsch v A (4.12.1995), Tomasi v F (27.8.1992).

Sürek (Nos 1, 2, 3 and 4) v Turkey 99/38

[Applications lodged 20.2.1995, 9.3.1994, 18.7.1994, 27.7.1994; Commission report 11.12.1997, 13.1.1998; Court Judgment 8.7.1999]

Mr Kamil Tekin Sürek was the major shareholder in a Turkish company which owned a weekly review, entitled *The Truth of News and Comments*, published in Istanbul.

Sürek (No 1)

Issue No 23 dated 30 August 1992 contained two readers' articles, entitled 'Weapons cannot win against freedom' and 'It is our fault'. On 12 April 1993, the Istanbul National Security Court found the applicant guilty in his capacity as the owner of the review of disseminating propaganda against the indivisibility of the State. On 12 April 1994 he was fined TRL 83,333,333. His subsequent appeals were dismissed.

Comm found by majority (19–13) NV 10, (31–1) V 6(1).

Court found by majority (11–6) NV 10, (16–1) V 6(1).

Judges: Mr L Wildhaber (declaration), President, Mrs E Palm (pd), Mr A Pastor Ridruejo, Mr G Bonello (pd), Mr J Makarczyk, Mr P Kûris, Mr J-P Costa, Mrs F Tulkens (jpd), Mrs V Stráznická, Mr M Fischbach (pd), Mr V Butkevych, Mr J Casadevall (jpd), Mrs Hs Greve (jpd), Mr Ab Baka, Mr R Maruste, Mr K Traja, Mr F Gölcüklü (pd), ad hoc judge.

Sürek (No 2)

The issue dated 26 April 1992 contained a news report providing information given at a press conference by a delegation which included two former Turkish parliamentarians – Lord Avebury

and a member of the Anglican Church – on its visit to Sirnak village, in the wake of tensions in the area. The news report included an article reporting the Governor of the village as having told the delegation that the Chief of Police had given an order to open fire on the people. It also produced a dialogue between the parliamentarians and a Gendarme Commander. On 2 September 1993 the National Security Court convicted the applicant as the owner of the review, with revealing the identity of officials mandated to fight terrorism and thus rendering them terrorist targets . He was fined TRL 54,000,000.

Comm found by majority (23–9) NV 10, (31–1) V 6(1).

Court found by majority (16–1) V 10, unanimously dismissed the Government's preliminary objection concerning the exhaustion of domestic remedies in relation to 6(1), found by majority (16–1) V 6(1).

Judges: Mr L Wildhaber (declaration), President, Mrs E Palm, Mr A Pastor Ridruejo, Mr G Bonello (c), Mr J Makarczyk, Mr P Kûris, Mr J-P Costa, Mrs F Tulkens, Mrs V Stráznická, Mr M Fischbach, Mr V Butkevych, Mr J Casadevall, Mrs HS Greve, Mr AB Baka, Mr R Maruste, Mr K Traja, Mr F Gölcüklü (d), ad hoc judge.

Sürek (No 3)

Issue No 42 of the review, dated 9 January 1993, contained a news commentary entitled 'In Botan the poor peasants are expropriating the landlords!'. On 27 September 1993, the National Security Court found the applicant guilty of making propaganda against the indivisibility of the State. He was fined TRL 83,333,333.

Comm found by majority (31–1) NV 10, V 6(1).

Court found by majority (10–7) NV 10, unanimously dismissed the Government's preliminary objection concerning the exhaustion of domestic remedies, found by majority (16–1) V 6(1).

Judges: Mr L Wildhaber (declaration), President, Mrs E Palm (pd), Mr A Pastor Ridruejo, Mr G Bonello (pd), Mr J Makarczyk, Mr P Kûris, Mr J-P Costa, Mrs F Tulkens (jpd), Mrs V Stráznická, Mr M Fischbach (pd), Mr V Butkevych, Mr J Casadevall (jpd), Mrs HS Greve (jpd), Mr AB Baka, Mr R Maruste (pd), Mr K Traja, Mr F Gölcüklü (pd), ad hoc judge.

Sürek (No 4)

Issue No 51 of the review, dated 13 March 1993, contained a news commentary entitled 'Once Again'. The article analysed possible events, which could occur during the upcoming celebrations of Newroz (Spring Festival). The same issue also contained an interview by the Kurdish News Agency with a representative of the National Liberation Front of Kurdistan, the political wing of the Kurdistan Workers' Party. Both organisations were illegal under Turkish law. On 27 September 1993, the Istanbul National Security Court found the applicant guilty in his capacity as the owner of the review of disseminating propaganda against the indivisibility of the State. He was fined TRL 83,333,333.

Comm found by majority (30–2) V 10, (31–1) V 6(1).

Court found by majority (16–1) V 10, unanimously dismissed the Government's preliminary objection under 6(1), by majority (16–1) V 6(1).

Judges: Mr L Wildhaber (declaration), President, Mrs E Palm (jc), Mr A Pastor Ridruejo, Mr G Bonello (c), Mr J Makarczyk, Mr P Kûris, Mr J-P Costa, Mrs F Tulkens (jc), Mrs V Stráznická, Mr M Fischbach (jc), Mr V Butkevych, Mr J Casadevall (jc), Mrs HS Greve (jc), Mr AB Baka, Mr R Maruste, Mr K Traja, Mr F Gölcüklü (d), ad hoc judge.

Scope of the case (*Sürek (No 1)*): the applicant's complaint of the unreasonableness of the length of the criminal proceedings had been declared inadmissible by the Commission and could not therefore be considered to be within the scope of the case before the Court.

A 10: there had been an interference with the applicants' right to freedom of expression on account of their conviction and sentence. The convictions were based on the Prevention of Terrorism Act 1991 and prescribed by law. The measures taken against the applicants could be said to have been in furtherance of certain of the aims of the protection of national security and territorial integrity and the prevention of disorder and crime.

In *Sürek (No 1)*, the words used contained a clear intention to stigmatise the other side to the conflict. The impugned letters amounted to an appeal to bloody revenge by stirring up base emotions and hardening already embedded prejudices which had manifested themselves in deadly violence. Furthermore, it was to be noted that the letters were published in the context of the security situation in south-east Turkey. In such a context the content of the letters had to be seen as capable of incitement to further violence in the region by instilling a deep-seated and irrational hatred against those depicted as responsible for the alleged atrocities. In *Sürek (No 3)*, the nature of the article and the context in which it was published had to be seen as capable of incitement to further violence in the region. The reasons given by the authorities for the applicant's conviction with their emphasis on the destruction of the territorial integrity of the State were both relevant and sufficient to ground an interference with the applicant's right to freedom of expression. The mere fact that information or ideas offended, shocked or disturbed did not suffice to justify that. What was in issue in the instant case, however, was hate speech and the glorification of violence. Although the applicant did not personally associate himself with the views contained in the letters, he nevertheless provided their writers with an outlet for stirring up violence and hatred. He was an owner and as such had the power to shape the editorial direction of the review. For that reason, he was vicariously subject to the 'duties and responsibilities' which the review's editorial and journalistic staff undertook in the collection and dissemination of information to the public and which assumed an even greater importance in situations of conflict and tension. Therefore the penalty imposed on the applicant as the owner of the review could reasonably be regarded as answering a pressing social need and the reasons adduced by the authorities for the applicant's conviction were relevant and sufficient. The applicant first received a relatively modest fine which was later halved. The nature and severity of the penalty imposed were factors to be taken into account when assessing the proportionality of the interference. Having regard to the margin of appreciation which national authorities had in such a case, the interference at issue was proportionate to the legitimate aims pursued. There had consequently been no breach of A 10 in the circumstances of the case.

In *Sürek (No 2)*, the wording of the statements clearly implied serious misconduct on the part of the police and gendarme officers in question. Although the statements were not presented in a manner which could be regarded as incitement to violence against the officers concerned or the authorities, they were capable of exposing the officers to strong public contempt. The news report was published in the context of the security situation in south-east Turkey. Therefore the applicant's conviction and sentence were supported by reasons which were relevant for the purposes of the necessity test under A 10(2). With regard to whether the reasons relied on could also be considered sufficient, the contested interference related to journalistic reporting of statements made by certain politicians to the press concerning their visit to an area of Turkey where tensions had occurred. Assuming that the assertions were true, in view of the seriousness of the misconduct in question, the public had a legitimate interest in knowing not only the nature of the conduct but also the identity of the officers. However, the defences of truth and public interest could not have been pleaded under the relevant Turkish law. The press declaration on which the news report was based had already been reported in other newspapers and the incriminated news coverage added nothing to those reports; the information was already in the public domain. Thus, the interest in protecting the identity of the officers concerned had been substantially diminished and the potential damage which the restriction was aimed at preventing had already been done. The conviction and sentence were capable of discouraging the contribution of the press to open discussion on matters of public concern. Therefore the objective of the Government in protecting the officers in question against terrorist attack was not sufficient to justify the restrictions placed on the applicant's right to freedom of expression under A 10 of the Convention. In the absence of a fair balance between the interests in protecting the freedom of the press and those in protecting the identity of the public officials in question, the interference complained of was disproportionate to the legitimate aims pursued. There had therefore been a breach of A 10 in the case of *Sürek (No 2)*.

In *Sürek (No 4)*, the incriminated news commentary could be interpreted as describing an

awakening of Kurdish sentiment but was not an appeal to violence. The interview contained hard-hitting criticism of the Turkish authorities but that was more a reflection of the hardened attitude of one side to the conflict, rather than a call to violence. The Court had regard to the sensitivities in the region. However, the domestic authorities failed to have sufficient regard to the public's right to be informed of a different perspective on the situation in south-east Turkey, irrespective of how unpalatable that perspective may be for them. The reasons given by the Istanbul National Security Court for convicting and sentencing the applicant, although relevant, could not be considered sufficient to justify the interference with his right to freedom of expression. The nature and severity of the penalty imposed were factors to be taken into account when assessing the proportionality of the interference. The conviction and sentencing of the applicant were disproportionate to the aims pursued and therefore not necessary in a democratic society. There had accordingly been a violation of A 10.

Preliminary objection in *Sürek (Nos 2 and 4)*: the Government did not raise the objection of non-exhaustion regarding A 6 before the Commission and was therefore estopped from raising their objection before the Court.

A 6(1): the Court recalled its previous case-law in which it had found that applicant's fears as to the Istanbul National Security Court's lack of independence and impartiality could be regarded as objectively justified. The proceedings in the Court of Cassation were not able to dispel those fears since that court did not have full jurisdiction. Therefore there had been a breach of A 6(1).

Sürek (No 1): finding of a violation of A 6(1) constituted sufficient just satisfaction for the non-pecuniary damage alleged by the applicant. Costs and expenses (FF 10,000).

Sürek (No 2): pecuniary damage (FF 13,000), non-pecuniary damage (FF 30,000), costs and expenses (FF 15,000).

Sürek (No 3): finding of a violation of A 6(1) constituted just satisfaction for the non-pecuniary damage alleged by the applicant. Costs and expenses (FF 15,000).

Sürek (No 4): pecuniary damage (FF 3,000), non-pecuniary damage (FF 30,000), costs and expenses (FF 15,000).

Cited in one or more of the judgments: Aytekin v TR (23.9.1998), Castells v E (23.4.1992), Çiraklar v TR (28.10.1998), Fressoz and Roire v F (21.1.1999), Incal v TR (9.6.1998), Janowski v PL (21.1.1999), Jersild v DK (23.9.1994), Lingens v A (8.7.1986), Nikolova v BG (25.3.1999), Observer and Guardian and the Sunday Times (No 2) v UK (26.11.1991), Weber v CH (22.5.1990), Wingrove v UK (25.11.1996), Zana v TR (25.11.1997).

Sürek and Özdemir v Turkey 99/37

[Applications lodged 25.2.1994, 4.5.1994; Commission report 13.1.1998; Court Judgment 8.7.1999]

Mr Kamil Tekin Sürek was the major shareholder in a Turkish company which owned a weekly review entitled *The Truth of News and Comments* published in Istanbul. Mr Yücel Özdemir was the editor-in-chief of the review. In the 31 May 1992 and 7 June 1992 issues of the review, an interview with a leader of the Kurdistan Workers' Party (PKK), an illegal organisation, was published in two parts. In the edition of 31 May 1992 a joint declaration by four socialist organisations was published. Copies of the review were seized and the applicants were arrested and charged. On 27 May 1993 the Istanbul National Security Court found the applicants guilty of disseminating propaganda against the indivisibility of the State and sentenced the first applicant to fines totalling TRL 300,000,000 and the second applicant to six months' imprisonment fines totalling TRL 150,000,000. The Court of Cassation dismissed their appeals. They complained that their convictions resulting from the publication of material in his periodical unjustifiably interfered with their right to freedom of expression and that they had not received a fair hearing before an independent and impartial tribunal. The second applicant also alleged that, contrary to A 18, the restrictions imposed on his right to freedom of expression were inconsistent with the legitimate aims set out in A 10(2).

Comm found by majority (17–15) V 10, unanimously no separate issue regarding second applicant's complaint under A 18, by majority (31–1) V 6(1).

Court found by majority (11–6) V 10, unanimously not necessary to examine the second applicant's complaint under A 18, unanimously dismissed the Government's preliminary objection under A 6(1), by majority (16–1) V 6(1).

Judges: Mr L Wildhaber (declaration/jpd), President, Mrs E Palm (jc), Mr A Pastor Ridruejo, Mr G Bonello (c), Mr J Makarczyk, Mr P Kûris (jpd), Mr J-P Costa, Mrs F Tulkens (jc), Mrs V Stráznická (jpd), Mr M Fischbach (jc), Mr V Butkevych, Mr J Casadevall (jc), Mrs HS Greve (jc), Mr AB Baka, Mr R Maruste, Mr K Traja, Mr F Gölcüklü (d), ad hoc judge.

There had been an interference with the applicants' right to freedom of expression on account of their conviction and sentence. The convictions were based on the Prevention of Terrorism Act 1991 and prescribed by law. The measures taken against the applicants could be said to have been in furtherance of certain of the aims of the protection of national security and territorial integrity and the prevention of disorder and crime. The fact that the impugned interviews were given by a leading member of a proscribed organisation could not in itself justify an interference with the applicants' right to freedom of expression; equally so the fact that the interviews contained hard-hitting criticism of official policy and communicated a one-sided view of the origin of and responsibility for the disturbances in south-east Turkey. While it was clear from the words used in the interviews that the message was one of intransigence and a refusal to compromise with the authorities as long as the objectives of the PKK had not been secured, the texts taken as a whole could not be considered to incite to violence or hatred. The Court had regard to the sensitivity of the region. However, it appeared that the domestic authorities in the instant case failed to have sufficient regard to the public's right to be informed of a different perspective on the situation in south-east Turkey, irrespective of how unpalatable that perspective may be for them. The reasons given by the Istanbul National Security Court for convicting and sentencing the applicants, although relevant, could not be considered sufficient for justifying the interferences with their right to freedom of expression. The nature and severity of the penalties imposed were factors to be taken into account when assessing the proportionality of the interference. The duties and responsibilities which accompanied the exercise of the right to freedom of expression by media professionals assumed special significance in situations of conflict and tension. Particular caution was called for when consideration was being given to the publication of the views of representatives of organisations which resorted to violence against the State lest the media become a vehicle for the dissemination of hate speech and the promotion of violence. At the same time, where such views could not be categorised as such, Contracting States could not with reference to the protection of territorial integrity or national security or the prevention of crime or disorder restrict the right of the public to be informed of them by bringing the weight of the criminal law to bear on the media. Therefore the conviction and sentencing of the applicants were disproportionate to the aims pursued and therefore not necessary in a democratic society. There had accordingly been a violation of A 10.

The second applicant did not pursue the complaint under A 18 in the proceedings before the Court which did not propose to examine the complaint of its own motion.

The Government did not raise the objection of non-exhaustion regarding A 6 before the Commission and were therefore estopped from raising their objection before the Court.

The Court recalled its previous case-law in which it had found that applicant's fears as to the Istanbul National Security Court's lack of independence and impartiality could be regarded as objectively justified. The proceedings in the Court of Cassation were not able to dispel those fears since that court did not have full jurisdiction. Therefore there had been a breach of A 6(1).

Pecuniary damage (FF 8,000 to Mr Sürek), non-pecuniary damage (FF 30,000 to each applicant), costs and expenses (FF 15,000 to each applicant).

Cited: Çiraklar v TR (28.10.1998), Fressoz and Roire v F (21.1.1999), Incal v TR (9.6.1998), Lingens v A (8.7.1986), Nikolova v BG (25.3.1999), Wingrove v UK (25.11.1996), Zana v TR (25.11.1997).

Süßmann v Germany (1998) 25 EHRR 64 96/33

[Application lodged 21.5.1992; Commission report 12.4.1995; Court Judgment 16.9.1996]

Mr Gerhard Süßmann worked as a physicist in research institutes whose remuneration and pension system was the same as that of the civil service. He retired in 1980. Following amendment to the Supplementary Pensions Fund which administered the supplementary old-age pensions scheme, the Federal Court gave judgment in a series of test cases. The applicant appealed to the Arbitration Tribunal of the Supplementary Pensions Fund, challenging, *inter alia*, the legality of the amendments made to the rules governing the pension scheme. He complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously A 6(1) applicable, by majority (14–6) NV 6(1).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr L-E Pettiti (jpd), Mr R Macdonald, Mr A Spielmann, Mr N Valticos, Mrs E Palm, Mr I Foighel (pd), Mr R Pekkanen, Sir John Freeland, Mr AB Baka, Mr MA Lopes Rocha, Mr G Mifsud Bonnici (pd), Mr J Makarczyk, Mr D Gotchev, Mr B Repik, Mr P Jambrek (pd), Mr K Jungwiert, Mr U Lôhmus (jpd), Mr J Casadevall (pd).

The scope of the case was delimited by the Commission's decision on admissibility, the Court had no jurisdiction to revive issues declared inadmissible. Nor could the Court take cognisance of matters not raised before the Commission.

The Court recalled its case-law. The relevant test in determining whether Constitutional Court proceedings may be taken into account in assessing the reasonableness of the length of proceedings was whether the result of the Constitutional Court proceedings was capable of affecting the outcome of the dispute before the ordinary courts. The Court reviewed the jurisdiction of the Federal Constitutional Court. The dispute as to the amount of the applicant's pension entitlement was of a pecuniary nature and concerned a civil right within the meaning of A 6. The Federal Constitutional Court proceedings were directly decisive for a dispute over the applicant's civil right. A 6(1) was applicable.

The Court was concerned only with the length of the proceedings before the Federal Constitutional Court. The relevant period began on 11 July 1988, the date on which the applicant appealed to the Federal Constitutional Court, and ended on 5 December 1991, the date on which the decision was notified to him. It therefore lasted three years, four months and three weeks. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the complexity of the case, the conduct of the parties and of the authorities, and the importance of what was at stake for the applicant in the litigation. The case was one of some complexity. The applicant's conduct did not cause any delay in the proceedings. A 6(1) imposed on the Contracting States the duty to organise their judicial systems in such a way that their courts could meet each of its requirements, including the obligation to hear cases within a reasonable time. While A 6 required that judicial proceedings be expeditious, it also lay emphasis on the more general principle of the proper administration of justice. In view of the importance of the decision taken by the German Federal Constitutional Court in the present case, the impact of which extended far beyond the individual application before it, that principle was of special relevance here. Bearing in mind the unique political context of German reunification and the serious social implications of the disputes which concerned termination of employment contracts, the Federal Constitutional Court was entitled to decide that it should give priority to those cases. The applicant's supplementary pension had been reduced and, in view of his age, the proceedings before the Federal Constitutional Court were of undeniable importance for him. However, the amendments to the supplementary pensions scheme did not cause prejudice to him to such an extent as to impose on the court concerned a duty to deal with his case as a matter of very great urgency, as was true of certain types of litigation. Therefore a reasonable time was not exceeded and there had accordingly been no breach of A 6(1) on this point.

Cited: A and Others v DK (8.2.1996), Bock v D (29.3.1989), Boddaert v B (12.10.1992), Deumeland v D (29.5.1986), Karlheinz Schmidt v D (18.7.1994), Kraska v CH (19.4.1993), Leutscher v NL (26.3.1996), Massa v I (24.8.1993), Muti v I (23.3.1994), Phocas v F (23.4.1996), Ruiz-Mateos v E (23.6.1993), Schuler-Zgraggen v CH (24.6.1993).

Sutter v Switzerland (1984) 6 EHRR 272 84/2

[Application lodged 17.4.1978; Commission report 10.10.1981; Court Judgment 22.2.1984]

Mr Peter Sutter was a student. During refresher courses organised in 1974 and 1975 as part of ordinary military obligations, he was subjected to five and seven days' strict arrest for refusing to comply with the service regulations relating to haircuts. In November 1976, following further refusal, he was charged with repeated insubordination and failure to observe service regulations. On 16 May 1977, at the close of a public hearing, Divisional Court delivered in public a judgment sentencing the applicant to 10 days' imprisonment for the two offences. He appealed to the Military Court of Cassation. He complained that the Military Court of Cassation had dismissed his appeal without previously holding a public hearing and had not pronounced its judgment of 21 October 1977 publicly.

Comm found by majority (10–8) NV 6(1).

Court found unanimously NV 6(1) regarding the absence of public hearings before the Military Court of Cassation, by majority (11–4) NV 6(1) regarding the absence of public pronouncement of that Court's judgment.

Judges: Mr R Ryssdal, President, Mr J Cremona (d), Mr Thór Vilhjálmsson, Mr W Ganshof van der Meersch (d/supplementary observations), Mrs D Bindschedler-Robert (jc), Mr L Liesch, Mr F Gölcüklü, Mr F Matscher (jc), Mr J Pinheiro Farinha, Mr L-E Pettiti, Mr B Walsh (d), Mr R Macdonald (d), Mr C Russo, Mr R Bernhardt (c), Mr J Gersing.

The public character of proceedings before the judicial bodies referred to in A 6(1) protected litigants against the administration of justice in secret with no public scrutiny; it was also one of the means whereby confidence in the courts, superior and inferior, could be maintained. By rendering the administration of justice visible, publicity contributed to the achievement of the aim of A 6(1), namely a fair trial. Account had to be taken of the entirety of the proceedings conducted in the domestic legal order; what had to be determined was whether, in the present instance, the proceedings before the Military Court of Cassation had, like those before the Divisional Court, to be accompanied by each of the guarantees laid down in A 6(1). The proceedings before the Military Court of Cassation were conducted in writing. The court received only a memorial filed by the applicant, since the grand juge, the Military Prosecutor and the Chief Military Prosecutor had confined themselves, without giving reasons, to submitting that the appeal should be dismissed. The Court of Cassation did not rule on the merits of the case, as regards either the question of guilt or the sanction imposed by the Divisional Court. It dismissed the applicant's appeal in a judgment that was devoted solely to the interpretation of the legal provisions concerned. There was therefore nothing to suggest that his trial before the Military Court of Cassation was less fair than his trial before the Divisional Court, the latter trial having fulfilled the requirements of A 6. In the particular circumstances of the case, oral argument during a public hearing before the Court of Cassation would not have provided any further guarantee of the fundamental principles underlying A 6. Accordingly, the absence of public hearings at the cassation stage did not infringe A 6(1).

The judgment delivered on 21 October 1977 by the Military Court of Cassation was served on the parties but not pronounced in open court. The form of publicity given to the judgment under the domestic law of the respondent State had to be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of A 6(1). Anyone who could establish an interest could consult or obtain a copy of the full text of judgments of the Military Court of Cassation; important judgments, were subsequently published in an official collection. Its jurisprudence was therefore to a certain extent open to public scrutiny. Having regard to the issues dealt with by the Military Court of Cassation in the instant case and to its decision – which made

the judgment of the Divisional Court final and changed nothing in respect of its consequences for the applicant – a literal interpretation of the terms of A 6(1), concerning pronouncement of the judgment, appeared to be too rigid and not necessary for achieving the aims of A 6. The Convention did not require the reading out aloud of the judgment delivered at the final stage of the proceedings.

Cited: Axen v D (8.12.1983), Delcourt v B (17.1.1970), Pretto and Others v I (8.12.1983).

Swedish Engine Drivers' Union (1979–80) 1 EHRR 617 76/1

[Application lodged 6.7.1972; Commission report 27.5.1974; Court Judgment 6.2.1976]

The Swedish Engine Drivers' Union was an independent trade union open to certain employees of the Swedish State Railways. Its membership comprised between 20% to 25% of the eligible railway personnel, the majority of whom – 75% to 80% – belonged to the Railwaymen's Section of the State Employees' Union, one of the three principal federations of Swedish State employees. It complained that the Swedish National Collective Bargaining Office concluded collective agreements on terms of employment and conditions of work only with the said federations, thus resulting in disadvantages of the applicant union.

Comm found unanimously NV 11, NV 14+11, NV 13.

Court found unanimously NV 11, NV 14+11, NV 13.

Judges: Mr G Balladore Pallieri, President, Mr H Mosler, Mr J Cremona, Mr G Wiarda, Mr P O'Donoghue, Mrs H Pedersen, Mr S Petren.

The Convention nowhere made an express distinction between the functions of a Contracting State as holder of public power and its responsibilities as employer. A 11 was accordingly binding upon the State as employer, whether the latter's relations with its employees were governed by public or private law. While A 11(1) presented trade union freedom as one form or a special aspect of freedom of association, the Article did not secure any particular treatment of trade unions, or their members, by the State, such as the right that the State should conclude any given collective agreement with them. It was not an element necessarily inherent in a right guaranteed by the Convention. The phrase 'for the protection of his interests' showed that the Convention safeguarded freedom to protect the occupational interests of trade union members by trade union action, the conduct and development of which the Contracting States had to both permit and make possible. It followed that the members of a trade union had a right, in order to protect their interests, that the trade union should be heard. While the concluding of collective agreements was one of those means, there were others. The applicant union could engage in various kinds of activity vis-à-vis the Government. The employees in question retained the freedom, as of right, to join or remain members of the Union. There was no infringement of a right guaranteed by A 11(1) and therefore the Court was not called upon to have regard to A 11(2).

The applicant union complains in the first place of the Office declining to enter into collective agreements with it despite frequently doing so with the large trade union federations. That policy on the part of the Office unquestionably resulted in several inequalities of treatment to the prejudice of the independent unions such as the applicant. The explanation of the policy was in the high degree of centralisation achieved within the Swedish trade union movement. In consequence of that state of affairs, the Office preferred as a general rule to sign collective agreements only with the most representative organisations and not to be faced with an excessive number of negotiating partners, in order to avoid dissipating its efforts and to arrive more easily at a concrete result. That aim was legitimate and there was no reason to think that the Swedish State had other and ill-intentioned designs in the matter. Furthermore, the principle of proportionality was not offended.

Swedish legislation offered the applicant union a remedy of which, moreover, the union had availed itself, namely the institution of proceedings before the Labour Court. The fact that the applicant's claim was rejected could not alone establish that the remedy was ineffective. The Labour Court carefully examined the complaints brought before it in the light of the legislation in

force and not without taking into account Sweden's international undertakings. In addition, neither A 13 nor the Convention in general lay down for the Contracting States any given manner for ensuring within their internal law the effective implementation of any of the provisions of the Convention.

Cited: 'Belgian Linguistic' case (23.7.1968), De Wilde, Ooms and Versyp v B (18.6.1971), National Union of Belgian Police (27.10.1975).

Szücs v Austria 97/86

[Application lodged 24.8.1992; Commission report 3.9.1996; Court Judgment 24.11.1997]

Mr Zoltan Szücs, a Hungarian national, was arrested on 25 February 1991 as he was entering Austria on suspicion of having made fraudulent use of another person's credit card when making purchases in various shops in Austria. He was detained pending trial. On 11 May 1991 proceedings were discontinued in the light of a graphologist's finding that it was unlikely that the signatures on the payment slips for the purchases made with the stolen credit card were in the applicant's hand. He was released. On 6 May 1991 the applicant sought compensation from the State for the pecuniary damage sustained on account of his detention. The Regional Court refused his compensation claim and on 27 May 1991 he appealed against that decision to the Vienna Court of Appeal. On 9 January 1992 the Court of Appeal dismissed his claim. He complained that the Austrian courts had not pronounced judgment publicly.

Comm found by majority (27–2) V 6(1).

Court found unanimously V 6(1) on account of the failure to pronounce the judgments in those proceedings publicly.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr F Matscher (c), Mr L-E Pettiti, Mr A Spielmann, Mr N Valticos, Mrs E Palm, Mr L Wildhaber, Mr B Repik.

The applicant had the right to be compensated for his detention pending trial, provided that the statutory requirements had been satisfied. There had therefore been a dispute over a right. The outcome of the proceedings in the relevant criminal courts were directly decisive for his right. The applicant's right to compensation was a civil one. Accordingly, A 6(1) was applicable to the proceedings in issue.

The Government did not raise the issue of the reservation in their memorial to the Court and were therefore estopped from raising the question whether the complaint was covered by the relevant reservation and it was unnecessary for the Court to consider it of its own motion.

The holding of court hearings in public constituted a fundamental principle enshrined in A 6(1). That public character protected litigants against the administration of justice in secret with no public scrutiny; it was also one of the means whereby confidence in the courts could be maintained. A third party could be given leave to inspect the files and obtain copies of the judgments they contained if he showed a legitimate interest. Such leave was, however, granted only at the discretion of the relevant courts, so that the full texts of the judgments were not made available to everyone. In Austria the possibility of obtaining the full texts of judgments from the court registry existed only in respect of judgments of the Supreme Court, the Administrative Court and the Constitutional Court and not in respect of the judgments and decisions of courts of appeal or first instance. The Government's argument as to maintaining the presumption of the applicant's innocence could not succeed. It was not necessary for the relevant courts, in the course of proceedings brought under the Compensation (Criminal Proceedings) Act, to make statements which would breach the principle of presumption of innocence. However, it might be of importance to the person concerned that the fact that suspicion concerning him has been dispelled should be brought to the knowledge of the public. That being so, in view of the fact that no judicial decision in the two sets of proceedings complained of was pronounced publicly and that publicity was not sufficiently ensured by other means, there had been a breach of A 6(1) in this respect.

Present judgment constituted sufficient just satisfaction for any non-pecuniary damage sustained. Costs and expenses (ATS 98,501.50).

Cited: Pretto and Others v I (8.12.1983), Axen v D (8.12.1983), Sutter v CH (22.2.1984), Editions Périscope v F (26.3.1992), Diennet v F (26.9.1995), Masson and Van Zon v NL (28.9.1995), Nideröst-Huber v CH (18.2.1997), Georgiadis v GR (29.5.1997), Werner v A (24.11.1997).

T

T v Italy 92/63

[Application lodged 1.4.1988; Commission report 4.7.1991; Court Judgment 12.10.1992]

On 19 May 1982, Mr T's daughter, aged 14, lodged a complaint with the Genoa public prosecutor's office, which opened an investigation concerning T in connection with an alleged rape. On 15 February 1983 it sent to him in Jeddah, Saudi Arabia, a 'judicial notification' advising him that proceedings had been instituted and inviting him to provide an address for service in Italy. The applicant claimed that he did not receive the notification in question because on 13 February he had left Jeddah, where he had worked for a time, for Khartoum, Sudan. He had, moreover, visited the Italian Embassy there to report his change of address. The investigating judge declared the applicant untraceable and designated a lawyer to act for him. Thereafter all the documents which were to be notified to the applicant were lodged with the registry, his lawyer being informed thereof on each occasion. On 9 October 1984 the Genoa District Court convicted Mr T *in absentia* and sentenced him to seven years' imprisonment, to be stripped of his civic rights and to accessory penalties. The officially appointed lawyer appealed. On 1 October 1986 the Genoa Court of Appeal upheld the contested judgment. On 4 March 1987 the Genoa public prosecutor's office issued a warrant for Mr T's arrest. On 20 August he was arrested in Copenhagen, on the premises of the Italian Embassy, and extradited on 29 October. He lodged an objection to the execution of the warrant which was dismissed by the Genoa District Court on 17 December. A further appeal to the Court of Cassation was rejected. He complained of his trial *in absentia*.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr B Walsh, Mr C Russo, Mr J De Meyer, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou, Mr F Bigi, Mr AB Baka.

The requirements of A 6(3) were specific aspects of the right to a fair trial guaranteed under A 6(1) and therefore the complaint would be examined from the point of view of A 6(1). Although not expressly mentioned in A 6(1), the object and purpose of the article taken as a whole showed that a person charged with a criminal offence was entitled to take part in the hearing. Mr T denied having received the 'judicial notification' of 15 February 1983. At the time he had already left Saudi Arabia to take up residence in Khartoum. He had learned indirectly that criminal proceedings had been instituted against him. To inform someone of a prosecution brought against him was, however, a legal act of such importance that it had to be carried out in accordance with procedural and substantive requirements capable of guaranteeing the effective exercise of the accused's rights. Vague and informal knowledge could not suffice. During the investigation and then in the course of the trial proceedings, the police made fresh inquiries in order to discover Mr T's whereabouts, but those efforts were limited to the latter's address in Italy. Yet from the outset it was clear that the applicant was living abroad; indeed, he had had his passport renewed by the Italian consulate in Khartoum on 8 February 1984. Notwithstanding that, the Italian judicial authorities declared him untraceable and then convicted and sentenced him without having ordered more thorough investigations. It was difficult to reconcile that situation with the diligence which the Contracting States had to exercise to ensure the effective enjoyment of the rights guaranteed under A 6. Mr T did not receive a fair trial. As the legislation in force at the time did not afford him any means of redress in that respect, there was a violation of A 6(1).

Present judgment constituted just satisfaction for any non-pecuniary damage.

Cited: Brozicek v I (19.12.1989), Colozza v I (12.2.1985), FCB v I (28.8.1991).

T v United Kingdom 99/121

[Application lodged 20.5.1994; Commission report 4.12.1998; Court Judgment 16.12.1999]

The applicant was born in August 1982. On 12 February 1993, when he was 10 years old, he and another 10-year-old boy, V had played truant from school and abducted a two-year-old boy from a

shopping precinct, taken him on a journey of over two miles and then battered him to death and left him on a railway line to be run over. The applicant and V were arrested in February 1993 and detained pending trial. Their trial took place over three weeks in November 1993, in public, at an adult Crown Court before a judge and 12 jurors. Following their conviction for murder, the judge sentenced them, as required by law, to detention during Her Majesty's pleasure. There had to be set a tariff to satisfy the requirements of retribution and deterrence. The trial judge set the tariff at 8 years. The Home Secretary set the tariff at 15 years in respect of each applicant. That decision was quashed in judicial review proceedings by the House of Lords on 12 June 1997. The applicant complained that, in view of his young age, his trial in public in an adult Crown Court and the punitive nature of his sentence constituted violations of his right not to be subjected to inhuman or degrading treatment or punishment as guaranteed under A 3. He further complained that he had been denied a fair trial in breach of A 6 of the Convention, that he had suffered discrimination in breach of A 14 in that a child aged younger than 10 at the time of the alleged offence would not have been held criminally responsible, that the sentence imposed on him of detention during Her Majesty's pleasure amounted to a breach of his right to liberty under A 5, and the fact that a government minister, rather than a judge, was responsible for setting the tariff violated his rights under A 6. Finally, he complained under A 5(4) of the Convention that he had not had the opportunity to have the continuing lawfulness of his detention examined by a judicial body, such as the Parole Board.

Comm found by majority (17–2) NV 3 in respect of the trial, (14–5) V 6 in respect of the trial, (15–4) no separate issue under 14 in respect of the trial, (17–2) NV 3 or 5(1) in respect of the sentence, (18–1) V 6 in respect of the fixing of the sentence, (18–1) V 5(4).

Court unanimously dismissed the Government's preliminary objection, found by majority (12–5) NV 3 in respect of trial, (16–1) V 6(1) in respect of the trial, unanimously not necessary to examine 6(1)+14, (10–7) NV 3 in respect of sentence, unanimously NV 5(1), V 6(1) in respect of the setting of the applicant's tariff, V 5(4).

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr CL Rozakis (pd), Mr A Pastor Ridruejo (jpd), Mr G Ress (jpd), Mr J Makarczyk (jpd), Mr P Kûris, Mr R Türmen, Mr J-P Costa (pd), Mrs F Tulkens (jpd), Mr C Bîrsan, Mr P Lorenzen, Mr M Fischbach, Mr V Butkevych (jpd), Mr J Casadevall, Mr AB Baka (pd), Lord Reed (c), ad hoc judge.

The Government had not discharged the burden upon them of proving the availability to the applicant of a remedy capable of providing redress in respect of his Convention complaints and offering reasonable prospects of success. Therefore the Government's preliminary objection of non-exhaustion was dismissed.

The attribution of criminal responsibility to the applicants in respect of acts committed at the age of 10 did not in itself give rise to a breach of A 3 of the Convention. The criminal proceedings took place over three weeks in public in an adult Crown Court with attendant formality. The Court was not convinced that the particular features of the trial process as applied to the applicant caused, to a significant degree, suffering going beyond that which would inevitably have been engendered by any attempt by the authorities to deal with the applicant following the commission by him of the offence in question. The applicant's trial did not give rise to a violation of A 3 of the Convention.

A 6: it was essential that a child charged with an offence was dealt with in a manner which took full account of his age, level of maturity and intellectual and emotional capacities, and that steps were taken to promote his ability to understand and participate in the proceedings. In respect of a young child charged with a grave offence attracting high levels of media and public interest, it would be necessary to conduct the hearing in such a way as to reduce as far as possible his or her feelings of intimidation and inhibition, or, where appropriate in view of the age and other characteristics of the child and the circumstances surrounding the criminal proceedings, to provide a modified procedure of selected attendance rights and judicious reporting. The trial took place over three weeks in public in the Crown Court. Special measures were taken in view of the applicant's young age and to promote his understanding of the proceedings: for example, he had

the trial procedure explained to him and was taken to see the courtroom in advance, and the hearing times were shortened so as not to tire the defendants excessively. Nonetheless, the formality and ritual of the Crown Court must at times have seemed incomprehensible and intimidating for a child of 11, and there was evidence that certain of the modifications to the courtroom, in particular the raised dock, which was designed to enable the defendants to see what was going on, had the effect of increasing the applicant's sense of discomfort during the trial, since he felt exposed to the scrutiny of the press and public. There was psychiatric evidence that the applicant was suffering from post-traumatic effects and found it very difficult and distressing to think or talk about the events in question, to concentrate during the trial or discuss the offence with his lawyers. In such circumstances it was not sufficient for the purposes of A 6(1) that the applicant was represented by skilled and experienced lawyers. Although his legal representatives were seated, as the Government put it, 'within whispering distance', it was highly unlikely that the applicant would have felt sufficiently uninhibited, in the tense courtroom and under public scrutiny, to have consulted with them during the trial or, indeed, that, given his immaturity and his disturbed emotional state, he would have been capable outside the courtroom of co-operating with his lawyers and giving them information for the purposes of his defence. The applicant was therefore unable to participate effectively in the criminal proceedings against him and was, in consequence, denied a fair hearing in breach of A 6(1).

The applicant did not maintain his complaint under 14+6 before the Court, which saw no reason of its own motion to examine it.

A 3 sentence: States had a duty under the Convention to take measures for the protection of the public from violent crime. The punitive element inherent in the tariff approach did not give rise to a breach of A 3 and the Convention did not prohibit States from subjecting a child or young person convicted of a serious crime to an indeterminate sentence allowing for the offender's continued detention or recall to detention following release where necessary for the protection of the public. Until a new tariff had been set, it was not possible to draw any conclusions regarding the length of punitive detention to be served by the applicant who had by now been detained for six years since his conviction in November 1993. In all the circumstances of the case including the applicant's age and his conditions of detention, a period of punitive detention of this length could not be said to amount to inhuman or degrading treatment. There had been no violation of A 3 in respect of the applicant's sentence.

The sentence of detention during Her Majesty's pleasure was lawful under English law and was imposed in accordance with a procedure prescribed by law. It could not be said that the applicant's detention was not in conformity with the purposes of the deprivation of liberty permitted by A 5(1)(a) so as to be arbitrary. There had been no violation of A 5(1).

A 6(1) covered the whole of the proceedings in issue, including appeal proceedings and the determination of sentence. The tariff was served to satisfy the requirements of retribution and deterrence, and thereafter it was legitimate to continue to detain the offender only if that appeared to be necessary for the protection of the public. Where a juvenile sentenced to detention during Her Majesty's pleasure was not perceived to be dangerous, the tariff represented the maximum period of detention which he could be required to serve. The fixing of the tariff amounted to a sentencing exercise and, accordingly, A 6(1) was applicable to the procedure. A 6(1) guaranteed, *inter alia*, a fair hearing by an independent and impartial tribunal. Independent in this context meant independent of the parties to the case and also of the executive. The Home Secretary, who set the applicant's tariff, was not independent of the executive, and it followed that there had been a violation of A 6(1).

As the sentence of detention during Her Majesty's pleasure was indeterminate and the tariff was initially set by the Home Secretary rather than the sentencing judge, the judicial supervision required by A 5(4) was not incorporated in the trial court's sentence. The Home Secretary's decision setting the tariff was quashed by the House of Lords on 12 June 1997 and no new tariff had since been substituted. That failure to set a new tariff meant that the applicant's entitlement to access to a tribunal for periodic review of the continuing lawfulness of his detention remained

inchoate. It followed that the applicant has been deprived, since his conviction in November 1993, of the opportunity to have the lawfulness of his detention reviewed by a judicial body in accordance with A 5(4).

No claim for pecuniary or non-pecuniary damage.

Costs and expenses (GBP 18,000 less FF 29,255).

Cited: A v UK (23.9.1998), Akdivar and Others v TR (16.9.1996), Chahal v UK (15.11.1996), De Wilde, Ooms and Versyp v B (18.6.1971), Dudgeon v UK (22.10.1981), Eckle v D (15.7.1982), Hussain v UK (21.2.1996), Nortier v NL (24.8.1993), Osman v UK (28.10.1998), Ringeisen v A (16.7.1971), Soering v UK (7.7.1989), Steel and Others v UK (23.9.1998), Thynne, Wilson and Gunnell v UK (25.10.1990), Weeks v UK (2.3.1987), Wynne v UK (18.7.1994), X, Y and Z v UK (22.4.1997).

TW v Malta (2000) 29 EHRR 185 99/19

[Application lodged 2.11.1994; Commission report 4.3.1998; Court Judgment 29.4.1999]

TW was a UK national residing in Malta, where he was a storekeeper. On Thursday 6 October 1994 he was arrested by the police. He was brought before a magistrate the following day. He pleaded not guilty to sexual offences of defiling his minor daughter and committing acts of violent assault on her. He applied for bail. His application was immediately sent to the Attorney-General, who opposed it. Another magistrate examined his bail application and refused it on 10 October 1994. On 20 October 1994 the second magistrate began hearing evidence and on 25 October 1994 he ordered the applicant's release on bail. On 8 May 1995 the Court of Magistrates convicted the applicant and gave him a two-year suspended prison sentence. On 8 January 1996 the Court of Criminal Appeal upheld the applicant's conviction. He complained that he had not been brought promptly before a judge who had the power to order his release, that there was no remedy whereby the lawfulness of his arrest or detention could be challenged speedily.

Commission found unanimously V 5(3), NV 5(4).

Court unanimously joined to the merits the Government's preliminary objection and dismissed it, found V 5(3) not necessary to examine A 5(4).

Judges; Mr L Wildhaber, President, Mrs E Palm, Mr A Pastor Ridruejo, Mr L Ferrari Bravo, Mr G Bonello (pd A 41), Mr J Makarczyk, Mr P Kûris, Mr R Tümen, Mr J-P Costa, Mrs F Tulkens (jpd A41) Mrs V Stráznická, Mr Fischbach, Mr V Butkevych, Mr J Casadevall (jpd A 41), Mrs HS Greve, Mr A Baka, Mrs S Botoucharova.

In so far as the Government's argument was that the applicant could have invoked particular sections of the Criminal Code, that was an argument going directly to the issue of compliance with that provision. Accordingly, the Government's preliminary objection of non-exhaustion was joined to the merits.

As the Court had pointed out on many occasions, A 5(3) provided persons arrested or detained on suspicion of having committed a criminal offence with a guarantee against any arbitrary or unjustified deprivation of liberty. The fact that an arrested person had access to a judicial authority was not sufficient to constitute compliance with the opening part of A 5(3). This provision enjoined the judicial officer before whom the arrested person appeared to review the circumstances militating for or against detention, to decide by reference to legal criteria whether there were reasons to justify detention, and to order release if there were no such reasons. To be in accordance with A 5(3), judicial control had to be prompt. It also had to be automatic, it could not be made to depend on a previous application by the detained person. Such a requirement would change the nature of the safeguard provided for under A 5(3), which was distinct from that in A 5(4), guaranteeing the right to institute proceedings to have the lawfulness of detention reviewed by a court. Prompt judicial review of detention was also an important safeguard against ill-treatment in custody. Judicial officers should themselves hear the detained person before taking the appropriate decision. The applicant was arrested on 6 October 1994 and was brought before the magistrate on 7 October 1994; that appearance could be regarded as prompt. The matters which the judicial officer had to examine went beyond just lawfulness; the review to establish whether the deprivation of the individual's liberty was justified had to be sufficiently wide to encompass the various

circumstances militating for or against detention. In this case, the evidence did not disclose that the magistrate had the power to conduct such a review of his or her own motion. Regarding the Government's argument that the applicant could have obtained a wider review by lodging an application under the Criminal Code, compliance with A 5(3) could not be ensured by making an A 5(4) remedy available. The review had to be automatic. It followed that the Government had not substantiated their preliminary objection that the applicant had not exhausted domestic remedies. Moreover, the applicant's appearance before the magistrate on 7 October 1994 was not capable of ensuring compliance with A 5(3) as the magistrate had no power to order his release. It followed that there had been a breach of that provision. The question of bail was a distinct and separate issue, which only came into play when the arrest and detention were lawful. In consequence, the Court did not have to address that issue for the purposes of its finding of a violation of A 5(3).

The parties had not addressed A 5(4) in the proceedings before the Court. That being so and having regard also to the conclusion under A 5(3), it was not necessary to examine the complaint under A 5(4).

Present judgment constituted just satisfaction for any non-pecuniary damage (by majority (14–3)). Costs and expenses (MTL 2,600).

Cited: Aksoy v TR (18.12.1996), Assenov v BG (28.10.1998), Brogan and Others v UK (29.11.1988), De Jong, Baljet and Van den Brink v NL (22.5.1984), Erdagöz v TR (22.10.1997), Kurt v TR (25.5.1998), Navarra v F (23.11.1993).

Taiuti v Italy 92/20

[Application lodged 23.5.1986; Commission report 5.12.1990; Court Judgment 27.2.1992]

Mr Renzo Taiuti instituted divorce proceedings before the Florence District Court on 1 June 1982. The parties were heard on 17 February 1988, after which judgment was reserved. The date of the Court's judgment had not been communicated, but the text was lodged with the court registry on 20 October 1988. The judgment became final on 1 December 1990. The applicant complained of the length of the civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 1 June 1982, when the applicant instituted divorce proceedings, and ended on 1 December 1990. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. There were delays on the part of the courts. The Government pleaded the backlog of cases in the District Court, but A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. Accordingly, the Court could not regard as reasonable the lapse of time in the present case, in particular as special diligence was required in cases concerning civil status and capacity. There had therefore been a violation of A 6(1).

Non-pecuniary damage (ITL 2,000,000), costs and expenses (ITL 3,327,500).

Cited: Bock v D (23.3.1989), Vocaturo v I (24.5.1991).

Tanrikulu v Turkey 99/39

[Application lodged 25.2.1994; Commission report 15.4.1998; Court Judgment 8.7.1999]

Mrs Selma Tanrikulu's husband, Dr Zeki Tanrikulu, was shot dead on 2 September 1993 on a road between the hospital and the Silvan police headquarters. The applicant heard the shots and rushed over from her apartment in the hospital grounds; she saw two men running away. The applicant and the Government put forward different versions of the events concerned. On 5 November the

public prosecutor issued a decision to the effect that he had no jurisdiction to investigate the matter and transferred the file to the prosecutor's office at the Diyarbakir State Security Court, where the case was still pending. The applicant complained that her husband had been killed either by State security forces or with their connivance and that the killing had not been adequately investigated by the authorities. In the course of the proceedings before the Commission the applicant further alleged that she had been hindered in the effective exercise of the right of individual petition as guaranteed by former A 25(1).

Comm found unanimously NV 2 on account of the killing of the applicant's husband itself or on account of its alleged discriminatory aspect, V 2 on account of the failure to carry out an effective investigation into the death of the applicant's husband, NV 3, not necessary to examine 6, V 13, NV 14, by majority (29–1) Turkey had failed to comply with its obligations under former 25.

Court unanimously dismissed the Government's preliminary objection, found NV 2 in respect of killing of applicant's husband, V 2 on account of the failure of the authorities of the respondent State to conduct an effective investigation not necessary to consider 2 regarding the alleged lack of protection in domestic law of the right to life, by majority (16–1) V 13, unanimously NV 14+2, by majority (16–1) respondent State had failed to comply with its obligations under former 25(1).

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr L Ferrari Bravo, Mr L Caflisch, Mr J-P Costa, Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach, Mr B Zupancic, Mrs N Vajic, Mr J Hedigan, Mrs W Thomassen, Mrs M Tsatsa-Nikolovska, Mr T Pantiru, Mr E Levits, Mr K Traja, Mr F Gölcüklü (pd), ad hoc judge.

As regards a civil action for redress for damage, a plaintiff in such an action had to identify the person believed to have committed the tort. In the instant case, however, it was still unknown who was responsible for the acts of which the applicant complained. With respect to an action in administrative law, a remedy indicated by the Government had to be sufficiently certain in practice as well as in theory and they had not been provided with any examples of persons having brought such an action in a situation comparable to the applicant's. Consequently, the applicant was not required to bring the civil and administrative proceedings in question and the preliminary objection concerning such proceedings was unfounded. The criminal law remedies raised issues closely linked to those raised in the complaints on the merits.

The Court accepted the Commission's establishment of the facts in the case. Although the Government had fallen short of their obligations under former A 28(1)(a) to furnish all necessary facilities to the Commission in its task of establishing the facts, there was no cause to depart from the Commission's conclusions regarding the complaint. Accordingly, the material in the case file did not enable the Court to conclude beyond reasonable doubt that Dr Zeki Tanrikulu was killed by security forces or with their connivance. It followed that no violation of A 2 had been established on that account.

The obligation to protect the right to life under A 2, read in conjunction with the State's general duty under A 1 of the Convention to secure to everyone within its jurisdiction the rights and freedoms defined in the Convention, required by implication that there should be some form of effective official investigation when individuals had been killed as a result of the use of force. It seemed doubtful that the investigation of the scene could have amounted to more than a superficial one in view of the limited time spent on it and the lack of photographs. There was no record of any attempt to retrieve the 11 missing bullets that passed through the body of the applicant's husband. There was lack of precision and detail on the sketch map drawn by one of the police officers and the whole of the investigation was characterised by inadequate and imprecise reporting of the steps that were taken. The Court expressed misgivings as to the limited amount of forensic information obtained from the post-mortem examination and considered it regrettable that no forensic specialist was involved and that no full autopsy was performed. The public prosecutor referred the investigation to the State Security Court suggesting that the killing constituted a terrorist offence, yet the evidence available to the public prosecutor at that time contained few indications of the manner in which the offence had been committed, and did not appear sufficient to conclude that terrorists must have been responsible. The applicant's statement was not taken until more than a year after the incident occurred and no statements taken from those members of the security forces who had been standing guard outside the security

directorate. The authorities failed to carry out an effective investigation into the circumstances surrounding Dr Zeki Tanrikulu's death. Moreover, the Court was not persuaded that the criminal law remedies nominally available to the applicant would have been capable of altering to any significant extent the course of the investigation that was made. That being so, the applicant must be regarded as having complied with the requirement to exhaust the relevant criminal law remedies. Accordingly, the remainder of the Government's preliminary objection relating to criminal proceedings was dismissed. There had been a violation of A 2.

In view of the finding of breach of A 2, it was not necessary to examine the complaint regarding an alleged lack of protection in domestic law of the right to life.

The authorities had an obligation to carry out an effective investigation into the circumstances of the killing of the applicant's husband. For the reasons set out under A 2, no effective criminal investigation could be considered to have been conducted in accordance with A 13, the requirements of which were broader than the obligation to investigate imposed by A 2. Consequently, there had been a violation of A 13.

The scope of the examination of the evidence undertaken in this case and the material in the file were not sufficient, even in the light of findings made in previous cases, to enable the Court to determine whether the authorities had adopted a practice of violating A 2 and 13.

The Court considered that it did not have before it any evidence substantiating the alleged breach of A 14.

It was of the utmost importance for the effective operation of the system of individual petition instituted by former A 25 that applicants or potential applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. In that context, 'pressure' included not only direct coercion and flagrant acts of intimidation, but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy. The applicant was questioned about the authenticity of the power of attorney which had been submitted in respect of her legal representation in the proceedings before the Commission. It was not appropriate for the authorities of a respondent government to enter into direct contact with an applicant on the pretext that 'forged documents have been submitted in other cases'. To proceed as the Government did in the present case could very well have been interpreted by the applicant as an attempt to intimidate her. According to the record of the applicant's interview, she was shown a power of attorney in the name of another person, even though the only power of attorney that the Government had been provided with was a copy of the power of attorney bearing the applicant's full name. The Government subsequently informed the Commission that the applicant had denied signing the power of attorney. A deliberate attempt had been made on the part of the authorities to cast doubt on the validity of the application and thereby on the credibility of the applicant. The actions of the authorities described above could not but be interpreted as a bid to try and frustrate the applicant's successful pursuance of her claims, thus constituting a negation of the very essence of the right of individual petition. The respondent State had failed to comply with its obligations under former A 25(1).

Non-pecuniary damage (unanimously GBP 15,000 to applicant and her children), costs and expenses (by majority (12–5) GBP 15,000 less FF 13,495).

Cited: Akdivar and Others v TR (16.9.1996), Aksoy v TR (18.12.1996), Aydin v TR (25.9.1997), Boyle and Rice v UK (27.4.1988), Ergi v TR (28.7.1998), Kaya v TR (19.2.1998), Kurt v TR (25.5.1998), McCann and Others v UK (27.9.1995), Mentes and Others v TR (28.11.1997), United Communist Party of Turkey and Others v TR (30.1.1998), Yagci and Sargin v TR (8.6.1995), Yasa v TR (2.9.1998).

Tarsia v Italy 00/30

[Application lodged 12.5.1997; Court Judgment 25.1.2000]

The applicants, Angela, Giulia and Giuseppina Tarsia complained of the length of civil proceedings.

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into account began on 22 October 1985 and was still pending on 10 January 1999. It had lasted more than 13 years and 23 months at one level of jurisdiction.

Non-pecuniary damage (ITL 40,000,000).

Cited: Bottazzi v I (28.7.1999)

Teixeira de Castro v Portugal (1999) 28 EHRR 101 98/46

[Application lodged 24.10.1994; Commission report 25.2.1997; Court Judgment 9.6.1998]

Mr Francisco Teixeira de Castro worked in a textile factory. In connection with an operation monitoring drug trafficking, two plain-clothes officers of the Public Security Police approached an individual, VS, on a number of occasions. Shortly before midnight on 30 December 1992 the two officers went to VS's home saying that they were interested in buying heroin. VS mentioned the name of Francisco Teixeira de Castro as being someone who might be able to find some; however, he did not know the latter's address and had to obtain it from FO. All four then went to the applicant's home. The officers said that they wished to buy a large quantity of heroin. The applicant agreed to procure the heroin and, accompanied by FO, went in his own car to the home of another person who provided the heroin in exchange for a payment. The applicant then took the drugs to VS's home where the latter and the two police officers were waiting. When the applicant produced the heroin, the two officers identified themselves and arrested the applicant, VS and FO. The applicant was brought before an investigating judge at the Famalição Criminal Court later that day and was detained pending trial. His applications for release were refused. On 6 December 1993 the Santo Tirso Criminal Court convicted the applicant and sentenced him to six years' imprisonment. His appeal to the Supreme Court was dismissed on 5 May 1994. He complained, *inter alia*, that he had not had a fair hearing as police officers had incited him to commit the offence of which he was subsequently convicted.

Comm found by majority (30–1) V 6(1), unanimously NV 3, by majority (30–1) not necessary to examine 8.

Court found by majority (8–1) V 6(1), unanimously not necessary to examine 3 or 8.

Judges: Mr R Bernhardt, President, Mr A Spielmann, Mr N Valticos, Mrs E Palm, Mr I Foighel, Mr AN Loizou, Mr MA Lopes Rocha, Mr B Repik, Mr V Butkevych (so).

The admissibility of evidence was primarily a matter for regulation by national law and as a general rule it was for the national courts to assess the evidence before them. The Court's task under the Convention was not to give a ruling as to whether statements of witnesses were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair. The use of undercover agents had to be restricted and safeguards put in place even in cases concerning the fight against drug trafficking. While the rise in organised crime undoubtedly required that appropriate measures be taken, the right to a fair administration of justice nevertheless held such a prominent place that it could not be sacrificed for the sake of expedience. The public interest could not justify the use of evidence obtained as a result of police incitement. In the present case it was necessary to determine whether or not the two police officers' activity went beyond that of undercover agents. It was not contended that the officers' intervention took place as part of an anti-drug-trafficking operation ordered and supervised by a judge and it did not appear that the competent authorities had good reason to suspect that the applicant was a drug trafficker; on the contrary, he had no criminal record and no preliminary investigation concerning him had been opened. The drugs were not at the applicant's home, he obtained them from a third party who had, in turn, obtained them from another person. Nor were there more drugs in his possession than the quantity the police officers had requested, thereby going beyond what he had been incited to do by the police. There was no evidence that the applicant was predisposed to commit offences. The two police officers did not confine themselves to investigating the applicant's criminal activity in an essentially passive

manner, but exercised an influence such as to incite the commission of the offence. The two police officers' actions went beyond those of undercover agents because they instigated the offence and there was nothing to suggest that without their intervention it would have been committed. That intervention and its use in the impugned criminal proceedings meant that, right from the outset, the applicant was definitively deprived of a fair trial. Consequently, there had been a violation of A 6(1).

No argument was adduced before the Court on A 3 and there was no cause for the Court to consider the point of its own motion.

Having regard to the conclusion in respect of A 6(1), it was not necessary to examine that complaint separately under A 8.

Pecuniary and non-pecuniary damage (by majority (8–1) PTE 10,000,000), costs and expenses (PTE 1,800,000 less FF 19,801.70).

Cited: Delcourt v B (17.1.1970), Kostovski v NL (20.11.1989), Lüdi v CH (15.6.1992), Van Mechelen and Others v NL (23.4.1997), Windisch v A (27.9.1990).

Tejedor García v Spain (1998) 26 EHRR 440 97/95

[Application lodged 4.8.1994; Commission report 3.9.1996; Court Judgment 16.12.1997]

Mr Manuel Tejedor García was an officer in the national police force. On 21 May 1989, while off duty and drunk, he assaulted and arrested a Gambian national and a Portuguese national. A preliminary inquiry was opened in respect of the applicant for wrongful arrest, assault and disobeying orders. On 10 September 1990 the investigating judge considered that no offence had been made out and ordered the discharge of the applicant. The file was to be sent to the public prosecutor who had three days to apply to have the order set aside. The application was not lodged until November 1990 but was accepted by the investigating judge. The applicant was committed for trial. On 6 November 1991 the Audiencia Provincial found the applicant guilty of the alleged offences. It sentenced him to 6 months and 15 days' imprisonment, a fine of ESP 200,000, and ordered him to pay compensation to the victims. He was also suspended from duty for six months. His appeal to the Supreme Court was dismissed. The applicant complained of a violation of A 6(1) in that the investigating judge had granted an application filed out of time by the public prosecutor for an order setting aside the decision of 10 September 1990 discontinuing the criminal proceedings against him.

Comm found by majority (18–11) V 6(1).

Court found by majority (8–1) NV 6(1).

Judges: Mr Thór Vilhjálmsson, President, Mr N Valticos (d), Mr I Foighel, Mr JM Morenilla, Sir John Freeland, Mr AB Baka, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr T Pantiru.

The complaint under A 6(2) having been declared inadmissible by the Commission for failure to exhaust domestic remedies, the Court had no jurisdiction to consider it.

The concept of a 'charge' for the purposes of A 6(1) was autonomous and had to be understood within the meaning of the Convention and not solely within its meaning under national law. It could be defined as 'the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence', a definition that also corresponded to the test whether 'the situation of the suspect has been substantially affected'. Moreover, the words 'determination of any criminal charge' in A 6(1) did not imply that that article had no application to pre-trial proceedings. In the present case, a preliminary inquiry had been opened against the applicant in respect of various criminal offences arising out of the incident of 21 May 1989, after which he had been cautioned by the police and brought before the Saragossa investigating judge. The allegations made against him had been examined by the investigating judge, who subsequently ordered that no further action be taken in the light of the contradictory nature of the evidence. Therefore, the applicant had been the subject of a criminal charge within the meaning of A 6(1). That provision was accordingly applicable.

It was in the first place for the national authorities, and notably the courts, to interpret domestic law and the Court would not substitute its own interpretation for theirs in the absence of arbitrariness. That applied in particular to the interpretation by courts of rules of a procedural nature such as time-limits governing the filing of documents or the lodging of appeals. Although time-limits and procedural rules governing appeals by the prosecution had to be adhered to as part of the concept of a fair procedure, in principle it was for the national courts to police the conduct of their own proceedings. The national law allowed the public prosecutor three days to appeal against the decision that no further action be taken; that period began to run from the date of receipt of the case file accompanying the decision. Both the file and the application or appeal had to be returned to the judge. It appeared that the investigating judge's decision of 10 September 1990 was served on the applicant's legal representative the following day. However, the case file did not contain any annotation from the registrar attesting service of the decision on the public prosecutor, or the dates the latter received and returned the file to the investigating judge. In the absence of any indication as to the date of receipt, the investigating judge considered that the application had to be deemed to have been made in time. That interpretation was upheld by the Supreme Court, which stressed the importance of avoiding a strict interpretation that would unjustifiably prevent the case from being examined on its merits. Both the investigating judge and the Supreme Court took into consideration the submissions made in support of the applicant's position. Although the date appearing on the public prosecutor's application to have the decision set aside was marked as 13 September 1990, the national courts did not consider that fact to be relevant to the issue concerning the date of receipt of the file and held that that date could not be determined for certain, there being nothing to show when the decision had been sent to the public prosecutor or when he had actually received it. The courts were thus called upon to interpret the procedure rules in circumstances where the date of receipt could not be established as a matter of certainty. The interpretation to be given to the relevant rule, in such circumstances, was a matter for the domestic courts. Granting the public prosecutor's application almost two months after the decision not to prosecute meant that the matter had not become final under Spanish law. In those circumstances, the interpretation of the national courts could not be described as either arbitrary or unreasonable, or of such a nature as to taint the fairness of the proceedings. Nor could it be said that any issue arose concerning the equality of arms in this case. There had, accordingly, been no violation of A 6(1).

Cited: Bulut v A (22.2.1996), Deweer v B (27.2.1980), Eckle v D (15.7.1982), Imbrioscia v CH (24.11.1993), Leutscher v NL (26.3.1996), Ravnsborg v S (23.3.1994), Serves v F (20.10.1997), Van der Leer v NL (21.2.1990).

Tekin v Turkey 98/48

[Application lodged 14.7.1993; Commission report 17.4.1997; Court Judgment 9.6.1998]

Mr Salih Tekin was a journalist for the newspaper *Özgür Gündem*. In February 1993 he was arrested on suspicion of threatening village guards and taken to Derinsu gendarmerie headquarters. Following a hearing on 13 May 1993, he was acquitted on 2 August 1993 of the charges against him. He complained that he had been ill-treated while being held in detention at gendarmerie headquarters from 15 to 19 February 1993 and that this event had not been adequately investigated by the State authorities.

Comm found unanimously NV 2, 10, 14 and 18, by majority (31–1) V 3 and 13, unanimously not necessary to examine the applicant's other complaints.

Court found unanimously NV 2, by majority (6–3) V 3, (8–1) not necessary to consider 5(1) and 6(1), unanimously NV 10, by majority (7–2) V 13, unanimously NV 14 or 18.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü (d), Mr C Russo, Mr J De Meyer (d), Mr JM Morenilla, Mr L Wildhaber, Mr K Jungwiert, Mr V Toumanov (d).

The establishment and verification of the facts were primarily a matter for the Commission. While the Court was not bound by the Commission's findings of fact and remained free to make its own appreciation in the light of all the material before it, it was only in exceptional circumstances that it

would exercise its powers in that area. The Commission and its delegates had the opportunity to see and hear the applicant and other witnesses give their testimony and answer questions. The Commission found the applicant's testimony to be consistent and convincing, whereas it found the evidence given by the witnesses for the Government to be flawed and unreliable. A 28(1)(a) placed the State concerned under a duty to 'furnish all necessary facilities' to the Commission for its investigation of the facts underlying a petition. In the present case, when key witnesses failed to attend before the Commission, the respondent State was not justified in complaining of the insufficiency of the evidence on which the Commission based its findings. Therefore the Court accepted the facts as found by the Commission.

The facts as found by the Commission did not support the conclusion that the applicant was treated in such a way as to amount to an interference with his right to life within the meaning of A 2.

Ill-treatment had to attain a minimum level of severity if it was to fall within the scope of A 3. The assessment of that minimum was relative, depending on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim. The Commission found that the applicant was held in a cold and dark cell, blindfolded, and treated, in connection with his interrogation, in a way which left wounds and bruises on his body. Assessing those facts against the standards imposed by A 3, in respect of a person deprived of his liberty, recourse to physical force which had not been made strictly necessary by his own conduct diminished human dignity and was in principle an infringement of the right set forth in A 3. The conditions in which the applicant was held, and the manner in which he must have been treated in order to leave wounds and bruises on his body, amounted to inhuman and degrading treatment within the meaning of A 3.

Before the Court, the applicant did not pursue his claims in respect of A 5(1) and 6(1) and it was not therefore necessary for the Court to consider them.

The finding by the Commission did not establish that the applicant's detention and treatment in custody amounted to interferences with his right to freedom of expression. It followed that there had been no violation of A 10.

The applicant complained of ill-treatment to the public prosecutor on his release from custody but no action was taken in respect of the complaint. It was not until 10 months later, following the Commission's communication of the application to the Government, that an investigation was commenced into the applicant's allegations. There were delays in taking statements and the investigation could not properly be described as thorough and effective such as to meet the requirements of A 13.

There was no evidence to substantiate the alleged breaches of A 14 and 18.

Non-pecuniary damage (by majority (8–1) GBP 10,000), costs and expenses, (GBP 15,000).

Cited: Aksoy v TR (18.12.1996), Ribitsch v A (4.12.1995), Selçuk and Asker v TR (24.4.1998).

Telesystem Tirol Kabeltelevision v Austria 97/29

[Application lodged 29.11.1991; Commission report 18.10.1995; Court Judgment 9.6.1997]

Telesystem Tirol Kabeltelevision Unterland Gesellschaft mbH & Co KG was a limited partnership which obtained authorisation to set up a shared aerial to receive broadcast programmes and retransmit them to subscribers via a cable television network. On 12 January 1989, the applicant applied for authorisation to send out its own programmes via its cable network. The application was rejected. The applicant appealed to the National Post and Telecommunications Head Office, which dismissed the appeal on 17 February 1989. An application to the Constitutional Court was rejected and on 18 September 1991 the Administrative Court also dismissed the application. The applicant complained that it had been refused permission to send out its own programmes on account of the Austrian Broadcasting Corporation's monopoly.

Comm found unanimously V 10.

Court unanimously struck case out of the list.

Judges: Mr R Bernhardt, President, Mr F Matscher, Mr L-E Pettiti, Mr JM Morenilla, Sir John Freeland, Mr AB Baka, Mr G Mifsud Bonnici, Mr P Kûris, Mr E Levits.

The Court took formal note of the friendly settlement reached by the Government and the applicant. It discerned no reason of public policy militating against striking the case out of its list.

FS (Republic of Austria to pay the applicant ATS 200,000 as compensation), therefore SO.

Terra Woningen BV v Netherlands (1997) 24 EHRR 456 96/60

[Application lodged 9.9.1992; Commission report 5.4.1995; Court Judgment 17.12.1996.

Terra Woningen BV, the applicant company, had business including the development of real property. One of their properties was on soil polluted land. A tenant in one of the applicant company flats applied to the Rent Board in Schiedam for a ruling as to the fairness of the rent. The Rent Board gave its ruling on 17 April 1991 and thereafter the applicant company applied to the District Court of Schiedam for a binding decision arguing that the soil pollution should not be taken into account. The District Court gave its decision dismissing the applicant company's arguments. The applicant company complained that they had not had the benefit of effective judicial review in the determination of their civil rights as the District Court had considered itself bound by the Provincial Executive's finding in respect of the soil pollution and its effects on public health and the environment and had thus denied them a judicial ruling on an important part of their case.

Comm found by majority (12–1) V 6(1), not necessary to examine 13.

Court found by majority (8–1) no jurisdiction to rule on 14+P1A1, 17+P1A1, 18+P1A1, unanimously dismissed the Government's preliminary objection, by majority (5–4) V 6(1), unanimously not necessary to examine 13.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü (d), Mr L-E Pettiti (d), Mr B Walsh, Mr J De Meyer (pd), Mr N Valticos (d), Mr SK Martens (d), Mr B Repik.

The compass of the case before the Court was delimited by the Commission's decision on admissibility. In the present case, the application as declared admissible related solely to an alleged deficiency of a procedural nature. Whether or not the outcome of the proceedings in question was affected by that alleged deficiency, the scope of the case before the Court did not extend to the substance of the issues involved. Accordingly, the Court had no jurisdiction to examine the complaints which the Commission declared inadmissible.

The Government's preliminary objection of non-exhaustion of domestic remedies was formulated for the first time before the Court. They were therefore estopped from raising it.

The rent-determination proceedings in question constituted the determination of civil rights and obligations. For the determination of civil rights and obligations by a tribunal to satisfy A 6(1), it was required that the tribunal in question had jurisdiction to examine all questions of fact and law relevant to the dispute before it. The Schiedam District Court, in its judgment, held that the health and environmental risk was necessarily implied by the Provincial Executive's decision. In so doing the Schiedam District Court, a 'tribunal' satisfying the requirements of A 6(1), deprived itself of jurisdiction to examine facts which were crucial for the determination of the dispute. In those circumstances, the applicant company could not be considered to have had access to a tribunal invested with sufficient jurisdiction to decide the case before it. There had accordingly been a violation of A 6(1).

In view of the conclusion as to A 6(1) it was not necessary to examine the allegation under A 13.

No causal link between the violation found and the damage allegedly suffered had been established. Costs and expenses (NLG 30,000).

Cited: British-American Tobacco Company Ltd v NL (20.11.1995), Bryan v UK (22.11.1995), Fischer v A (26.4.1995), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Masson and Van Zon v NL (28.9.1995).

Terranova v Italy 95/52

[Application lodged 11.6.1990; Commission report 7.12.1994; Court Judgment 4.12.1995]

Mr Giuseppe Terranova, a pensioner, was formerly a municipal employee. On 25 April 1985 he applied to the Court of Audit in Rome seeking judicial review of a Treasury order whereby he had been granted an enhanced pension but was required to repay half of a sum he had previously received as compensation for invalidity occasioned during the performance of his official duties. The application was registered on 3 May 1985. On 26 October 1992 the court ruled that it lacked jurisdiction *ratione materiae* and declared the application inadmissible. The judgment was deposited with the registry on 15 June 1993. The applicant complained of the length of proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Bernhardt, President, Mr F Gölcüklü, Mr F Matscher, Mr C Russo, Mr A Spielmann, Mr AN Loizou, Sir John Freeland, Mr J Makarczyk, Mr D Gotchev.

The period to be taken into consideration began on 3 May 1985, when Mr Terranova's application was registered by the Court of Audit registry, and ended on 15 June 1993, when the judgment dismissing the application was deposited in the registry. The period to be examined thus lasted just over eight years and one month. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. There were delays on the part of the authorities. A period of approximately eight years and one month could not be considered reasonable, regard being had to the fact that the case was not complex and to what was at stake for the applicant, namely repayment of half of the sum received in compensation. There had therefore been a breach of A 6(1).

Non-pecuniary damage and costs (ITL 20,000,000).

Cited: Giancarlo Lombardo v I (26.11.1992), Paccione v I (27.4.1995), Vernillo v F (20.2.1991).

Testa v Italy 91/64

[Application lodged 5.3.1987; Commission report 5.3.1991; Court Judgment 3.12.1991]

Mr Giancarlo Testa was a train driver. On 21 May 1985, having suffered an accident at work, he took proceedings before the Rome magistrates' court against the railway company, claiming payment of a temporary disability allowance. On 19 March 1986 the magistrates' court ordered the railway company to pay the applicant the benefit claimed. On 9 October 1986 the railway company appealed against the decision. A hearing took place on 11 May 1989 after which the appeal was dismissed. The text of the appeal judgment was lodged with the registry on 30 June 1990. The applicant complained of the length of the civil proceedings brought by him.

Comm found unanimously V 6(1).

Court unanimously struck case out of list.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr SK Martens.

Despite several reminders from the registry, the applicant showed no interest in the proceedings before the Court. There was an implied withdrawal which constituted a fact of a kind to provide a solution of the matter. In addition, there was no reason of public policy for continuing the proceedings. The Court noted other cases in which it had reviewed the reasonableness of the length of civil proceedings.

Cited: Brigandì v I (19.2.1991), Caleffi v I (24.5.1991), Capuano v I (25.6.1987), Owners' Services Ltd v I (28.6.1991), Pretto and Others v I (8.12.1983), Pugliese (No 2) v I (24.5.1991), Santilli v I (19.2.1991), Vocaturo v I (24.5.1991), Zanghì v I (19.2.1991).

Thery v France 00/43

[Application lodged 10.10.1996; Court Judgment 1.2.2000]

Mr Hubert Thery was the joint owner of agricultural land which formed part of an estate of 250 hectares. In 1971 the property was leased for 19 years. In January 1988 the owners gave notice to the tenants of the repossession of the property by the applicant. The applicant obtained authorisation for a requisite permit in the form of a prefectoral decision. In September 1988 the tenants lodged an appeal with the administrative court. On 8 December 1992 the administrative court set aside the prefectoral decision. In March 1993 the applicant lodged an appeal against that decision. On 10 May 1996 the Conseil d'Etat dismissed the applicant's appeal. He complained of the length of proceedings.

Court found by majority V 6(1), not necessary to examine P1A1.

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr L Loucaides, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mr MK Traja.

The proceedings concerned a dispute which related to the applicant's arguable right to use his farmland to carry on his occupation in accordance with a given practice and the legislation in force. However, a right relating to the manner in which the right of property was exercised was a civil right within the meaning of A 6. The outcome of the proceedings had been decisive as to the applicant's right to cultivate the farmland which he held in ownership in common. That conclusion was not invalidated by the fact that the applicable law had been based on public interest and the refusal to grant the permit had been justified by regional planning considerations. A 6 therefore applied to the case.

The period to be taken into consideration began with the lodging of the appeal with the administrative court on 13 September 1988 and ended on 10 May 1996 with the decision of the Conseil d'Etat. It had lasted nearly seven years and eight months. The reasonableness of the proceedings had to be assessed in the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities. There were substantial procedural delays. Neither the complexity of the case nor the conduct of the parties justified this length. There had therefore been a violation of A 6(1).

In view of the conclusion in respect of A 6(1) it was not necessary to examine P1A1.

Non-pecuniary damage (FF 30,000), costs and expenses (FF 10,000).

Cited: Benthem v NL (23.10.1985), Brigandi v I (19.2.1991), Doustaly v F (23.4.1998), Fredin v S (18.2.1991), Rolf Gustafson v S (1.7.1997), Allan Jacobsson v S (25.10.1989), Oerlemans v NL (27.11.1991), Richard v F (22.4.1998), Santilli v I (19.2.1991), Zanghì v I (19.2.1991).

Thlimmenos v Greece 00/123

[Application lodged 18.12.1996; Commission report 4.12.1998; Court Judgment 6.4.2000]

Mr Iakovos Thlimmenos was a Jehovah's Witness. On 9 December 1983 the Athens Permanent Army Tribunal convicted him of insubordination for having refused to wear military uniform at a time of general mobilisation. However, the tribunal considered that there were extenuating circumstances and sentenced the applicant to four years' imprisonment. The applicant was released on parole after two years and one day. In June 1988 the applicant sat a public examination for the appointment of chartered accountants. He came second among 60 candidates. However, on 8 February 1989, the Executive Board of the Greek Institute of Chartered Accountants refused to appoint him on the ground that he had been convicted of a felony. On 8 May 1989 he appealed to the Supreme Administrative Court invoking, *inter alia*, his right to freedom of religion and equality

before the law and also claiming that he had not been convicted of a felony but of a less serious crime. The Supreme Administrative Court decided that the Board had acted in accordance with the law. It considered, *inter alia*, that the Board's failure to appoint him was not related to his religious beliefs but to the fact that he had committed a criminal offence. He complained of infringement of A 9, 14+9 and 6.

Comm found by majority (22–6) V 14+9, (21–7) not necessary to examine whether 9, unanimously V 6(1).

Court unanimously dismissed the Government's preliminary objection, found V 14+9, not necessary to examine 9, V 6(1).

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr L Ferrari Bravo, Mr L Caflisch, Mr J-P Costa, Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach, Mr B Zupancic, Mrs N Vajic, Mr J Hedigan, Mrs W Thomassen, Mrs M Tsatsa-Nikolovska, Mr T Pantîru, Mr E Levits, Mr K Traja, Mr G Koumantos, ad hoc judge.

The scope of the Court's jurisdiction was determined by the Commission's decision declaring the originating application admissible. The complaint under P1A1 was separate from the complaints declared admissible and therefore the Court had no jurisdiction to entertain that complaint.

With regard to the Government's preliminary objection of non-exhaustion of remedies, even if the applicant had raised the claim of conscientious objector, the military commission and the Minister would not have been obliged to grant the his claim since they, at least to a certain degree, retained discretionary powers. Even if the applicant had obtained the removal of his conviction from his criminal record, he would not have been able to obtain reparation for the prejudice he had suffered until then as a result of his conviction. For the same reason the applicant could not have been certain that his request for a pardon would have been granted and, even if it had, the applicant could not have obtained reparation. The Government's preliminary objection concerning the applicant's status as a victim had not been put forward when the admissibility of the application was being considered by the Commission and they were therefore estopped from raising it.

The applicant was treated differently from the other persons who had applied for that post on the ground of his status as a convicted person. Such difference of treatment did not generally come within the scope of A 14 in so far as it related to access to a particular profession, the right to freedom of profession not being guaranteed by the Convention. However, the applicant's complaint rather concerned the fact that in the application of the relevant law, no distinction was made between persons convicted of offences committed exclusively because of their religious beliefs and persons convicted of other offences, and the facts complained of fell within the ambit of A 9. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention was also violated when States without an objective and reasonable justification failed to treat differently persons whose situations were significantly different. As a matter of principle, States had a legitimate interest to exclude some offenders from the profession of chartered accountant. However, a conviction for refusing on religious or philosophical grounds to wear the military uniform could not imply any dishonesty or moral turpitude likely to undermine the offender's ability to exercise this profession. Excluding the applicant on the ground that he was an unfit person was not, therefore, justified. The applicant had served a prison sentence for his refusal to wear the military uniform. In those circumstances, imposing a further sanction on him was disproportionate. It followed that the applicant's exclusion from the profession of chartered accountants did not pursue a legitimate aim. There was no objective and reasonable justification for not treating the applicant differently from other persons convicted of a felony. Although the board had no option under the law but to refuse to appoint the applicant, it was the State's enactment of the relevant legislation, without appropriate exceptions, which violated the applicant's right not to be discriminated against in the enjoyment of his right under A 9. There had been therefore a violation of A 14 taken in conjunction with A 9.

In view of the finding of a breach of A 14 taken in conjunction with A 9 it was not necessary also to consider whether there had been a violation of A 9 taken on its own.

Although regulated by administrative law, the profession of chartered accountants was one of the liberal professions in Greece. As a result, the proceedings instituted by the applicant to challenge the authorities' failure to appoint him to a post of chartered accountant involved a determination of his civil rights within the meaning of A 6(1) of the Convention. The proceedings before the Supreme Administrative Court began on 8 May 1989, when the applicant lodged his application for judicial review, and ended on 28 June 1996, when the Third Chamber of the court rejected it. They lasted, therefore, seven years, one month and 20 days. The reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case having regard to the complexity of the case, the conduct of the parties, the conduct of the authorities dealing with the case and what was at stake for the applicant. Employment disputes, to which disputes concerning access to a liberal profession could be compared, generally called for expeditious decision. The case involved legal issues of some complexity. The applicant did not cause any delays. There were two periods of inactivity of a total duration of almost three years. The only explanation offered by the Government for these periods of inactivity was the Supreme Administrative Court's case-load. According to the Court's case-law, it was for Contracting States to organise their legal systems in such a way that their courts could guarantee the right of everyone to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time. In the light of all the above and given that the proceedings concerned the applicant's professional future, the length of the proceedings failed to meet the reasonable time requirement. There had therefore been a violation of A 6(1).

Non-pecuniary damage (GRD 6,000,000), costs and expenses (GRD 3,000,000).

Cited: Chassagnou and Others v F (29.4.1999), Inze v A (28.10.1987), König v D (28.6.1978), Laino v I (18.2.1999), Nikolova v BG (25.3.1999), Sürek v TR (No 1) (8.7.1999), Vocaturo v I (24.5.1991).

Thomann v Switzerland (1997) 24 EHRR 553 96/23

[Application lodged 5.12.1990; Commission report 2.3.1995; Court Judgment 10.6.1996]

Mr Martin Thomann was prosecuted on various charges of fraud and accounting offences. He did not appear at his trial, but was arrested and attended court for the delivery of the judgment, when he was sentenced to imprisonment and fined. He sought a retrial. The Criminal Court allowed his request and the case was set down for a new trial. On discovering that the composition of the Criminal Court would be identical to that of the court that had convicted him *in absentia*, on 29 June 1989 the applicant lodged an application challenging its three members. His challenge was dismissed by the Criminal Court, the Court of Appeal and the Federal Court. The retrial in the Criminal Court was before the same judges. They heard evidence and convicted and sentenced the applicant. On 11 July 1991 the cantonal Court of Appeal acquitted the applicant on some of the counts and reduced his prison sentence. On 9 December 1992 the Federal Court dismissed the applicant's public-law appeal against that judgment. He complained that he had been convicted by a court that was not impartial for the purposes of A 6(1).

Comm found by majority (20–4) NV 6(1).

Court found unanimously NV 6(1).

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr C Russo, Mr J De Meyer, Mr MA Lopes Rocha, Mr L Wildhaber, Mr J Makarczyk, Mr P Jambrek.

In considering the question of impartiality of a tribunal for the purposes of A 6(1), regard had to be had not only to the personal conviction and behaviour of a particular judge in a given case, the subjective approach, but also to whether it afforded sufficient guarantees to exclude any legitimate doubt in that respect. As regards the subjective aspect, there was nothing to indicate in the present case any prejudice or bias on the part of the judges and, moreover, the applicant did not level any criticism at them in that respect. As regards the objective test, the instant case did not concern the successive exercise of different judicial functions, but judges who sat twice in the same capacity. The Federal Court explained that judges who retried in the defendant's presence a case that they

had first had to try *in absentia* on the basis of the evidence that they had available to them at the time were in no way bound by their first decision. They undertook a fresh consideration of the whole case; all the issues raised by the case remain opened and were examined in adversarial proceedings with the benefit of the more comprehensive information that might be obtained from the appearance of the defendant in person. That was in fact what happened in the present case. Such a situation was not sufficient to cast doubt on the impartiality of the judges in question. Furthermore, if a court had to alter its composition each time that it accepted an application for a retrial from a person who had been convicted in his absence, such persons would be placed at an advantage in relation to defendants who appeared at the opening of their trial, because that would enable the former to obtain a second hearing of their case by different judges at the same level of jurisdiction. In addition, it would contribute to slowing down the work of the courts as it would force a larger number of judges to examine the same file, and that would scarcely be compatible with conducting proceedings within a reasonable time. Therefore there had been no violation of A 6(1).

Cited: Bulut v A (22.2.1996), Diennet v F (26.9.1995), Ringeisen v A (16.7.1971).

Thorgeirson v Iceland (1992) 14 EHRR 843 92/51

[Application lodged 19.11.1987; Commission report 11.12.1990; Court Judgment 25.6.1992]

Mr Thorgeir Thorgeirson, a writer, published two articles on police brutality in the daily newspaper. He was prosecuted, found guilty of defaming members of the Reykjavik police force and fined. He complained that as the Public Prosecutor had been absent from a number of sittings of the Reykjavik Criminal Court, the single judge had not only conducted the court investigation but had also taken on a role as a representative of the prosecution. Consequently, the Criminal Court did not satisfy the requirement of impartiality. In addition, there had been interference with his right to freedom of expression.

Comm found unanimously NV 6(1) and by majority (13–1) V 10.

Court found unanimously NV 6(1) and by majority (8–1) V 10.

Judges: Mr R Ryssdal, President, Mr L-E Pettiti, Mr R Macdonald, Mr A Spielmann, Mr SK Martens, Mrs E Palm, Mr R Pekkanen, Mr AN Loizou, Mr Gardar Gíslason (so), ad hoc judge.

The Court's task was not to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to the applicant gave rise to a violation of A 6(1). The existence of impartiality for the purposes of A 6(1) had to be determined according to a subjective test, that was on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that was ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in that respect. As to the subjective test, the personal impartiality of a judge had to be presumed until there was proof to the contrary; the applicant has adduced no evidence to suggest that the judge in question was personally biased. Under the objective test, it had to be determined whether, quite apart from the judge's personal conduct, there were ascertainable facts which might raise doubts as to his impartiality. Appearances could be of importance. In deciding whether in a given case there was a legitimate reason to fear that a particular judge lacked impartiality, the standpoint of the accused was important but not decisive. What was decisive was whether this fear could be held to be objectively justified. The Reykjavik Criminal Court held 12 sittings, the Public Prosecutor was absent from six. At those sittings at which the Public Prosecutor was absent, the Reykjavik Criminal Court was not called upon to conduct any investigation into the merits of the case or to assume any functions which might have been fulfilled by the prosecutor had he been present (in the absences of the prosecutor, the court dealt with requests for an adjournment, preparatory sitting, procedural matters, filing of applicant's written defence, delivery of judgment). The Public Prosecutor was, with one exception (when a video was shown), present at all the sittings at which evidence was submitted and witnesses were heard. In those circumstances, any fears the applicant may have had, on account of

the prosecutor's absence, as regards the Reykjavik Court's lack of impartiality could not be held to be justified. Accordingly, there had been no violation of A 6(1).

The applicant's conviction and sentence for defamation constituted an interference with his right to freedom of expression. Such an interference entailed a violation of A 10 unless it was prescribed by law, had an aim or aims that was or were legitimate under A 10(2) and was necessary in a democratic society for the aforesaid aim or aims. The interference was prescribed by law. The applicant's conviction and sentence were aimed at protecting the reputation of others and thus had an aim that was legitimate under this provision. Freedom of expression constituted one of the essential foundations of a democratic society, applicable not only to information or ideas that were favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offended, shocked or disturbed. The exceptions in A 10(2) had to be narrowly interpreted and the necessity for any restrictions had to be convincingly established. The applicant expressed his views by having them published in a newspaper. Regard had to be had, therefore, to the pre-eminent role of the press in a State governed by the rule of law. Whilst the press should not overstep the bounds set, *inter alia*, for 'the protection of the reputation of others', it was nevertheless incumbent on it to impart information and ideas on matters of public interest. Not only did it have the task of imparting such information and ideas: the public also had a right to receive them. The applicant was essentially reporting what was being said by others about police brutality. In so far as the applicant was required to establish the truth of his statements, he was faced with an unreasonable, if not impossible task. His purpose was to encourage the establishment of an investigation into police brutality and not to defame the police. The articles were framed in particularly strong terms. However, having regard to their purpose and the impact which they were designed to have, the language used could not be regarded as excessive. The Court considered that the conviction and sentence were capable of discouraging open discussion of matters of public concern. The interference therefore was not proportionate to the legitimate aim pursued and therefore not necessary in a democratic society.

Costs and expenses (ISK 530,000).

Cited: Barfod v DK (22.2.1989), Castells v E (23.4.1992), Hauschildt v DK (24.5.1989), Kruslin v F (24.4.1990), Lingens v A (8.7.1986), Oberschlick v A (23.5.1991), Observer and Guardian v UK (26.11.1991).

Thynne, Wilson and Gunnell (1991) 13 EHRR 666 90/26

[Applications lodged 3.6.1985, 1.9.1985, 24.4.1985; Commission report 7.9.1989; Court Judgment 25.10.1990]

Mr Michael Keith Thynne pleaded guilty on 27 October 1975 at the Central Criminal Court to rape and buggery. He was sentenced to life imprisonment. Escape and commission of further offences resulted in further sentencing. He was referred to the Parole Board, who referred the case to the Local Review Committee, which did not recommend release. Mr Benjamin Wilson pleaded guilty on 17 May 1972 at the Central Criminal Court to buggery, attempted buggery and indecent assault on boys under 16. He was sentenced to life imprisonment. The Parole Board recommended his release into a controlled protective environment with psychiatric supervision. On 11 February 1983, five months after his release on licence, the Parole Board recommended his recall and the Secretary of State revoked his licence as his conduct had given cause for concern and he had failed to co-operate with his supervising officer. Mr Edward James Gunnell was convicted at the Central Criminal Court on 15 December 1965, *inter alia*, of rapes and attempted rape. He was sentenced to life imprisonment. His case was reviewed by the Parole Board and, following their recommendation, he was released in 1982 subject to conditions. In 1983 his licence was revoked and he was recalled to prison. All three applicants complained that there was no judicial procedure available under UK law to determine the continued lawfulness of their detention or, in the case of the second and third applicants, their re-detention following release.

Comm found by majority (10–2) V 5(4) in respect of all three applicants, V 5(5) in the case of Mr Wilson.

Court found by (18–1) V 5(4) in the case of all three applicants, V 5(5) in the case of Mr Wilson.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson (d), Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer, Mr N Valticos, Mr SK Martens, Mr R Pekkanen, Mr A Loizou, Mr JM Morenilla Rodriguez.

Where a sentence of imprisonment was imposed after conviction by a competent court, the supervision required by A 5(4) was incorporated in the decision of the court. In subsequent cases the concept of lawfulness under A 5(4) required that the detention be in conformity not only with domestic law but also with the text of the Convention, the general principles embodied therein and the aim of the restrictions permitted by A 5(1). Each of the applicants was sentenced to life imprisonment because, in addition to the need for punishment, he was considered by the courts to be suffering from a mental or personality disorder and to be dangerous and in need of treatment. The discretionary life sentence has clearly developed in English law as a measure to deal with mentally unstable and dangerous offenders. Such sentences, unlike mandatory sentences, were composed of a punitive element and of a security element designed to confer on the Secretary of State the responsibility for determining when the public interest permitted the prisoner's release. The three applicants had committed offences of the utmost gravity meriting lengthy terms of imprisonment. However, in each case the punitive period of the discretionary life sentence had expired. The factors of mental instability and dangerousness were susceptible to change over the passage of time and new issues of lawfulness might arise in the course of detention. It followed that, at that phase in the execution of their sentences, the applicants were entitled under A 5(4) to take proceedings to have the lawfulness of their continued detention decided by a court at reasonable intervals and to have the lawfulness of any re-detention determined by a court. The punitive period of their life sentences having expired, the applicants were entitled to subsequent judicial control as guaranteed by A 5(4). A 5(4) did not guarantee a right to judicial control of such scope as to empower the court on all aspects of the case, including questions of expediency, to substitute its own discretion for that of the decision-making authority. The review had to be, nevertheless, wide enough to bear on those conditions which, according to the Convention, were essential for the lawful detention of a person subject to the special type of deprivation of liberty ordered against the three applicants. The Court had regard to its previous case-law, neither the Parole Board nor judicial review proceedings satisfied the requirements of A 5(4). Therefore, there had been a violation of A 5(4) in respect of all three applicants.

The lack of an enforceable right to compensation before the UK courts in respect of the violation of A 5(4) was a breach of A 5(5).

Finding of violation constituted just satisfaction for A 50. Costs and expenses (GBP 4,500 less FF 7,845 to Mr Thynne, GBP 18,000 less FF 24,849.98 jointly to Mr Wilson and Mr Gunnell).

Cited: Brogan and Others v UK (29.11.1988), De Wilde, Ooms and Versyp v B (18.6.1971), E v N (29.8.1990), Fox, Campbell and Hartley v UK (30.8.1990), Van Droogenbroeck v B (24.6.1982), Weeks v UK (2.3.1987), X v UK (5.11.1981).

Tierce and Others v San Marino 00/187

[Applications lodged 17.5.1994, 9.2.1994; Commission reports 23.4.1998, 30.11.1998; Court Judgment 25.7.2000]

Mr Jean-Marc Tierce's business associate filed a complaint against him in November 1990 accusing him of irregularities in the management of their company. The Commissario della Legge investigated the matter. In 1992, the applicant was committed for trial for fraud and misappropriation before the same Commissario della Legge sitting as a judge in the summary procedure applied to the case. The applicant was found guilty by the Commissario della Legge who imposed a suspended sentence and ordered him to pay a fine. The applicant appealed. Without holding a hearing and relying on the documents relating to the investigation at first instance placed in the file for the appeal by the Commissario della Legge, the appellate court rejected the applicant's appeal.

Mr Roberto Marra, the second applicant, and Mrs Paola Gabrielli, the third applicant, were arrested in possession of drugs. The Commissario della Legge confirmed their arrest, questioned them, charged them with possession and trafficking of drugs and summoned them for trial. The Commissario della Legge convicted the second applicant of possession of drugs and acquitted the third applicant for lack of evidence. The applicants and the Procuratore del Fisco appealed. Without holding a hearing and on the basis of the documents relating to the investigation at first instance placed in the file for the appeal, the appellate court convicted both applicants.

Comm found unanimously V 6(1) in respect of the impartiality of the tribunal, by majority (29–1) in respect of a public hearing, by majority (28–1) V 6(1) regarding public hearing in respect of second and third applicants.

Court found unanimously V 6(1) with regard to the first applicant on the question of impartiality of tribunal, V 6(1) regarding the three applicants on the question of a hearing in person.

Judges: Mrs E Palm, Mrs W Thomassen, Mr L Ferrari Bravo, Mr R Türmen, Mr J Casadevall, Mr T Pantîru, Mr R Maruste.

The first applicant's fears as to the objective impartiality of the Commissario della Legge related to the combination of his roles as investigating judge, trial judge at first instance and judge responsible for preparing the appeal. For more than two years, the Commissario della Legge conducted a very thorough investigation into the first applicant's affairs, including repeated questioning of the applicant, the complainant and the witnesses, ordering expert inquiries, questioning the expert and making orders for attachment of the applicant's assets. The Commissario della Legge had made extensive use of his powers as investigating judge and had then committed the applicant for trial and convicted him. Consequently, the applicant's concerns regarding the impartiality of the Commissario della Legge could be regarded as justified from an objective standpoint. Accordingly, there was a violation of A 6(1). In the light of that conclusion it was not necessary to consider whether the applicant's fears concerning the fact that the Commissario della Legge had then prepared the file for the appeal were also well founded.

The appellate court in San Marino had jurisdiction to deal with points of fact and of law. There was no public hearing before that court. Under the Code of Criminal Procedure an investigative hearing could be held in the course of the appeal if the appellate court considered that further investigations were necessary, but the hearing was before the Commissario della Legge, who was responsible for investigations on appeal. There was no investigative hearing in any of the applicants' cases. Had such a hearing taken place, it would not have been before the appellate court and the applicants would not therefore have been able to plead their case before that court. In both cases the appellate court was required to deal with facts and law in order to ascertain the applicants' guilt. In the first applicant's case, the court considered the legal classification of the applicant's conduct. In the case of the other two applicants the appellate court had to evaluate the testimony of both applicants before the court of first instance without directly questioning them. The second applicant's conviction was aggravated by the fact that he intended to deal in the drugs in his possession and the third applicant was convicted although she had been acquitted at first instance. In both cases it was necessary to hear the applicants directly in their appeals. The role of the appellate court and the nature of the questions submitted to it led to the conclusion that there was no special feature of the procedure that could justify refusing the applicants a hearing in public on appeal which they could attend and at which they could give evidence in person. There had therefore been a violation of A 6(1).

Non-pecuniary damage (ITL 12,000,000 to the first applicant, ITL 10,000,000 to each of the other two applicants), costs and expenses (ITL 15,000,000 to all three applicants).

Cited: Jan-Åke Andersson v S (29.10.1991), Axen v D (8.12.1983), Colozza v I (12.2.1985), Ekbatani v S (26.5.1988), Fejde v S (29.10.1991), Fey v A (24.2.1993), Immobiliare Saffi v I (28.7.1999), Nortier v NL (24.8.1993), Padovani v I (26.2.1993), Piersack v B (1.10.1982), Sutter v CH (22.22.1984).

Timurtas v Turkey 00/161

[Application lodged 9.2.1994; Court Judgment 13.6.2000]

Mr Mehmet Timurtas complained that his son, Abdulvahap Timurtas, had disappeared after being taken into custody by the security forces in August 1993. He relied on A 2, 5, 13 and 18 of the Convention on account of his son's disappearance and that he himself was a victim of a violation of A 3. He further contended that the respondent State had failed to comply with its obligations under former A 25 and 28(1)(a).

Court found by majority (6–1) V 2 in respect of death of Abdulvahap Timurtas, V (2) in respect of failure to conduct an effective investigation, V 3 in respect of the applicant, unanimously V 5, by majority (6–1) V 13, unanimously not necessary to decide on 18, unanimously that the respondent State has not failed to comply with its obligations under 34.

Judges: Mrs E Palm, President, Mrs W Thomassen, Mr L Ferrari Bravo, Mr J Casadevall, Mr B Zupancic, Mr R Maruste, Mr F Gölcüklü (pd), ad hoc judge.

The facts were disputed by the parties. The Commission reached its findings of fact after a delegation had heard evidence in Ankara. The applicant's allegations of the apprehension of his son were confirmed in a document submitted on his behalf. The question of whether the document was a photocopy of an authentic post-operation report was of importance to the establishment of the facts and their assessment. A photocopied document had to be subjected to close scrutiny before it could be accepted as a true copy of an original, the more so as it was undeniably true that modern technological devices could be employed to forge, or to tamper with, documents. The Convention proceedings did not in all cases lend themselves for rigorous application of the principle of *affirmanti incumbit probatio.* It was of the utmost importance for the effective operation of the system of individual petition instituted under former A 25 (now A 34) that States should furnish all necessary facilities to make possible a proper and effective examination of applications. It was inherent in proceedings relating to cases of this nature, where an individual applicant accused State agents of violating his rights under the Convention, that in certain instances solely the respondent Government have access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information which was in their hands without a satisfactory explanation might not only reflect negatively on the level of compliance by a respondent State with its obligations under A 38(1)(a) (former A 28(1)(a)), but might also give rise to the drawing of inferences as to the well-foundedness of the allegations. In the present case the Government were in the pre-eminent position to assist the Commission by providing access to the document which they claimed was the genuine document bearing the reference number featuring on the photocopy. It was insufficient for the Government to rely on the allegedly secret nature of that document which, in the Court's opinion, would not have precluded it from having been made available to the Commission's delegates, none of whom were Turkish, so that they could have proceeded to a simple comparison of the two documents without actually taking cognisance of the contents. Consequently, the Court found it appropriate to draw an inference from the Government's failure to produce the document without a satisfactory explanation. Noting, furthermore, other factors pointing to the document's authenticity, the Court agreed with the Commission's finding that it was a photocopy of an authentic post-operation report. The Court considered that the Commission also approached its task of assessing the other evidence with the requisite caution, giving detailed consideration to the elements which supported the applicant's account and to those which cast doubt on its credibility. It thus accepted the facts as established by the Commission. The Court observed that the Government had not advanced any explanation to account for the omissions relating to documentary evidence and the attendance of a witness. In this case the Government fell short of their obligations under former A 28(1)(a) to furnish all necessary facilities to the Commission in its task of establishing the facts.

Whether the failure on the part of the authorities to provide a plausible explanation as to a detainee's fate, in the absence of a body, might raise issues under A 2 would depend on all the circumstances of the case, and in particular on the existence of sufficient circumstantial evidence,

based on concrete elements, from which it may be concluded to the requisite standard of proof that the detainee must be presumed to have died in custody. In this respect the period of time which had elapsed since the person was placed in detention, although not decisive in itself, was a relevant factor to be taken into account. It had to be accepted that the more time went by without any news of the detained person, the greater the likelihood that he or she had died. The passage of time might therefore to some extent affect the weight to be attached to other elements of circumstantial evidence before it could be concluded that the person concerned was to be presumed dead. In the present case, six and a half years had elapsed since Abdulvahap Timurtas was apprehended and detained. He was taken to a place of detention by authorities for whom the State was responsible. He was wanted by the authorities for his alleged PKK activities. In the general context of the situation in south-east Turkey in 1993, it could by no means be excluded that an unacknowledged detention of such a person would be life-threatening. In all the circumstances Abdulvahap Timurtas had to be presumed dead following an unacknowledged detention by the security forces. Consequently, the responsibility of the respondent State for his death was engaged. The authorities had not provided any explanation as to what occurred after his apprehension and they did not rely on any ground of justification in respect of any use of lethal force by their agents. There had been a violation of A 2 on that count.

The Court noted the length of time it took before an official investigation got underway and before statements from witnesses were obtained, the inadequate questions put to the witnesses and the manner in which relevant information was ignored and subsequently denied by the investigating authorities. It was not until two years after the applicant's son had been taken into detention that inquiries were made of the gendarmes in Sirnak. The applicant had apprised the authorities long before then of the information he had obtained to the effect that his son had been transferred to Sirnak. Moreover, there was no evidence to suggest that the public prosecutors concerned made an attempt to inspect custody ledgers or places of detention for themselves, or that the Silopi district gendarmerie were asked to account for their actions on the day of apprehension. The investigation carried out into the disappearance of the applicant's son was inadequate and therefore in breach of the State's procedural obligations to protect the right to life. There had accordingly been a violation of A 2 on this count also.

The question whether a family member of a 'disappeared person' was a victim of treatment contrary to A 3 would depend on the existence of special factors which gave the suffering of the applicant a dimension and character distinct from the emotional distress which might be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements would include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those inquiries. The applicant was the father of the disappeared person. He made many inquiries to find out what had happened to his son. His anguish about the fate of his son would have been exacerbated by the fact that another son had died whilst in custody and by the conduct of the authorities to whom he addressed his multiple inquiries. Not only did the investigation into the applicant's allegations lack promptitude and efficiency, certain members of the security forces also displayed a callous disregard for the applicant's concerns by denying, to the applicant's face and contrary to the truth, that his son had been taken into custody. His anguish concerning his son's fate continued to the present day. The disappearance of his son amounted to inhuman and degrading treatment contrary to A 3 in relation to the applicant.

The Court noted that its reasoning and findings in relation to A 2 left no doubt that Abdulvahap Timurtas' detention was in breach of A 5. He was held in unacknowledged detention in the complete absence of the safeguards contained in A 5 and there had been a particularly grave violation of the right to liberty and security of person guaranteed under that provision.

The applicant had an arguable complaint that his son had been taken into custody. In view of the finding that the domestic authorities failed in their obligation to protect the life of the applicant's son, the applicant was entitled to an effective remedy. Accordingly, the authorities were under the obligation to conduct an effective investigation into the disappearance of the applicant's son. They

failed to comply with that obligation. Consequently, there had been a violation of A 13.

The scope of examination of the evidence undertaken in the case and the material on the case file were not sufficient to enable the Court to determine whether the failings identified in the case are part of a practice adopted by the authorities.

Having regard to its other findings, the Court did not consider it necessary to examine A 18 separately.

In the circumstances of the present case, the conduct of the authorities, in particular the gendarme concerned, did not constitute a failure to comply with the obligation of A 34 on the part of the respondent Government.

Non-pecuniary damage (GBP 20,000 in respect of son, GBP 10,000 in respect of applicant), costs and expenses (GBP 20,000 less FF 10,245.06).

Cited: Akdivar and Others v TR (16.9.1996), Çakici v TR (8.7.1999), Ertak v TR (9.5.2000), Ireland v UK (18.1.1978), Kaya v TR (19.2.1998), Mahmut Kaya v TR (28.3.2000), Cemil Kiliç v TR (28.3.2000), Kurt v TR (25.5.1998), McCann and Others v UK (27.9.1995), Ribitsch v A (4.12.1995), Selmouni v F (28.7.1999), Tanrikulu v TR (8.7.1999), Tomasi v F (27.8.1992), United Communist Party of Turkey and Others v TR (30.1.1998), Yasa v TR (2.9.1998).

Tinnelly and Sons Ltd and Others and McElduff and Others v United Kingdom (1999) 27 EHRR 249 98/51

[Applications lodged 27.5.1992, 26.8.1992; Commission report 8.4.1997; Court Judgment 10.7.1998]

The first applicant, Tinnelly and Sons Ltd, was a contracting firm based in Northern Ireland with experience in the demolition and dismantling of industrial plants as well as asbestos stripping. Mr Patrick Tinnelly, the second applicant, was the firm's managing director and his brother, Mr Gerard Tinnelly, the third applicant, was its company secretary. The second and third applicants are Catholics. Mr Kevin McElduff, Mr Michael McElduff, Mr Paddy McElduff and Mr Barry McElduff, the remaining applicants, were all self-employed joiners based in Northern Ireland. They were all Catholics. In 1984, Northern Ireland Electricity Services (NIE) invited tenders for the demolition of a power station and the purchase of the resulting scrap. The Tinnelly firm submitted the lowest tender. Having regard to their competitive bid as well as to the firm's track record in demolition work, an executive committee of NIE recommended that the firm's bid be accepted. On 26 June 1985 a revised recommendation was drawn up recommending that the contract be given to the Glasgow-based firm of McWilliam Demolition Ltd which had submitted the second lowest tender offer. The applicant firm was not informed of the reasons for this decision. The applicant firm subsequently complained to the Fair Employment Agency (FEA) on the ground that it believed that it had been refused the contracts because of perceived religious beliefs or political opinion. The FEA agreed to investigate the complaint. During the proceedings, on 28 October 1987 the Secretary of State for Northern Ireland issued a certificate under s 42 of the Fair Employment (Northern Ireland) Act 1976 Act to the effect that the decision not to grant Tinnelly the contract in question was 'an act done for the purpose of safeguarding national security or of protecting public safety or public order'. The FEA commenced judicial review proceedings in the High Court of Justice of Northern Ireland. Documents sought by the FEA were covered by a public-interest immunity certificate issued by the Secretary of State. The judicial review application was dismissed.

In about May 1990 the McElduffs were awarded a subcontract subject to security clearance from the Department of the Environment (DOE). They were later informed that they had not been granted security clearance despite having no criminal convictions. They believed that they were discriminated against by the DOE on the grounds of religious belief or political opinion. They requested an explanation from the DOE, but received none. They complained to the Fair Employment Tribunal alleging that the contractor and the DOE had discriminated against them contrary to the 1976 Act. During the proceedings the Secretary of State for Northern Ireland issued a s 42(2) certificate to the effect that the decision to refuse the applicants' admission to the site of the contract was done for the purpose of safeguarding national security. Counsel advised the

applicants that the effect of issuing the certificate was to bar the Tribunal from determining the complaint in the applicants' favour; they withdrew their application, which was accordingly dismissed by the Tribunal on 27 March 1992.

They complained that they had been denied access to an independent and impartial tribunal, that the authorities had interfered with their right to respect for their private and family lives, and that they had no effective remedy in respect of their Convention grievances. They also maintained that they were victims of discrimination on, *inter alia*, religious grounds.

Comm found unanimously V 6, not necessary to determine 8, 13+8 or 14+6.

Court found unanimously V 6(1), not necessary to consider 14+6(1), 8 13+8.

Judges: Mr R Bernhardt, President, Mr A Spielmann, Mr J De Meyer (c), Mrs E Palm, Sir John Freeland, Mr MA Lopes Rocha, Mr K Jungwiert, Mr E Levits, Mr T Pantiru.

The 1976 Act guaranteed persons a right not to be discriminated against on grounds of religious belief or political opinion in the job market, including when bidding for a public works contract or subcontract. That clearly defined statutory right, having regard to the context in which it applied and to its pecuniary nature, could be classified as a 'civil right' within the meaning of A 6(1). Had it been established that the applicants were the victims of unlawful discrimination, the County Court in the case of Tinnelly and the Fair Employment Tribunal in the case of the McElduffs could have ordered financial reparation in their favour. The fact that the contracts in issue were public procurement contracts or that the applicants' offers were never accepted could not prevent that right from being considered a 'civil right' for the purposes of A 6(1). Contrary to the Government's submissions, s 42(1) of the Act did not define the scope of the substantive right in limine but provided a respondent with a defence to a complaint of unlawful discrimination. The issue as to whether the act was done for purposes of national security or an act of unlawful discrimination could be submitted to a domestic court or tribunal for determination. A 6(1) was applicable to the proceedings instigated by the applicants under the 1976 and 1989 Acts.

A 6(1) embodied the right to a court, of which the right of access, the right to institute proceedings before a court in civil matters, constituted one aspect. That right was not absolute, but might be subject to limitations. At no stage of the proceedings was there any independent scrutiny by the fact-finding bodies set up under the Acts of the facts which led the Secretary of State to issue the conclusive certificates under s 42 of the 1976 Act. The primary fact-finding body in the Tinnelly case, the Fair Employment Agency, could not pursue its investigation into Tinnelly's complaint. As to the McElduffs, the Fair Employment Tribunal was never presented with any evidence as to why the complainants were considered a security risk by the Department of the Environment and the weight of the McElduffs' assertion that they were victims of mistaken identity could not be verified by the Tribunal since its further consideration of the case was brought to a halt by the issue of a s 42 certificate. The judicial review proceedings in the High Court of Northern Ireland in the Tinnelly case never led to a full scrutiny of the factual basis of the Secretary of State's certificate. The judge was unable to go behind the terms of the s 42 certificate in order to verify the underlying basis for the conclusions and he did not have sight of all the materials on which the Secretary of State had based his decision. The Court was naturally mindful of the security considerations at stake in the instant case and of the need for the authorities to display the utmost vigilance in the award of contracts for work involving access to vital power supplies or public buildings situated in town centres in Northern Ireland. However, there was no reasonable relationship of proportionality between the protection of the national security concerns relied on and the impact which the certificates had on the applicants' right of access to a court. In other contexts it had been found possible to modify judicial procedures in such a way as to safeguard national security concerns about the nature and sources of intelligence information and yet accord the individual a substantial degree of procedural justice. There was nothing to suggest that such arrangements would impair public confidence in the administration of justice in Northern Ireland; it might serve to enhance public confidence. The issue by the Secretary of State of s 42 certificates constituted a disproportionate restriction on the applicants' right of access to a court or tribunal and there had been a breach of A 6(1).

Having regard to the conclusions regarding breach of A 6(1), it was not necessary to determine 14+6(1), 8 or 8+13.

Compensation for loss of opportunity (GBP 15,000 to Tinnelly GBP 10,000 to the McElduffs), expenses (GBP 1,200.14 to Mr Patrick and Mr Gerard Tinnelly, no claim submitted in respect of other applicants).

Cited: British-American Tobacco Company Ltd v NL (20.11.1995), Chahal v UK (15.11.1996), Fayed v UK (21.9.1994), Leander v S (26.3.1987), Powell and Rayner v UK (21.2.1990), Stubbings and Others v UK (22.10.1996).

Tolstoy Miloslavsky v United Kingdom (1995) 20 EHRR 442 95/20

[Application lodged 18.12.1990; Commission report 6.12.1993; Court Judgment 13.7.1995]

Count Nikolai Tolstoy Miloslavsky was a historian. In March 1987 he wrote a pamphlet entitled 'War Crimes and the Wardenship of Winchester College' which contained defamatory statements about Lord Aldington. Aldington instituted libel proceedings. At the end of the trial the jury of 12 found unanimously for Lord Aldington and awarded GBP 1,500,000 damages. The judge also granted an injunction restraining further publication and ordered the applicant to pay Lord Aldington's costs. The applicant gave notice of appeal to the Court of Appeal. Lord Aldington's application for an order requiring the applicant to give security in an amount which would cover the costs of his opponent's representation if the appeal were to be unsuccessful was allowed. The applicant did not furnish the required security and his appeal was dismissed on 3 August 1990. He complained that the Court of Appeal's order making his right to appeal conditional upon his paying security for Lord Aldington's costs gave rise to a breach of his right of access to court and that the libel award and injunction constituted a violation of his right to freedom of expression.

Comm found by majority (10–5) NV 6(1) regarding the applicant's right of access to court, unanimously V 10.

Court found unanimously NV 10 as the award was 'prescribed by law', unanimously V 10 in that the award, having regard to its size taken in conjunction with the state of national law at the relevant time was not 'necessary in a democratic society', unanimously NV 10 in respect of the injunction, either taken alone or together with the award, unanimously 6(1) applicable, by majority (8–1) NV 6(1) in respect of the applicant's right of access to court on account of the security for costs.

Judges: Mr R Ryssdal, President, Mr B Walsh, Mr C Russo, Mrs E Palm, Mr I Foighel, Mr R Pekkanen, Sir John Freeland, Mr B Repik, Mr P Jambrek (pd).

Both the award of damages and the injunction constituted an interference with the exercise by the applicant of his right to freedom of expression. Such an interference entailed a violation of A 10 unless it was prescribed by law, pursued an aim or aims that was or were legitimate under A 10(2) and was necessary in a democratic society to attain the aforesaid aim or aims. The libel as found by the jury was of an exceptionally serious nature. National laws concerning the calculation of damages for injury to reputation had to make allowance for an open-ended variety of factual situations. A considerable degree of flexibility might be called for to enable juries to assess damages tailored to the facts of the particular case. That was reflected in the trial judge's summing-up to the jury. It followed that the absence of specific guidelines in the legal rules governing the assessment of damages had to be seen as an inherent feature of the law of damages in this area. Having regard to the fact that a high degree of flexibility might be justified in this area, the various criteria to be taken into account by juries in the assessment of damages as well as the review exercised by the Court of Appeal, the Court reached the conclusion that the relevant legal rules concerning damages for libel were formulated with sufficient precision. In short, the award was prescribed by law. The award and the injunction pursued the legitimate aim of protecting the reputation or rights of others. The scope of judicial control, at the trial and on appeal, at the time of the applicant's case did not offer adequate and effective safeguards against a disproportionately large award. Having regard to the size of the award in the applicant's case in conjunction with the lack of adequate and effective safeguards at the relevant time against a disproportionately large award, the Court found that there had been a violation of the applicant's rights under A 10.

The award was not necessary in a democratic society as there was not, having regard to its size in conjunction with the state of national law at the relevant time, the assurance of a reasonable relationship of proportionality to the legitimate aim pursued. Accordingly there had been a violation of A 10.

It was not claimed that the jury's finding of libel was incompatible with A 10. The injunction was only a logical consequence of the finding and was framed precisely to prevent the applicant from repeating the libellous allegations against Lord Aldington. There was nothing to indicate that the injunction went beyond that purpose. Nor was there any other ground for holding that the measure, either taken alone or in conjunction with the award, amounted to a disproportionate interference with the applicant's right to freedom of expression as guaranteed by A 10.

A 6(1) applied to defamation proceedings, the right to enjoy a good reputation being a 'civil right' within the meaning of that provision. A 6 also applied in relation to a defendant in such proceedings, where the outcome was directly decisive for his or her civil obligations vis-à-vis the plaintiff. Accordingly, A 6(1) applied to the present case. The right of access to the courts may be subject to limitations in the form of regulation by the State. The State enjoyed a certain margin of appreciation. A 6(1) did not guarantee a right of appeal. Nevertheless, a Contracting State which set up an appeal system was required to ensure that persons within its jurisdiction enjoyed before appellate courts the fundamental guarantees in A 6. The security for costs order clearly pursued a legitimate aim, namely to protect Lord Aldington from being faced with an irrecoverable bill for legal costs if the applicant were unsuccessful in the appeal. In addition, since regard was also had to the lack of prospects of success of the applicant's appeal, the requirement could also be said to have been imposed in the interests of a fair administration of justice. The sum required (GBP 124,900) was very substantial and the time-limit (14 days) for providing the money was relatively short. However, there was nothing to suggest that the figure was an unreasonable estimate of Lord Aldington's costs before the Court of Appeal or that the applicant would have been able to raise the money had he been given more time. According to the relevant practice in the Court of Appeal, impecuniosity was a ground for awarding security for costs of an appeal to that court, but only on certain conditions. In exercising its discretion as to whether to grant an application for such an order, the Court of Appeal would consider whether the measure would amount to a denial of justice to the defendant, in particular having regard to the merits of the appeal. If it had reasonable prospects of success, the Court of Appeal would be reluctant to order security for costs. The justification given by the Court of Appeal for ordering security for costs did not disclose any arbitrariness, its decision was based on a full and thorough evaluation of the relevant factors. The national authorities had not overstepped their margin of appreciation in setting the conditions which they did for the applicant to pursue his appeal in the Court of Appeal. It could not be said that those conditions impaired the essence of the applicant's right of access to court or were disproportionate for the purposes of A 6(1).

Fees and expenses (CHF 40,000 and GBP 70,000).

Cited (merits): Margareta and Roger Andersson v S (25.2.1992), Castells v E (23.4.1992), Delcourt v B (17.1.1970), Edwards v UK (16.12.1992), Fayed v UK (21.9.1994), Helmers v S (29.10.1991), Lingens v A (8.7.1986), Malone v UK (2.8.1984), Sunday Times v UK (No 1) (26.4.1979), Thorgeir Thorgeirson v ISL (25.6.1992).

(A 50): Allenet de Ribemont v F (10.2.1995), Edwards v UK (16.12.1992), König v D (10.3.1980), Monnell and Morris v UK (2.3.1987), Pelladoah v NL (22.9.1994), Philis v GR (27.8.1991), Silver and Others v UK (24.10.1983), Sunday Times v UK (No 1) (6.11.1980).

Tomasi v France (1993) 15 EHRR 1 92/53

[Application lodged 10.3.1987; Commission report 11.12.1990; Court Judgment 27.8.1992]

Mr Félix Tomasi was a shopkeeper and a salaried accountant. At the time of his arrest, he was an active member of a Corsican political organisation which put up candidates for the local elections and of which he was the treasurer. On 23 March 1983 the police apprehended him in his shop on suspicion of having taken part in an attack against the rest centre of the Foreign Legion. He was

charged with murder, attempted murder and the carrying of weapons and ammunition. The applicant submitted numerous applications for release which were unsuccessful. On 22 October 1988 he was acquitted and immediately released. On 18 April 1989 he lodged a claim with the Compensation Board at the Court of Cassation. By a decision of 8 November 1991 the Compensation Board awarded the applicant compensation. When in police custody after his arrest the applicant alleged that he had been badly treated. He complained that during his police custody he had suffered inhuman and degrading treatment; he also criticised the length of the proceedings.

Comm found by majority (12–2) V 3, (13–1) V 6(1), unanimously V 5(3).

Court unanimously dismissed the Government's preliminary objections, found V 5(3), V 3, V 6(1).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr A Spielmann, Mr J De Meyer (c), Mr JM Morenilla.

The right to secure the ending of a deprivation of liberty was to be distinguished from the right to receive compensation for such deprivation. The Code of Criminal Procedure made the award of compensation subject to the fulfilment of specific conditions not required under A 5(3). The applicant had lodged his application in Strasbourg after four years spent in detention. The objection of failure to exhaust domestic remedies was therefore dismissed. The objection based on the loss of victim status was open to the same considerations as the plea based on the failure to exhaust domestic remedies and was therefore unfounded.

A 5(3): the period to be taken into consideration began on 23 March 1983, the date of the applicant's arrest, and ended on 22 October 1988 with his release following the delivery of the Gironde assize court's judgment acquitting. It therefore lasted five years and seven months. It fell in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person did not exceed a reasonable time. They had to examine all the circumstances arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on the applications for release. It was essentially on the basis of the reasons given in these decisions and of the true facts mentioned by the applicant in his applications for release and his appeals that the Court was called upon to decide whether or not there had been a violation of A 5(3).

The persistence of reasonable suspicion that the person arrested has committed an offence was a condition *sine qua non* for the validity of the continued detention, but, after a certain lapse of time, it no longer sufficed. The grounds for continuing detention put forward by the investigating authorities were the seriousness of the alleged offences, the protection of public order, the need to prevent pressure being brought to bear on the witnesses or to avoid collusion between the co-accused, and the danger of the applicant's absconding. The existence and persistence of serious indications of the guilt of the person concerned undoubtedly constituted relevant factors, but they could not alone justify such a long period of pre-trial detention. By reason of their particular gravity and public reaction to them, certain offences may give rise to public disquiet capable of justifying pre-trial detention, at least for a time. However, that ground could be regarded as relevant and sufficient only provided that it was based on facts capable of showing that the accused's release would actually prejudice public order. In addition, detention would continue to be legitimate only if public order remained actually threatened; its continuation could not be used to anticipate a custodial sentence. There was, from the outset, a genuine risk that pressure might be brought to bear on the witnesses. It gradually diminished, without however disappearing completely. The danger of absconding could not be gauged solely on the basis of the severity of the sentence risked; it had to be assessed with reference to a number of other relevant factors which might either confirm the existence of a danger of absconding or make it appear so slight that it could not justify detention pending trial. In this case, the decisions of the judicial investigating authorities contained scarcely any reason capable of explaining why they considered the risk of his absconding to be decisive and why they did not seek to counter it by, for instance, requiring the lodging of a security and placing him under court supervision. Some of the reasons for dismissing

the applicant's applications were both relevant and sufficient, but with the passing of time they became much less so, and it was thus necessary to consider the conduct of the proceedings. The right of an accused in detention to have his case examined with particular expedition should not unduly hinder the efforts of the courts to carry out their tasks with proper care. The French courts in this case did not act with the necessary promptness. The length of the contested detention would not appear to have been essentially attributable either to the complexity of the case or to the applicant's conduct. There had therefore been a violation of A 5(3).

A 3: the Government's objection of failure to exhaust related to a completely different matter and the Government were estopped therefore from relying on that objection. The medical evidence indicated that the applicant's injuries related to the period when he was in custody. The medical certificates and reports, drawn up in total independence by medical practitioners, attested to the large number of blows inflicted on the applicant and their intensity; these were two elements which were sufficiently serious to render such treatment inhuman and degrading. The requirements of the investigation and the undeniable difficulties inherent in the fight against crime, particularly with regard to terrorism, could not result in limits being placed on the protection to be afforded in respect of the physical integrity of individuals. There had accordingly been a violation of A 3.

The Government's objection of failure to exhaust domestic remedies in respect of A 6(1) was made for the first time before the Court and was therefore out of time. The Code of Criminal Procedure provided for the filing of a complaint with an application to join the proceedings as a civil party. The right to compensation claimed by the applicant depended on the outcome of his complaint, in other words on the conviction of the perpetrators of the treatment complained of. It was a civil right, notwithstanding the fact that the criminal courts had jurisdiction. Therefore, A 6(1) was applicable. The period to be taken into consideration began on 29 March 1983, the date on which the applicant filed his complaint; it ended on 6 February 1989, with the delivery of the Court of Cassation's judgment. It therefore lasted more than five years and 10 months. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The case was not a particularly complex one. In addition, the applicant hardly contributed to delaying. Responsibility for the delays lay essentially with the judicial authorities. There had accordingly been a violation of A 6(1).

Damages (FF 700,000), costs and expenses (FF 300,000).

Cited: Clooth v B (12.12.1991), Drozd and Janousek v F and E (26.6.1992), Kemmache v F (27.11.1991), Letellier v F (26.6.1991), Moreira de Azevedo v P (23.10.1990), Toth v A (12.12.1991).

Torri v Italy 97/37

[Application lodged 8.9.1993; Commission report 23.1.1996; Court Judgment 1.7.1997]

Mr Angelo Torri's son died on 17 November 1978 as a result of a road accident. On 9 July 1979, he made a civil party application seeking leave to join criminal proceedings that had been brought in the Rome District Court (Criminal Division) against the person responsible for the accident in order to secure his conviction and obtain damages. On 17 November 1982 the accused was convicted, sentenced to imprisonment and ordered to pay the applicant damages. On 29 March 1991 the applicant brought proceedings against the convicted defendant and his insurance company in the Rome District Court (Civil Division) seeking compensation for pecuniary and non-pecuniary damage. In a judgment deposited with the registry on 3 June 1995 the District Court allowed the applicant's claim. The insurance company appealed to the Rome Court of Appeal. The case was still proceeding. The applicant complained of the length of criminal proceedings which he had joined as a civil party followed by proceedings for damages.

Comm found unanimously V 6(1).

Court unanimously dismissed the Government's preliminary objection, found V 6(1).

Judges: Mr R Ryssdal, President, Mr R Macdonald, Mr C Russo, Mr J De Meyer, Mrs E Palm, Mr MA Lopes Rocha, Mr D Gotchev, Mr B Repik, Mr U Lôhmus.

Where the national law of a State made provision for proceedings consisting of two stages – the first where the court ruled on, *inter alia*, the existence of an entitlement to damages and the second when it fixed the amount – it was reasonable to consider that, for the purposes of A 6(1), a civil right was not 'determined' until the amount had been decided. The determination of a right entailed deciding not only on the existence of that right but also on its scope or the manner in which it might be exercised, which included the assessment of damages. When sentencing the defendant, the Rome District Court stated that the quantum of the damages to be paid to the applicant would have to be determined by further proceedings, which obliged him to institute civil proceedings for that purpose. The action for damages was closely linked to the criminal proceedings which the applicant joined as a civil party. Therefore, the preliminary objection that the applicant was out of time regarding the first set of proceedings had to be dismissed.

The period to be taken into consideration began on 9 July 1979, when the applicant lodged his civil party application, and had not yet ended, since the civil proceedings were still pending following an appeal. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. The criminal proceedings lasted just over seven years and two months. Four years and six months then went by before the commencement of the civil action, even though the applicant's lawyer had been served with a copy of the notice of an appeal on points of law and notified of the date of the hearing for oral argument. In the civil proceedings, which had commenced on 29 March 1991, four years elapsed before the Rome District Court's judgment was deposited with the registry. Moreover, on 7 July 1996, the Court of Appeal adjourned the case until June 1997. Those last two periods were too long and in themselves exceeded the 'reasonable time' required by A 6, without it being necessary to consider the length of the criminal proceedings and the question of the applicant's conduct, especially as there was no particular complexity to the case. There had therefore been a breach of A 6(1).

Non-pecuniary damage (ITL 15,000,000), costs and expenses (ITL 10,000,000).

Cited: Silva Pontes v P (23.3.1994), Zappia v I (26.9.1996).

Toth v Austria (1992) 14 EHRR 551 91/69

[Application lodged 12.10.1985; Commission report 3.7.1990; Court Judgment 12.12.1991]

Mr Stefan Toth was arrested on 11 January 1985 for aggravated fraud. He remained in custody for two years, one month and two days during which time he made a number of bail applications. He complained of his detention.

Comm found unanimously V 5(3), 5(4).

Court unanimously rejected Government's preliminary objection, unanimously found V 5(3), by majority (8–1) V 5(4) inasmuch as the proceedings were not adversarial, 5(4) not applicable to proceedings in the Court of Appeal concerning the extensions of the applicant's pre-trial detention.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr F Matscher (pc/pd), Sir Vincent Evans (pd), Mr A Spielmann, Mr SK Martens, Mr I Foighel, Mr R Pekkanen.

The preliminary objection related to the applicant failing to distinguish between two different types of appeal proceedings and not bringing his complaint within the time limit of one. The Court considered it unrealistic to expect the applicant to make the distinction; his arguments should be considered as a whole and some had been sent within the time limit.

A *sine qua non* for continued detention was the persistence of a reasonable suspicion that the person arrested had committed an offence, but after a certain time that was no longer sufficient and the court had to establish whether the other grounds were relevant and sufficient. In this case there were fears the applicant would commit further offences or would abscond; those fears were

based on earlier offences and sentences, the severity of sentence risked by the applicant and the gravity of the charges pending against him. The Court found that the national courts had based their decisions on grounds which were relevant and sufficient. The length of the proceedings were not attributable to either the complexity of the case or the applicant's conduct. Delay had been caused by the transmission of original documents, rather than copies, every time a different court heard an application. Although States did not have to provide appeal proceedings for bail applications, where a State had such a system detainees had to have the same guarantees on appeal as at first instance. In the present case, the proceedings before the Court of Appeal had not been adversarial, the applicant and his lawyer were not summoned, but an official of the public prosecutor's office had attended and had been able to reply to questions. The proceedings did not ensure equal treatment, were not adversarial and had violated A 5(4) on that point. Regarding the judicial proceedings instituted in the Court of Appeal for extension of the pre-trial detention, the appellate court was ruling on the framework within which the investigating judge was free to take decisions and was not deciding on bail or custody or substituting its own decisions. The proceedings were not therefore adversarial and A 5(4) did not therefore apply to those judicial review proceedings.

Costs and expenses (ATS 7,853.40).

Cited: B v A (28.3.1990), Delcourt v B (17.1.1970), Ekbatani v S (26.5.1988), Foti and Others v I (10.12.1982), Guzzardi v I (6.11.1980), Kemmache v F (27.11.1991), König v D (28.6.1978), E v N (29.8.1990), Ringeisen v A (16.7.1971), Sanchez-Reisse v CH (21.10.1986), Wemhoff v D (27.6.1968).

Tre Traktörer Aktiebolag v Sweden (1991) 13 EHRR 309 89/13

[Application lodged 23.1.1984; Commission report 10.11.1987; Court Judgment 7.7.1989]

The applicant company had its licence to serve alcoholic beverages revoked by the County Administrative Board. The licence was revoked as not complying with special conditions (resulting in overcrowding, most customers being aged 18 and there being a discotheque open all evening). An appeal to the National Board of Health and Welfare was rejected. The applicant complained that the revocation of its drinks licence violated P1A1; it also complained that it did not have the possibility of having the revocation of its licence reviewed by a court.

Comm found by majority V 6(1) NV P1A1.

Court found by majority (6–1) V 6(1), unanimously NV P1A1.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr J Pinheiro Farinha (so), Mr R Macdonald, Mr R Bernhardt, Mrs E Palm.

In considering the question of whether there was a dispute over a right and its civil character, the Court referred to its previous case-law. The dispute had to be genuine and serious, it might relate not only to the actual existence of a right but also to its scope and manner of exercise and the result of the proceedings had to be directly decisive for the right in question. The licence conferred a right on the applicant company, the proceedings led to the withdrawal of the licence and were thus directly decisive for the right at issue. The concept of 'civil rights and obligations' was not to be determined solely by reference to the State's domestic law. The company carried on a private commercial activity which had the object of earning profits and was based on a contractual relationship between the licence holder and the customers. The withdrawal of the licence had adverse effects on the goodwill or value of the applicant's restaurant business. The public law features of the case were not sufficient to exclude it from the category of civil rights under A 6(1). The dispute therefore concerned a civil right. The withdrawal of the licence did not constitute the determination of a criminal charge. Although the revocation was a severe measure it could not be characterised as a penal sanction, even if it was linked to the licensee's behaviour; what was decisive was suitability to sell alcoholic beverages. Neither the County Administrative Board nor the National Board of Health and Welfare met the requirement of a tribunal nor provided a remedy which did.

The economic interests connected with running the restaurant were possessions for the purposes of P1A1. The withdrawal constituted an interference with the applicant's right to peaceful enjoyment. The interference did not fall within the second sentence of the first paragraph; the withdrawal constituted a measure of control of the use of property under the second paragraph of P1A1. The withdrawal of the licence was not contrary to Swedish law and pursued the general interest. As there was no stay of execution the financial repercussions were serious. The heavy burden placed on the applicant had to be weighed against the general interest of the community. The State enjoyed a wide margin of appreciation. Having regard to the legitimate aim of Swedish social policy concerning the consumption of alcohol, the State had not failed to strike a fair balance between the economic interests of the applicant company and the general interests of Swedish society. Accordingly NV P1A1.

No causal link between pecuniary damage and 6(1) violation. Costs and expenses (SEK 60,000).

Cited: Benthem v NL (23.10.1985), Chappell v UK (30.3.1989), Golder v UK (21.2.1975), James and Others v UK (21.2.1986), Lithgow v UK, Marckx v B (13.6.1979), Neves e Silva v P (27.4.1989), Pudas v S (27.10.1987), Sporrong and Lönnroth v S (23.9.1982).

Trevisan v Italy 93/11

[Application lodged 2.2.1988; Commission report 9.12.1991; Court Judgment 26.2.1993]

Mr Paolo Trevisan instituted proceedings on 18 July 1986 against the AMP company before the Padua magistrates' court seeking an order requiring AMP to pay him the arrears of salary to which he claimed entitlement, together with damages in respect of the company's failure to fulfil its obligations under his contract of employment and the premature termination of that contract. On 4 May 1987 the Padua magistrates' court ruled that it lacked territorial jurisdiction over the case. The applicant then instituted proceedings against AMP before the Treviso magistrates' court on 9 June 1987. The judgment of the magistrates' court was given on 26 June 1991 partly upholding the applicant's claims. The judgment became final on 7 July 1992. The applicant complained of the length of the civil proceedings.

Comm found by majority (10–1) V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr N Valticos, Mr SK Martens, Mrs E Palm, Mr F Bigi.

In view of the Commission's decision on the admissibility of the application (application declared inadmissible as out of time as regards the period prior to 9 June 1987), the period to be taken into consideration began on 9 June 1987, when the AMP company was summonsed before the Treviso magistrates' court; it ended on 7 July 1992, the date on which the latter's decision became final. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The case was of some complexity but that did not in itself explain the length of the proceedings. The parties' attempt at conciliation resulted in some delay, for which the State could not be held responsible, but the same could not be said of several periods of inactivity. As to the argument based on the vacant post at the Treviso magistrates' court, A 6(1) imposed on the Contracting States the duty to organise their judicial systems in such a way that their courts could meet each of its requirements. Special diligence was necessary in employment disputes. In those circumstances and in view of what was at stake in the proceedings for the applicant, the Court could not regard as reasonable the time which elapsed in this case. There had therefore been a violation of A 6(1).

Non-pecuniary damage (ITL 10,000,000), costs and expenses (ITL 6,477,130).

Cited: Nibbio v I (26.2.1992), Tusa v I (27.2.1992).

Triggiani v Italy 91/19

[Application lodged 19.11.1987; Commission report 5.12.1989; Court Judgment 19.2.1991]

Mr Emanuele Triggiani was a bank employee. He was arrested on 18 August 1975, under an arrest warrant dated 14 August 1975, issued by the Rome investigating judge, on charges of fraud, forgery and use of forged documents, and criminal association. He was suspended from his job on 12 September 1978 and dismissed in November 1978. The case led to marriage difficulties and his wife sought a divorce; separation was pronounced on 27 July 1977. On 30 September 1981 the applicant was acquitted for lack of evidence. The judgment was filed with the court registry on 11 November 1981. The applicant appealed against the decision, believing that he should be totally cleared of suspicion. By judgment of 28 October 1987, the Rome Court of Appeal declared the applicant not guilty of the offences with which he had been charged. The judgment became final on 1 November 1987. He complained, *inter alia*, of the length of the proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Sir Vincent Evans, Mr C Russo, Mr J De Meyer, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla.

The period to be taken into consideration began on 14 August 1975, the date on which the investigating judge ordered Mr Triggiani's arrest; it ended on 1 November 1987. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case. The proceedings were of some complexity owing to the nature of the facts to be established, but the applicant did nothing to slow them down and there were lengthy periods involved in the investigation of the case, the trial at first instance and the appeal proceedings, for which no adequate explanation had been given by the Government. The Court could not regard as reasonable in the instant case a lapse of time of more than 12 years and 2 months. There had therefore been a violation of A 6(1).

Pecuniary and non-pecuniary damage (ITL 150,000,000), costs and expenses (ITL 5,200,000).

Cited: Obermeier v A (28.6.1990).

Tripodi v Italy (1994) 18 EHRR 295 94/4

[Application lodged 9.7.1986; Commission report 14.10.1992; Court Judgment 22.2.1994]

Mrs Rosa Tripodi was a shopkeeper. In 1975 a lawyer, Mr MF, sold her a plot of land adjoining his property in Riace. Numerous disputes arose between them. As a result of Mr MF's complaints, criminal proceedings were instituted against the applicant. Following her trial on 8 November 1983, she was convicted and the District Court sentenced her on 9 May 1984 to suspended imprisonment and a fine. On an appeal, the Reggio di Calabria Court of Appeal quashed the conviction on one count and reduced the suspended prison sentence. The applicant appealed, filing her submissions in a memorial of 11 March 1985. On 2 October 1985 the lawyer appointed by the applicant received the notice fixing the date of the hearing. On 18 November 1985 he asked the court to postpone the hearing set down for 6 December 1985, as his state of health prevented him from attending on that date. He had had an operation and when he had left hospital on 15 November his doctor had prescribed 30 days' total rest for him. The letter reached the registry on 25 November 1985. The hearing before the Court of Cassation was nevertheless held on 6 December 1985. On that date the public prosecutor opposed an adjournment. The Court of Cassation refused to accede to the applicant's lawyer's request and proceeded to hear the case in the latter's absence. In a judgment of the same date, filed with the registry on 14 March 1986, it dismissed the appeals. The applicant complained that, at its hearing on 6 December 1985, the Court of Cassation had examined her appeal in the absence of her lawyer and had failed to appoint a lawyer to take his place.

Comm found unanimously V 6(3)(c).

Court found by majority (7–2) NV 6(3)(c).

Judges: Mr R Ryssdal (jd), President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr R Macdonald, Mr C Russo, Mr A Spielmann, Mr J De Meyer (jd), Mr R Pekkanen.

In appeal and cassation proceedings the manner in which A 6(1) and 6(3)(c) were to be applied depended upon the special features of the proceedings in question. Account had to be taken of the entirety of the proceedings conducted in the domestic legal system and the role of the particular appellate court therein. The Italian Court of Cassation decided on points of law and its proceedings were essentially written. Despite knowing that he would be unable to attend the hearing set down for 6 December 1985, the applicant's lawyer failed to take any action. Yet he could not have been unaware of the statutory provisions on adjournment. He could, and should, have taken steps to ensure that he was replaced for the day of the hearing. He could also have filed a further memorial, or have arranged for the filing of such a memorial by another lawyer, even as late as eight days before the hearing. The State could not be held responsible for a shortcoming on the part of the lawyer appointed by the accused. Having regard to the special features of the procedure in the Court of Cassation and to the conduct of the applicant's lawyer, there had been no violation of A 6(3)(c).

Cited: Jan-Åke Andersson v S (29.10.1991), Granger v UK (28.3.1990), Kamasinski v A (19.12.1989), Monnell and Morris v UK (2.3.1987).

Giuseppe Tripodi v Italy 00/18

[Application lodged 23.9.1996; Court Judgment 25.1.2000]

Mr Giuseppe Tripodi complained of the length of civil proceedings involving expropriation of land.

Court found unanimously V 6(1), that it was not necessary to examine P1A1 or 13.

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 8 November 1988 and was still pending at 18 October 1999. It had lasted more than 10 years and 11 months at one level of jurisdiction. The length of time could not be considered reasonable.

In the light of that finding it was not necessary to examine P1A1 or A 13.

Non-pecuniary damage (ITL 28,000,000), costs and expenses (ITL 5,000,000).

Cited: Bottazzi v I (28.7.1999), Pizzetti v I (26.2.1993), Zanghì v I (19.2.1991).

Trombetta v Italy 97/67

[Application lodged 5.6.1993; Commission report 28.11.1995; Court Judgment 2.9.1997]

Mrs Maria Luisa Trombetta was employed in a local health unit. The present application concerned five sets of proceedings commenced in 1987, 1988 and 1989, concerning the post assigned to the applicant and her remuneration following the dissolution of where she had formerly worked as an administrator. She contested in particular a series of decisions by which her new employer had assigned her to a staff category lower than the one to which she considered herself to be entitled. According to the observations submitted by the applicant in October 1996, the proceedings were still pending.

Comm found by majority (24–5) V 6(1).

Court found by majority (8–1) A 6(1) not applicable.

Judges: Mr R Bernhardt, President, Mr C Russo, Mr N Valticos, Mr R Pekkanen (d), Mr AB Baka, Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr P Kûris, Mr E Levits.

In the law of many Member States of the Council of Europe there was a basic distinction between civil servants and employees governed by private law. That had led the Court to hold that

disputes relating to the recruitment, careers and termination of service of civil servants are as a general rule outside the scope of A 6(1). In the present case the applicant was seeking judicial review of a series of decisions in which her employer had assigned her to a staff category lower than the one to which she considered herself to be entitled. The dispute raised by her clearly related to her career and did not concern a 'civil' right within the meaning of A 6(1). Regarding her claim for payment of the difference in salary, the award of such compensation by the administrative courts was directly dependent on a prior finding that the employer has acted unlawfully. Accordingly, A 6(1) was not applicable in the case.

Cited: Hussain v UK (21.2.1996), Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993), Neigel v F (17.3.1997), Scollo v I (28.9.1995).

Trotta v Italy 00/45

[Application lodged 22.12.1997; Court Judgment 8.2.2000]

Mr Carmine Trotta complained of the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr B Conforti, Mr G Ress, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mrs N Vajic.

The period to be taken into consideration began on 28 April 1981 and ended on 30 August 1997. It had lasted 16 years and four months at one level of jurisdiction. The length of proceedings could not be regarded as reasonable.

Non-pecuniary damage (ITL 57,000,000).

Cited: Bottazzi v I (22.12.1997).

Trotto v Italy 91/59

[Application lodged 26.3.1987; Commission report 15.1.1991; Court Judgment 3.12.1991]

Mrs Maria Trotto was a housewife. On 21 May 1985 she brought an action against the 'Istituto Nazionale della Previdenza Sociale' (INPS) before the Rome magistrates' court in order to establish her disability pension right. Her claim was dismissed on 29 January 1986 and she appealed. The District Court delivered judgment on 20 April 1989, which was filed with the registry on 11 January 1990. She complained of the length of proceedings.

Comm found unanimously V 6(1).

Court unanimously struck case out of the list.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr SK Martens.

Despite several reminders from the registry, the applicant showed no interest in the proceedings before the Court. There was an implied withdrawal which constituted a fact of a kind to provide a solution of the matter. In addition, there was no reason of public policy for continuing the proceedings. The Court noted other cases in which it had reviewed the reasonableness of the length of civil proceedings.

Cited: Brigandì v I (19.2.1991), Caleffi v I (24.5.1991), Capuano v I (25.6.1987), Owners' Services Ltd v I (28.6.1991), Pretto and Others v I (8.12.1983), Pugliese (No 2) v I (24.5.1991), Santilli v I (19.2.1991), Vocaturo v I (24.5.1991), Zanghì v I (19.2.1991).

Trzaska v Poland 00/178

[Application lodged 11.4.1994; Commission report 19.5.1998; Court Judgment 11.7.2000]

Mr Andrzej Trzaska was arrested on 27 June 1991 on suspicion of attempted manslaughter, robbery and rape. A number of hearings were held. His requests for release were refused. On 22 March 1995 he was sentenced to 25 years' imprisonment. On 19 October 1995, following the

applicant's appeal, the Katowice Court of Appeal in part quashed the first-instance judgment and ordered that the case be reconsidered. On 27 May 1997 the Katowice Regional Court again convicted the applicant and imposed a sentence of 25 years' imprisonment.

Comm found by majority (30–1) V 5(3) on account of the length of the applicant's pre-trial detention, unanimously V 5(4) in that the proceedings concerning review of his detention on remand had not been truly adversarial, by majority (26–5) V 6(1) in view of the unreasonable length of the proceedings.

Court found unanimously V 5(3), 5(4), 6(1)

Judges: Mrs E Palm, President, Mrs W Thomassen, Mr L Ferrari Bravo, Mr J Makarczyk, Mr R Türmen, Mr B Zupancic, Mr R Maruste.

The period which fell to be examined under A 5(3) began not on 27 June 1991, the date on which the applicant was remanded in custody, but on 1 May 1993, when Poland's declaration recognising the right of individual petition for the purposes of former A 25 of the Convention took effect. However, when determining whether the applicant's continued detention after that date was justified in the light of A 5(3), the fact that by 1 May 1993 the applicant had already been kept in custody for one year, ten months and three days had to be taken into account. In principle, conviction by a court marked the end of the period to be considered under A 5(3); from that point on, the detention of the person concerned fell within the scope of A 5(1)(a). The applicant was first convicted on 22 March 1995; his conviction was quashed on appeal on 19 October 1995. During the period following the former date, he was obviously detained 'after conviction by a competent court', not 'for the purpose of bringing him before the competent legal authority'. Notwithstanding the retrospective effect under Polish law of a judgment which quashed his conviction, that period had to be deducted from the period to be considered under A 5(3). Subsequently, on 27 May 1997, he was again convicted. The period under examination therefore lasted three years and six months. The courts relied on the serious character of the offences with which the applicant had been charged and on one occasion on the risk of collusion. No concrete factual circumstances were relied on in respect of the risk of collusion. The risk of re-offending, submitted by the Government, was not expressly referred to in any of the decisions of the domestic authorities and could not be considered as constituting a relevant and sufficient ground for a protracted detention on remand in the present case. There were delays and inactivity in the case. Through its protracted length, the detention in issue breached A 5(3).

A 5(4): the applicant submitted a request for release at the hearing held before the Katowice Regional Court on 23 May 1994. However, that hearing was held after the applicant had been detained for a period of two years and 10 months, of which one year and 23 days after 1 May 1993, the date on which the Court became competent to examine individual petitions against Poland. The Regional Court carried out a review of the lawfulness of the applicant's detention in a manner which respected the principle of equality of arms. However, after such a protracted period of detention, it could not be said that the review was carried out speedily as required by A 5(4). The applicant's detention on remand was also reviewed in other types of proceedings. However, as the law stood at the relevant time, neither the applicant nor his lawyer was entitled to attend the relevant hearing although the prosecutor was, nor did the law require that the prosecutor's submissions in support of the applicant's detention be communicated either to the applicant or to his lawyer. Consequently, the applicant did not have an opportunity to comment on those arguments in order to contest the reasons invoked by the prosecuting authorities to justify his detention. There had been a violation of A 5(4).

A 6(1): the proceedings began on 27 June 1991 when the applicant was arrested, and ended on 18 June 1997 when the judgment of the Katowice Regional Court of 27 May 1997 became final and enforceable. However, having regard to the conclusion in respect of its temporal competence, the Court could only consider the period of four years, one month and eighteen days which elapsed after 1 May 1993, the date on which Poland recognised the right of individual petition. In order to assess the reasonableness of the period under examination, the Court had regard to the stage reached in the proceedings on 1 May 1993 and to the fact that by that date the proceedings against

the applicant had already lasted for one year, 10 months and three days. The case disclosed a certain complexity but there were no grounds on which to hold that the case had been particularly complex. The applicant had contributed to the length of proceedings. There were delays on the part of the authorities. Overall, the length of the criminal proceedings contravened A 6(1).

Present judgment constituted just satisfaction in respect of any damage sustained. Costs and expenses (PLN 6,000).

Cited: B v A (28.3.1990), Brogan and Others v UK (29.11.1988), Cesarini v I (12.10.1992), Humen v PL (15.10.1999), IA v F (23.9.1998), Kampanis v GR (13.7.1995), Megyeri v D (12.5.1992), Nikolova v BG (25.3.1999), Yagci and Sargin v TR (8.6.1995), Zimmermann and Steiner v CH (13.7.1983).

Tsingour v Greece 00/174

[Application lodged 10.3.1998; Court Judgment 6.7.2000]

Mr Djahit Tsingour appealed to the Conseil d'Etat on 30 June 1994 against the refusal of the Order of Pharmacists to admit him as a member. The hearing was postponed on several occasions. The hearing took place on 19 May 1998 and on 12 January the decision of the order was annulled. The applicant complained of the length of proceedings.

Court found unanimously V 6(1).

Judges: Mr AB Baka, President, Mr CL Rozakis, Mr B Conforti, Mr G Bonello, Mr P Lorenzen, Mr M Fischbach, Mr A Kovler.

The proceedings began with the application to the Conseil d'Etat on 30 June 1994 and ended on 12 January 1999. It had lasted four years, six months and 12 days at one level of jurisdiction. Although a persistent lawyers' strike was capable of disrupting the functioning of a supreme court, decision had nonetheless to be delivered within a reasonable time. The considerable length of the proceedings in these circumstances was difficult to reconcile with the effectiveness and credibility of the judicial system demanded by the Convention.

Pecuniary damage (GRD 3,000,000), non-pecuniary damage (GRD 1,000,000), costs and expenses (GRD 1,000,000).

Cited: Doustaly v F (23.4.1998), Papageorgiou v GR (22.10.1997), Richard v F (22.4.1998).

Tsirlis and Kouloumpas v Greece (1998) 25 EHRR 198 97/27

[Application lodged 26.11.1991; Commission report 7.3.1996; Court Judgment 29.5.1997]

Mr Dimitrios Tsirlis and Mr Timotheos Kouloumpas were religious ministers of the Christian Jehovah's Witnesses of Greece. They applied to be exempted from military service. Their applications were rejected on the ground that Jehovah's Witnesses were not a 'known religion' and they were ordered to report for duty at military training centres. They each presented themselves at their centre but refused to join their unit or wear a military uniform as ordered by a military officer. They were arrested and charged with insubordination. Following trial they were found guilty and sentenced to imprisonment. Both applicants appealed, remaining in detention pending the hearing. In the meantime the Supreme Administrative Court had delivered judgment in which the right of Jehovah's Witnesses ministers of religion to be exempted from military service had been expressly upheld. They were acquitted following trial and released. They complained that their detention was unlawful and amounted to discrimination on account of their religious beliefs, that they had been subjected to inhuman and degrading treatment, and that they did not have a fair hearing in the matter of compensation for their unlawful detention.

Comm found unanimously V 5(1), V 5(5), V 6(1), not necessary to examine 13, by majority (26–2) V 14+9, (24–4) not necessary to examine 9, unanimously NV 3.

Court found unanimously V 5(1), 5(5), not necessary to examine 9, 14+9, 6(1) or 13, NV 3.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr N Valticos, Mr R Pekkanen, Mr AN Loizou, Mr AB Baka, Mr D Gotchev, Mr P Kûris, Mr U Lôhmus.

The applicants' detention fell to be classified as detention 'after conviction by a competent court' and its lawfulness to be examined under sub-para (a) of A 5(1). Detention would in principle be lawful if it is carried out pursuant to a court order. As early as 1975, the Supreme Administrative Court acknowledged that the Jehovah's Witnesses were to be considered as such, and that case-law could unquestionably be regarded as established by 1990. It was not disputed throughout the domestic proceedings that the applicants were ministers of that religion. However, in deciding on the issue of the applicants' criminal liability, and thus on the lawfulness of their detention, the military authorities blatantly ignored this case-law. As a result, the applicants spent 13 and 12 months in detention respectively. Furthermore, the relevant authorities' persistence not to recognise Jehovah's Witnesses as a 'known religion' and the disregard of the applicants' right to liberty that followed, were of a discriminatory nature when contrasted with the way in which ministers of the Greek Orthodox Church obtained exemption. The applicants' detention following their conviction on charges of insubordination had no basis under domestic law and was arbitrary. It could not accordingly be considered to have been 'lawful' for the purposes of A 5(1).

The Military Appeal Court found that the applicants were not entitled under Greek law to any compensation on the ground that their detention had been due to their own 'gross negligence'. In the absence of any enforceable claim for compensation before the domestic authorities, it followed that A 5(5) had also been breached.

Having found that the applicants' detention was arbitrary and hence unlawful for the purposes of A 5(1), it was not necessary to examine the same facts also from the angle of A 9, either taken alone or in conjunction with A 14. In those circumstances, the Court was not required to rule on the Government's preliminary objections of non-exhaustion and that the complaint was introduced after the six-month period.

In matters of compensation for unlawful detention, A 5(5) constituted a *lex specialis*. Having already found a breach of A 5(5), it was not necessary to examine whether the breach of the State's obligation to grant compensation in respect of the applicants' unlawful detention was also contrary to A 6(1) or 13.

The applicants did not seek to substantiate the complaint under A 3 before the Court and, accordingly, no breach of it had been established.

Pecuniary and non-pecuniary damage (GRD 8,000,000 to Mr Tsirlis, and GRD 7,300,000 to Mr Kouloumpas), costs and expenses (GRD 2,000,000).

Cited: Benham v UK (10.6.1996), Bouamar v B (29.2.1988), Bozano v F (18.12.1986), Fox, Campbell and Hartley v UK (30.8.1990), Lukanov v BG (20.3.1997).

Tsomtsos and Others v Greece 96/48

[Application lodged 3.8.1992; Commission report 18.10.1995; Court Judgment 15.11.1996 (merits), 31.3.1998 (A 50)]

On 20 August 1986, by means of a joint decision of the Minister of Finance and the Minister of Public Works, the State expropriated land of each Mr Nikolaos Tsomtsos and the 100 other applicants' properties in the public interest, in particular to build new sections of the major road between Salonika and Nea Moudania. On 27 November 1987 the applicants applied to the Supreme Administrative Court to have the decisions quashed. Their applications were dismissed. The Salonika Court of First Instance assessed the unit amount for compensation. On account of the application of the presumption created by Law No 653/1977, that the owners of properties on major roads benefit when such roads were widened and had to accordingly contribute to the cost of expropriation if they were expropriated, the State did not compensate the applicants for the area laid down in that Law.

Comm found unanimously V P1A1.

Court unanimously dismissed the Government's preliminary objection, found V P1A1.

Judges (merits): Mr R Ryssdal, President, Mr F Gölcüklü, Mr L-E Pettiti, Mr N Valticos, Mrs E Palm, Mr I Foighel, Mr AB Baka, Mr B Repik, Mr P Kûris.

Judges (A 50): Mr F Gölcüklü, President, Mr L-E Pettiti, Mr C Russo, Mr N Valticos, Mrs E Palm, Mr I Foighel, Mr Ab Baka, Mr B Repik, Mr P Kûris.

The only remedies A 26 required to be exhausted were those that were available and sufficient and related to the breaches alleged. The failure to take the formal steps referred to by the Government could only have been relevant under the rule requiring domestic remedies to be exhausted if the Supreme Administrative Court had considered the merits of the appeals of those applicants who had produced the necessary documents. However, the Supreme Administrative Court had held that it did not have jurisdiction. Several months after the unit amount for compensation had been assessed and the persons entitled to it judicially determined, a full court of the Court of Cassation had delivered a final ruling holding that the presumption was compatible with the Constitution. Any further proceedings brought by the applicants in the civil courts would therefore have been bound to fail. The objection, that the incompatibility of the presumption with P1A1 had not been raised in the national courts, was not raised before the Commission and there was therefore an estoppel. Consequently, the objection of non-exhaustion was dismissed.

The applicants had been deprived of their property in accordance with the provisions of the legislation, so that new sections of a major road could be built. The expropriation thus pursued a lawful aim in the public interest. When compensation due to the owners of properties expropriated for roadworks to be carried out was being assessed, it was legitimate to take into account the benefit derived from the works by adjoining owners. However, in the system applied in this instance, the compensation was in every case reduced by an amount equal to the value of an area 15 metres wide, without the owners concerned being allowed to argue that in reality the effect of the works concerned either had been of no benefit – or less benefit – to them or had caused them to sustain varying degrees of loss. That system, which was too inflexible, took no account of the diversity of situations, ignoring the differences due in particular to the nature of the works and the layout of the site. It was manifestly without reasonable foundation. In the case of a large number of owners, it necessarily upset the fair balance between the protection of the right to property and the requirements of the general interest. In the instant case, the applicants had strong arguments to put forward in an attempt to show that the construction of the new road, instead of increasing the value of the properties they retained, in practice contributed to a drop in value of the properties and to a deterioration in housing conditions. The applicants thus had to bear an individual and excessive burden which could have been rendered legitimate only if they had had the possibility of proving their alleged loss in the courts and, where appropriate, receiving commensurate compensation. There had therefore been a violation of P1A1.

Costs and expenses (GRD 4,000,000). FS regarding A 50, therefore SO.

Cited: James and Others v UK (21.2.1986), Manoussakis and Others v GR (26.9.1996), Mellacher and Others v A (19.12.1989), Sporrong and Lönnroth v S (23.9.1982).

Tumminelli v Italy 92/37

[Application lodged 29.10.1987; Commission report 5.3.1991; Court Judgment 27.2.1992]

Mr Salvatore Tumminelli was a surveyor. On 29 May 1979 he applied to the presiding judge of the Caltanissetta District Court for a payment order against a Mr M, who he alleged owed him money for professional services. On 31 May 1979 the presiding judge issued an order to pay against Mr M. The proceedings were still pending and the applicant complained of their length.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 31 May 1979, the date of the payment order, and had not yet ended. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The case was a simple one. There were long delays on the part of the authorities and two particular periods of inactivity. The decision to have recourse to the testimony of a witness was taken in the context of judicial proceedings supervised by a judge. A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. In those circumstances a lapse of time of more than 12 years for proceedings which were still at the stage of the investigation could not be regarded as reasonable.

Judgment constituted just satisfaction for non-pecuniary damage sustained. Costs and expenses (ITL 1,996,500).

Cited: Capuano v I (25.6.1987), Pugliese (No 2) v I (24.5.1991), Vocaturo v I (24.5.1991).

Tusa v Italy 92/33

[Application lodged 7.10.1987; Commission report 5.12.1990; Court Judgment 27.2.1992]

Mr Antonio Tusa was a salesman. On 27 November 1973 he filed a suit with the Agrigento District Court against Mr R and the X insurance company, claiming compensation for damage sustained in a collision between his car and one driven by Mr R. On 16 March 1988 the court declared the defendants jointly and severally liable to pay damages to the applicant. The text of the decision was lodged with the court registry on 28 April 1988. Mr R appealed against the District Court's judgment. By a judgment of 5 April 1991, lodged with the registry on 8 October, the Palermo Court of Appeal dismissed Mr R's appeal and found for the applicant. He complained of the length of the proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 27 November 1973, when the proceedings were instituted against Mr R and the X company in the Agrigento District Court. It had not yet ended, as an appeal to the Court of Cassation from the judgment of the Palermo Court of Appeal remained possible. The reasonableness of the length of proceedings was to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The case was one of some complexity. However, the investigation took more than 12 years. Although the parties contributed to slowing down the proceedings by several requests for adjournments, there were numerous adjournments by the judicial authorities of their own motion. Regarding the backlog of cases and the transfer of the investigating judge, A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. There were delays on the part of the authorities. A lapse of time of approximately 18 years for two levels of jurisdiction could not be regarded as reasonable.

Non-pecuniary damage (ITL 10,000,000), costs and expenses (ITL 2,000,000).

Cited: Vocaturo v I (24.5.1991).

Twalib v Greece 98/45

[Application lodged 6.4.1993; Commission report 25.2.1997; Court Judgment 9.6.1998]

Mr Mosses Twalib was a Tanzanian seaman. On 18 February 1990 criminal proceedings were instituted against him for forgery and various drug-related offences. When he appeared before the court on 12 July 1991, his lawyer was absent and the court asked the lawyer of one of the co-accused to act for the applicant as well. A short interval was ordered to enable the appointed lawyer to study the applicant's case file. On 16 July 1991 the applicant was found guilty of

importing and transporting drugs and using forged documents. It sentenced him to life imprisonment and a fine. The applicant appealed. On appeal he was again assisted by a court-assigned interpreter and was defended by a lawyer provided by a humanitarian organisation. He was convicted of lesser matters and sentenced to 12 years' imprisonment and a fine. He lodged an appeal on points of law on 26 March 1993 stating that grounds would follow. On 12 July 1993 the Court of Cassation declared the applicant's appeal on points of law inadmissible on the ground that no grounds of appeal had been submitted. His claim to have petitioned the Court of Cassation about his case and to have asked for legal aid was rejected. He complained, *inter alia*, that the lawyer appointed by the trial court had not had sufficient time and facilities to prepare his defence and that he had not been granted legal aid for the preparation and hearing of his case in the proceedings before the Court of Cassation.

Comm found unanimously V 6(1) and 6(3)(c), by majority (24–6) NV 6(1) and 6(3)(b), unanimously NV 6(1) and (3)(e), NV 5(2).

Court unanimously dismissed the Government's preliminary objection, found by majority (6–3) NV 6(1)+6(3)(b), unanimously V 6(1)+6(3)(c).

Judges: Mr R Bernhardt, President, Mr J De Meyer, Mr N Valticos, Mr I Foighel, Mr J Makarczyk (pd), Mr P Jambrek (pd), Mr P Kûris, Mr J Casadevall, Mr P Van Dijk (pd).

The applicant affirmed in his pleadings before the Court that he did not wish to pursue the complaints under A 5(2) and A 6(1)+6(3)(e). Accordingly, the Court confined its examination to the applicant's complaints under A 6(1) taken together with A 6(3)(b) and (c).

The Government's arguments on the issue of exhaustion of domestic remedies were closely linked to the merits of the applicant's complaint under A 6(3)(c) concerning the unavailability of legal aid in respect of his appeal on points of law and therefore the preliminary plea would be joined to the merits.

The applicant's counsel was also appearing on behalf of one of his co-accused. Despite the seriousness of the offence and the complexity of the case, the lawyer was afforded very limited time to consult the case file and prepare the applicant's defence. In view of the applicant's submission that there was a conflict of interests between him and his co-accused, the brevity of the period of preparation could hardly be defended on the basis of the argument that the lawyer, as the representative of the co-accused, was largely familiar with the case. There were therefore serious shortcomings in the fairness of the proceedings at first instance which may have adversely affected the position of the applicant. However, on appeal, the applicant was represented by a different lawyer. The Court of Appeal was empowered to examine all questions of fact and of law and to quash the impugned judgment. The applicant's lawyer did not contend on appeal that the conviction was unsafe and that a retrial should be ordered. There was no clear indication that the appellate court could assume that there had been a defect in the first-instance proceedings without being alerted to the matter. The Court of Appeal reached its conclusion after having a hearing at which the applicant and his counsel were present. Given that the applicant had the opportunity to raise the alleged deficiency at the appeal hearing and that there was nothing to suggest that the fairness of the appeal proceedings could be called into question, there had been no violation of A 6(1) in conjunction with para 3(b) in the instant case.

The right of an accused charged with a criminal offence to free legal assistance was one element of the concept of a fair trial in criminal proceedings. The manner in which para 1, as well as para (3)(c), of A 6 was to be applied in relation to appellate or cassation courts depended on the special features of the proceedings involved; account had to be taken of the entirety of the proceedings conducted in the domestic legal order and the role of the appellate or cassation court therein. The Court was satisfied that the applicant lacked sufficient means to pay for his legal representation in connection with his appeal to the Court of Cassation. In view of the seriousness of the offence for which he was convicted, the severity of the sentence imposed on him and the complexity of the cassation procedure, the interests of justice required that the applicant be granted free legal

assistance to pursue an appeal on points of law. The applicant was of foreign origin and unfamiliar with the Greek language and legal system. In those circumstances, the interests of justice required that the applicant be granted free legal assistance in connection with his intended appeal to the Court of Cassation. Greek law made no provision for the grant of legal aid to individuals like the applicant in connection with their appeals on points of law. It was accordingly not of relevance in the instant case that the applicant's request for legal aid was made after the expiry of the time-limit for the appeal: it could not have been complied with.

Having regard to the fact that the law of the respondent State made no provision for the grant of legal aid in connection with an appeal on points of law the Government's preliminary objection had to be dismissed, there had been a violation of A 6(1) taken together with para 3(c).

Non-pecuniary damage (GRD 1,500,000), costs and expenses (GRD 2,000,000 less FF 20,298).

Cited: Belilos v CH (29.4.1988), Granger v UK (28.3.1990), Boner v UK (28.10.1994), Kerojärvi v F (19.7.1995), Kremzow v A (21.9.1993), Pakelli v D (25.4.1983), Pham Hoang v F (25.9.1992), Raninen v SF (16.12.1997).

Tyrer v United Kingdom (1979–80) 2 EHRR 1 78/2

[Application lodged 21.9.1972; Commission report 14.12.1976; Court Judgment 25.4.1978]

Mr Anthony M Tyrer lived in Isle of Man. In 1972, aged 15 and of previous good character, he pleaded guilty before the local juvenile court to an assault charge on a senior pupil. He was sentenced on the same day to three strokes of the birch in accordance with the relevant legislation. His appeal to the High Court of Justice of the Isle of Man was dismissed. The court ordered the applicant to be medically examined in the morning of the same day and had before it a doctor's report that the applicant was fit to receive the punishment. After a considerable wait in a police station for a doctor to arrive, the applicant was birched late in the afternoon of the same day. His father and a doctor were present. The applicant was made to take down his trousers and underpants and bend over a table; he was held by two policemen whilst a third administered the punishment, pieces of the birch breaking at the first stroke. The birching raised, but did not cut, the applicant's skin and he was sore for about a week and a half afterwards. The applicant claimed a breach of A 3. In January 1976, the Commission was notified that the applicant wished to withdraw his application. However, the Commission decided that it could not accede to this request since the case raised questions of a general character affecting the observance of the Convention which necessitated a further examination of the issues involved. The applicant took no further part in the proceedings.

Comm found by a majority (14–1) V 3, not necessary to examine 14.

Court held by a majority (6–1) V 3; unanimously not necessary to examine 3+14.

Judges: Mr G Balladore Pallieri, President, Mr J Cremona, Mrs H Pedersen, Mr Thór Vilhjálmsson, Sir Gerald Fitzmaurice (d), Mr P-H Teitgen, Mr F Matscher.

The preliminary application to have the case struck from the list in view of the fact that the applicant had declared that he wished to withdraw his complaint was refused. Under the rules, the Court could strike out of its list a case brought before it by the Commission, but only when the Court 'was informed of a friendly settlement, arrangement or other fact of a kind to provide a solution of the matter'. The Commission never examined the circumstances surrounding the applicant's request and the Court received no indication that the applicant's declaration of withdrawal was a fact of a kind to provide a solution of the matter. The proposed abolition of corporal punishment as a penalty for the offence of which the applicant had been convicted could not be regarded as such a fact.

The applicant claimed a breach of A 3, alleging that there had been torture or inhuman or degrading treatment or punishment, or any combination thereof. The Court held that the applicant's punishment did not amount to 'torture', nor was the level of suffering reached for the punishment to be classified as 'inhuman'. The question was whether the applicant was subjected to a 'degrading punishment'. A person may be humiliated by the mere fact of being criminally

convicted. However, for the purposes of A 3 he should be humiliated not simply by his conviction but by the execution of the punishment which was imposed on him. In most, if not all cases, this might be one of the effects of judicial punishment, involving as it did unwilling subjection to the demands of the penal system. A 3, by expressly prohibiting inhuman and degrading punishment, implied that there was a distinction between such punishment and punishment in general. In order for a punishment to be degrading and in breach of A 3, the humiliation or debasement involved had to attain a particular level and had to in any event be other than that usual element of humiliation referred to above. The assessment was relative, depending on all the circumstances of the case and, in particular, on the nature and context of the punishment itself and the manner and method of its execution. It was never permissible to have recourse to punishments which were contrary to A 3, whatever their deterrent effect may be. The Convention was a living instrument which had to be interpreted in the light of present-day conditions. The Court was influenced by the developments and commonly accepted standards in the penal policy of the member States of the Council of Europe in this field. Publicity may be a relevant factor in assessing whether a punishment was degrading within the meaning of A 3, but the Court did not consider that absence of publicity would necessarily prevent a given punishment from falling into that category: it may well suffice that the victim was humiliated in his own eyes, even if not in the eyes of others. The very nature of judicial corporal punishment was that it involved one human being inflicting physical violence on another human being. It was institutionalised violence: permitted by the law, ordered by the judicial authorities of the State and carried out by the police authorities of the State. Although the applicant did not suffer any severe or long-lasting physical effects, his punishment constituted an assault on precisely that which it was one of the main purposes of A 3 to protect, namely, a person's dignity and physical integrity. Neither could it be excluded that the punishment may have had adverse psychological effects. The institutionalised character of this violence was further compounded by the whole aura of official procedure attending the punishment and by the fact that those inflicting it were total strangers to the offender. There had been an interval of several weeks since the applicant's conviction by the juvenile court and a considerable delay in the police station where the punishment was carried out. Accordingly, in addition to the physical pain he experienced, the applicant was subjected to the mental anguish of anticipating the violence he was to have inflicted on him. In the present case, it was not relevant that the sentence was imposed for an offence of violence, nor was it relevant that birching was an alternative to a period of detention: the fact that one penalty may be preferable to, or have less adverse effects or be less serious than, another penalty did not of itself mean that the first penalty was not degrading within the meaning of A 3. The applicant was subjected to a punishment in which the element of humiliation attained the level inherent in the notion of degrading punishment. The indignity of having the punishment administered over the bare posterior aggravated the degrading character of the applicant's punishment but it was not the only or determining factor. There was therefore a violation of A 3.

It was not necessary to examine the question of breach of A 14.

Not necessary to apply A 50 as there was no longer an applicant associated with the case.

Cited: De Becker v B (27.3.1962), Kjeldsen, Busk Madsen and Pedersen v DK (7.12.1976), Ireland v UK (18.1.1978).

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Umlauft v Austria (1996) 22 EHRR 76 95/35

[Application lodged 23.8.1989; Commission report 19.5.1994; Court Judgment 23.10.1995]

On 16 October 1987 Mr Helmut Umlauft was stopped by the police while driving his car. He refused to submit to a breath test. In a sentence order of the same day the Bregenz district authority ordered him to pay a fine of ATS 10,000 with 480 hours' imprisonment in default, for an offence under the Road Traffic Act. The applicant's appeal against that decision to the Vorarlberg regional government, was dismissed on 19 January 1988. On 8 March 1988 he applied to the Constitutional Court. On 14 October 1988, at the conclusion of a consideration of the case in private, the Constitutional Court declined to accept the appeal for adjudication. At the applicant's request, it referred the application to the Administrative Court on 13 December 1988. On 20 January 1989 the Administrative Court dismissed the appeal. The court refused to refer the case to the Constitutional Court. He complained that he had not had access to a court with full jurisdiction.

Comm found unanimously V 6(1) as regards access to a court and that no separate issue arose under as to the failure to hold a hearing.

Court found unanimously V 6(1) as regards access to a court, not necessary to examine the complaint based on the lack of a hearing in the Administrative Court.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Mr R Macdonald, Mr SK Martens (so), Mr I Foighel, Mr JM Morenilla, Sir John Freeland, Mr J Makarczyk.

In order to determine whether an offence qualified as 'criminal' for the purposes of the Convention, it was first necessary to ascertain whether or not the provision defining the offence belonged, in the legal system of the respondent State, to criminal law; next, the very nature of the offence and the degree of severity of the penalty risked had to be considered. Although the offences in issue and the procedures followed in the case fell within the administrative sphere, they were nevertheless criminal in nature. That was moreover reflected in the terminology employed. In addition, the fine imposed on the applicant was accompanied by an order for his committal to prison in the event of his defaulting on payment. Those considerations were sufficient to establish that the offence of which the applicant was accused could be classified as 'criminal' for the purposes of the Convention. It followed that A 6 applied.

The Austrian reservation did not apply in the instant case as it related to A 5, whereas the applicant's complaints were based on A 6, and did not include the Road Traffic Act 1960.

Decisions taken by administrative authorities which did not themselves satisfy the requirements of A 6(1) had to be subject to subsequent control by a judicial body that had full jurisdiction. The Constitutional Court was not such a body. In the present case it could look at the impugned proceedings only from the point of view of their conformity with the Constitution, and that did not enable it to examine all the relevant facts. It accordingly lacked the powers required under A 6(1). The powers of the Administrative Court had to be assessed in the light of the fact that the court in this case was sitting in proceedings that were of a criminal nature for the purposes of the Convention. It followed that when the compatibility of those powers with A 6(1) was being gauged, regard had to be had to the complaints raised in that court by the applicant as well as to the defining characteristics of a judicial body that had full jurisdiction. Those included the power to quash in all respects, on questions of fact and law, the decision of the body below. As the Administrative Court lacked that power, it could not be regarded as a tribunal within the meaning of the Convention. It followed that the applicant did not have access to a tribunal. There had accordingly been a violation of A 6 on that point.

Having regard to that it was not necessary to examine the complaint of lack of a hearing.

Costs and expenses (ATS 100,000).

Cited: Albert and Le Compte v B (10.2.1983), Chorherr v A (25.8.1993), Demicoli v M (27.8.1991), Fischer v A (26.4.1995), Hauschildt v DK (24.5.1989), Öztürk v D (21.2.1984), Saïdi v F (20.9.1993).

Unión Alimentaria Sanders SA v Spain (1990) 12 EHRR 25 89/11

[Application lodged 5.7.1985; Commission report 13.10.1988; Court Judgment 7.7.1989]

The applicant company brought an action in a Barcelona Court of First Instance on 2 May 1979 to recover money owed. On 18 October 1986, Unión Alimentaria Sanders SA applied to the Barcelona Court of First Instance No 9 for enforcement of the Court of Appeal's judgment of 13 September 1986 and seizure of the defendants' assets. That application was still pending. The applicant complained about the length of time it had taken to hear the case.

Comm found by majority (13–1) V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr F Matscher, Mr R Macdonald, Mr J De Meyer, Mr JA Carrillo Salcedo.

The period to be considered began on 1 July 1981, when Spain's declaration accepting the right of individual petition took effect. However, in order to determine the reasonableness of the period which elapsed after then, regard had to be had to the stage which the proceedings had reached at that juncture. Regarding the end of the period, two phases had to be distinguished. The first had lasted until 13 September 1986, when the Barcelona Court of Appeal's judgment was notified to the parties; the second consisted of the enforcement proceedings. The latter proceedings, which depended entirely on the initiative of the applicant company, began on 18 October 1986 and had still not been concluded. The Court concentrated on the first phase, which lasted five years, two months and 13 days. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard, *inter alia*, to its complexity and the conduct of the applicant and the competent authorities. The applicant was only required to show diligence in carrying out the procedural steps relevant to him, to refrain from using delaying tactics and to avail himself of the scope afforded by domestic law for shortening the proceedings. The present case was not complex and the applicant had shown diligence. There had been two periods of inactivity amounting to more than three and a half years; such delay could only be justified by very exceptional circumstances. A temporary backlog of court business did not make a State liable if appropriate remedial action was taken with requisite promptness. In such circumstances it was legitimate as a temporary expedient to decide on a particular order in which cases would be dealt with, based on urgency and importance. However, the urgency of a case increased with time. In the present case the backlog had become organisationally inbuilt and the remedial measures taken were insufficient and belated. The length of the proceedings was excessive.

Pecuniary damage (ESP 1,500,000), costs and expenses (ESP 220,171).

Cited: Guincho v P (10.7.1984), Martins Moreira v P (26.10.1988), Milasi v I (25.6.1987), Zimmermann and Steiner v CH (13.7.1983).

United Communist Party of Turkey and Others v Turkey (1998) 26 EHRR 121 98/1

[Application lodged 7.1.1992; Commission report 3.9.1996; Court Judgment 30.1.1998]

The United Communist Party of Turkey (TBKP), the first applicant, was a political party formed on 4 June 1990. Mr Nihat Sargin and Mr Nabi Yagci, the second and third applicants, were respectively Chairman and General Secretary of the TBKP. On the day of its formation, its constitution and programme were submitted to the office of Principal State Counsel at the Court of Cassation for assessment of their compatibility with the Constitution and Law. On 14 June 1990, when the TBKP was preparing to participate in a general election, Principal State Counsel at the Court of Cassation applied to the Constitutional Court for an order dissolving the TBKP. He accused the party of having sought to establish the domination of one social class over the others, of having incorporated the word 'communist' into its name, of having carried on activities likely to undermine the territorial integrity of the State and the unity of the nation and of having declared itself to be the successor to a previously dissolved political party, the Turkish Workers' Party. On 16

July 1991 the Constitutional Court made an order dissolving the TBKP on the grounds of its name and its constitution and programme. The leaders, including the applicants, were banned from holding similar office in any other political party. They complained that the dissolution and the ban had infringed their right to freedom of association.

Comm found unanimously V 11, no separate issue under 9 and 10, no need to consider separately 14 and 18 and P1A1, P1A3.

Court found unanimously V 11, not necessary to examine 9, 10, 14, 18 and P1A1, P1A3.

Judges: Mr R Bernhardt, President, Mr F Gölcüklü, Mr F Matscher, Mr R Macdonald, Mr C Russo, Mr N Valticos, Mrs E Palm, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla, Sir John Freeland, Mr AB Baka, Mr MA Lopes Rocha, Mr L Wildhaber, Mr J Makarczyk, Mr P Kûris, Mr U Lôhmus, Mr P van Dijk.

The wording of A 11 provided an initial indication as to whether political parties could rely on that provision; trade unions were but one example among others of the form in which the right to freedom of association might be exercised. Political parties were a form of association essential to the proper functioning of democracy and in view of the importance of democracy in the Convention system, there could be no doubt that political parties came within the scope of A 11. An association, including a political party, was not excluded from the protection afforded by the Convention simply because its activities were regarded by the national authorities as undermining the constitutional structures of the State and calling for the imposition of restrictions. A 1 made no distinction as to the type of rule or measure concerned and did not exclude any part of the Member States' jurisdiction from scrutiny under the Convention.. The political and institutional organisation of the Member States had accordingly to respect the rights and principles enshrined in the Convention. Some compromise between the requirements of defending democratic society and individual rights was inherent in the system of the Convention. The protection afforded by A 11 lasted for an association's entire life and dissolution of an association by a country's authorities had accordingly to satisfy the requirements of para 2 of A 11. A 11 was applicable to the facts of the case.

There had been an interference with the right in respect of all three applicants. The interference was prescribed by law. The dissolution of the TBKP pursued at least one of the legitimate aims set out in A 11, the protection of national security. Notwithstanding its autonomous role and particular sphere of application, A 11 also had to be considered in the light of A 10. The fact that their activities formed part of a collective exercise of freedom of expression in itself entitled political parties to seek the protection of A 10 and 11. Political parties made an irreplaceable contribution to political debate, which was at the very core of the concept of a democratic society. The Court had identified certain provisions of the Convention as being characteristic of democratic society. The exceptions set out in A 11 were, where political parties were concerned, to be construed strictly; only convincing and compelling reasons could justify restrictions on such parties' freedom of association. In determining whether a necessity within the meaning of A 11(2) existed, the Contracting States had only a limited margin of appreciation, which went hand in hand with rigorous European supervision. The TBKP was dissolved even before it had been able to start its activities on the basis of its constitution and programme. A political party's choice of name could not, in principle, justify a measure as drastic as dissolution, in the absence of other relevant and sufficient circumstances. In the absence of any concrete evidence to show that in choosing to call itself 'communist', the TBKP had opted for a policy that represented a real threat to Turkish society or the Turkish State, the Court could not accept that the submission based on the party's name might, by itself, entail the party's dissolution. There could be no justification for hindering a political group solely because it sought to debate in public the situation of part of the State's population and to take part in the nation's political life in order to find, according to democratic rules, solutions capable of satisfying everyone concerned. There was no evidence to conclude that the party bore any responsibility for the problems which terrorism posed in Turkey. There was need to bring A 17 into play. A measure as drastic as the immediate and permanent dissolution of the TBKP, ordered before its activities had even started and coupled with a ban barring its leaders from discharging any other political responsibility, was disproportionate to the aim pursued and

consequently unnecessary in a democratic society. It followed that the measure infringed A 11 of the Convention.

The applicants did not pursue their complaints under A 9, 10, 14 and 18 in the proceedings before the Court, which saw no reason to consider them of its own motion.

The measures complained of under P1A1 and P1A3 by the applicants were incidental effects of the TBKP's dissolution, which the Court had held to be in breach of A 11. It was therefore unnecessary to consider those complaints separately.

Present judgment constituted sufficient just satisfaction in respect of any damage sustained by Mr Sargin and Mr Yagci. Costs and expenses (FF 120,000).

Cited: Lawless v IRL (14.11.1960 and 1.7.1961), Kjeldsen, Busk Madsen and Pedersen v DK (7.12.1976), Handyside v UK (7.12.1976), Ireland v UK (8.1.1978), Klass and Others v D (6.9.1978), Sunday Times v UK (No 1) (26.4.1979), Artico v I (13.5.1980), Young, James and Webster v UK (13.8.1981), Lingens v A (8.7.1986), Mathieu-Mohin and Clerfayt v B (2.3.1987), Soering v UK (7.7.1989), Castells v E (23.4.1992), Open Door and Dublin Well Woman v IRL (29.10.1992), Hadjianastassiou v GR (16.12.1992), Informationsverein Lentia and Others v A (24.11.1993), Jersild v DK (23.9.1994), Loizidou v TR (23.3.1995), Vogt v D (26.9.1995), Akdivar and Others v TR (16.9.1996), Wingrove v UK (25.11.1996), Aksoy v TR (18.12.1996), Gitonas and Others v GR (1.7.1997).

Unterpertinger v Austria (1991) 13 EHRR 175 86/13

[Application lodged 1.9.1980; Commission report 11.10.1984; Court Judgment 24.11.1986]

Mr Alois Unterpertinger was charged with assaulting his wife and step-daughter. They declined to give evidence, as was their right as close relatives, and their statements were read. He claimed self-defence regarding the attack on his daughter and insufficient agility and strength to kick his wife's thumb such as to break it. He was convicted and sentenced to 6 months' imprisonment. His appeal to the Court of Appeal was dismissed. He claimed a breach of A 6.

Comm found by majority (5–5 with the President's casting vote) NV 6(3)(d), (5–4 with one abstention) NV 6(1).

Court unanimously found V 6.

Judges: Mr G Wiarda, President, Mr W Ganshof van der Meersch, Mr F Matscher, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo.

Although the refusal to give evidence prevented the trial judge from hearing the witnesses and the defence and prosecution from examining them during oral proceedings, that was not manifestly incompatible with A 6(1) and (3)(d). The reading out of the statements before the trial judge and Court of Appeal was not inconsistent with A 6(1) and (3)(d) but the use made of them as evidence had to comply with the rights of the defence. The applicant had not been able to examine the witnesses. Although he was able to submit his comments freely during the hearing, the Court of Appeal had refused to admit evidence he wished to adduce to put his, now former, wife and step-daughter's credibility in doubt. The courts had other evidence before them but had convicted the applicant mainly on the statements of the former wife and step-daughter. The courts had treated those statements not as items of information but as proof of the truth of the accusations made by the women at the time. The applicant's rights were therefore appreciably restricted and he did not have a fair trial. There had been a breach of A 6(1) taken together with the principles in (3)(d).

Damages (ATS 161,578.15 less FF 5,470.50).

Cited: Airey v I (9.10.1979), Bönisch v A (6.5.1985).

V

V v United Kingdom 99/122

[Application lodged 20.5.1994; Commission report 4.12.1998; Court Judgment 16.12.1999]

The applicant was born in August 1982. On 12 February 1993, when he was ten years old, he and another ten-year-old boy, T, had played truant from school and abducted a two-year-old boy from a shopping precinct, taken him on a journey of over two miles and then battered him to death and left him on a railway line to be run over. The applicant and T were arrested in February 1993 and detained pending trial. Their trial took place over three weeks in November 1993, in public, at an adult Crown Court before a judge and 12 jurors. Following their conviction for murder, the judge sentenced them, as required by law, to detention during Her Majesty's pleasure. There had to be set a tariff to satisfy the requirements of retribution and deterrence. The trial judge set the tariff at 8 years. The Home Secretary set the tariff at 15 years in respect of each applicant. That decision was quashed in judicial review proceedings by the House of Lords on 12 June 1997. The applicant complained that, in view of his young age, his trial in public in an adult Crown Court and the punitive nature of his sentence constituted violations of his right not to be subjected to inhuman or degrading treatment or punishment as guaranteed under A 3. He further complained that he had been denied a fair trial in breach of A 6 of the Convention, that he had suffered discrimination in breach of A 14 in that a child aged younger than ten at the time of the alleged offence would not have been held criminally responsible, that the sentence imposed on him of detention during Her Majesty's pleasure amounted to a breach of his right to liberty under A 5, and that the fact that a government minister, rather than a judge, was responsible for setting the tariff violated his rights under A 6. Finally, he complained under A 5(4) of the Convention that he had not had the opportunity to have the continuing lawfulness of his detention examined by a judicial body, such as the Parole Board.

Comm found by majority (17–2) NV 3 in respect of the trial, (14–5) V 6 in respect of the trial, (15–4) no separate issue under 14 in respect of the trial, (17–2) NV 3 or 5(1) in respect of the sentence, (18–1) V 6 in respect of the fixing of the sentence, (18–1) V 5(4).

Court unanimously dismissed the Government's preliminary objection, found by majority (12–5) NV 3 in respect of trial, (16–1) V 6(1) in respect of the trial, unanimously not necessary to examine 6(1)+14, (10–7) NV 3 in respect of sentence, unanimously NV 5(1), V 6(1) in respect of the setting of the applicant's tariff, V 5(4).

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr CL Rozakis (pd), Mr A Pastor Ridruejo (jpd), Mr G Ress (jpd), Mr J Makarczyk (jpd), Mr P Kûris, Mr R Türmen, Mr J-P Costa (pd), Mrs F Tulkens (jpd), Mr C Bîrsan, Mr P Lorenzen, Mr M Fischbach, Mr V Butkevych (jpd), Mr J Casadevall, Mr AB Baka (pd), Lord Reed (c), ad hoc judge.

The Government had not discharged the burden upon them of proving the availability to the applicant of a remedy capable of providing redress in respect of his Convention complaints and offering reasonable prospects of success. Therefore the Government's preliminary objection of non-exhaustion was dismissed.

The attribution of criminal responsibility to the applicants in respect of acts committed at the age of ten did not in itself give rise to a breach of A 3 of the Convention. The criminal proceedings took place over three weeks in public in an adult Crown Court with attendant formality. The Court was not convinced that the particular features of the trial process as applied to the applicant caused, to a significant degree, suffering going beyond that which would inevitably have been engendered by any attempt by the authorities to deal with the applicant following the commission by him of the offence in question. The applicant's trial did not give rise to a violation of A 3 of the Convention.

A 6: it was essential that a child charged with an offence was dealt with in a manner which took full account of his age, level of maturity and intellectual and emotional capacities, and that steps were taken to promote his ability to understand and participate in the proceedings. In respect of a young child charged with a grave offence attracting high levels of media and public interest, it would be necessary to conduct the hearing in such a way as to reduce as far as possible his or her

feelings of intimidation and inhibition, or, where appropriate in view of the age and other characteristics of the child and the circumstances surrounding the criminal proceedings, to provide a modified procedure of selected attendance rights and judicious reporting. The trial took place over three weeks in public in the Crown Court. Special measures were taken in view of the applicant's young age and to promote his understanding of the proceedings: for example, he had the trial procedure explained to him and was taken to see the courtroom in advance, and the hearing times were shortened so as not to tire the defendant excessively. Nonetheless, the formality and ritual of the Crown Court must at times have seemed incomprehensible and intimidating for a child of 11, and there was evidence that certain of the modifications to the courtroom, in particular the raised dock, which was designed to enable the defendant to see what was going on, had the effect of increasing the applicant's sense of discomfort during the trial, since he felt exposed to the scrutiny of the press and public. There was psychiatric evidence that the applicant was suffering from post-traumatic effects and found it very difficult and distressing to think or talk about the events in question, to concentrate during the trial or discuss the offence with his lawyers. In such circumstances it was not sufficient for the purposes of A 6(1) that the applicant was represented by skilled and experienced lawyers. Although his legal representatives were seated, as the Government put it, 'within whispering distance', it was highly unlikely that the applicant would have felt sufficiently uninhibited, in the tense courtroom and under public scrutiny, to have consulted with them during the trial or, indeed, that, given his immaturity and his disturbed emotional state, he would have been capable outside the courtroom of co-operating with his lawyers and giving them information for the purposes of his defence. The applicant was therefore unable to participate effectively in the criminal proceedings against him and was, in consequence, denied a fair hearing in breach of A 6(1).

The applicant did not maintain his complaint under 14+6 before the Court, which saw no reason of its own motion to examine it.

A 3 sentence: States had a duty under the Convention to take measures for the protection of the public from violent crime. The punitive element inherent in the tariff approach did not give rise to a breach of A 3 and the Convention did not prohibit States from subjecting a child or young person convicted of a serious crime to an indeterminate sentence allowing for the offender's continued detention or recall to detention following release where necessary for the protection of the public. Until a new tariff had been set, it was not possible to draw any conclusions regarding the length of punitive detention to be served by the applicant who had by now been detained for six years since his conviction in November 1993. In all the circumstances of the case including the applicant's age and his conditions of detention, a period of punitive detention of this length could not be said to amount to inhuman or degrading treatment. There had been no violation of A 3 in respect of the applicant's sentence.

The sentence of detention during Her Majesty's pleasure was lawful under English law and was imposed in accordance with a procedure prescribed by law. It could not be said that the applicant's detention was not in conformity with the purposes of the deprivation of liberty permitted by A 5(1)(a) so as to be arbitrary. There had been no violation of A 5(1).

A 6(1) covered the whole of the proceedings in issue, including appeal proceedings and the determination of sentence. The tariff was served to satisfy the requirements of retribution and deterrence, and thereafter it was legitimate to continue to detain the offender only if that appeared to be necessary for the protection of the public. Where a juvenile sentenced to detention during Her Majesty's pleasure was not perceived to be dangerous, the tariff represented the maximum period of detention which he could be required to serve. The fixing of the tariff amounted to a sentencing exercise and, accordingly, A 6(1) was applicable to the procedure. A 6(1) guaranteed, *inter alia*, a fair hearing by an independent and impartial tribunal. Independent in this context meant independent of the parties to the case and also of the executive. The Home Secretary, who set the applicant's tariff, was not independent of the executive, and it followed that there had been a violation of A 6(1).

As the sentence of detention during Her Majesty's pleasure was indeterminate and the tariff was initially set by the Home Secretary rather than the sentencing judge, the judicial supervision required by A 5(4) was not incorporated in the trial court's sentence. The Home Secretary's decision setting the tariff was quashed by the House of Lords on 12 June 1997 and no new tariff had since been substituted. That failure to set a new tariff meant that the applicant's entitlement to access to a tribunal for periodic review of the continuing lawfulness of his detention remained inchoate. It followed that the applicant has been deprived, since his conviction in November 1993, of the opportunity to have the lawfulness of his detention reviewed by a judicial body in accordance with A 5(4).

No claim for pecuniary or non-pecuniary damages.

Costs and expenses (GBP 32,000 less FF 32,405).

Cited: A v UK (23.9.1998), Akdivar and Others v TR (16.9.1996), Chahal v UK (15.11.1996), De Wilde, Ooms and Versyp v B (18.6.1971), Dudgeon v UK (22.10.1981), Eckle v D (15.7.1982), Hussain v UK (21.2.1996), Nortier v NL (24.8.1993), Osman v UK (28.10.1998), Ringeisen v A (16.7.1971), Soering v UK (7.7.1989), Thynne, Wilson and Gunnell v UK (25.10.1990), Weeks v UK (2.3.1987), Wynne v UK (18.7.1994), X, Y and Z v UK (22.4.1997).

Vacher v France 96/61

[Application lodged 18.11.1991; Commission report 5.4.1995; Court Judgment 17.12.1996]

Mr Gérard Vacher was a company director. On 21 September 1988 the Public Works Department lodged a criminal complaint against him alleging offences under the Town Planning Code and, more particularly, that he had built a wall without first obtaining planning permission. On 9 February 1990 the Nanterre Criminal Court sentenced the applicant to a fine and ordered him to alter the wall so that it complied with regulations. His appeal to the Versailles Court of Appeal was dismissed. On 28 May 1991 Mr Vacher lodged a notice of appeal on points of law against the judgment of the Versailles Court of Appeal with that court's registry. On 19 June 1991 the case file for the appeal was registered by the Court of Cassation registry. On 14 August 1991 the applicant filed a pleading in support of his appeal. On 3 September 1991 the chief registrar of the Court of Cassation sent the applicant a letter informing him that the Court of Cassation delivered a judgment on 6 August 1991 dismissing his appeal and that as his pleading was received at the registry on 14 August 1991 it would be disregarded as being out of time. The applicant complained that he had not had a fair trial as the Court of Cassation had dismissed his appeal on points of law for failure to lodge grounds of appeal, without informing him of the time-limit for filing a pleading.

Comm found by majority (8–4) V 6.

Court found by majority (6–3) V 6.

Judges: Mr R Bernhardt, President, Mr L-E Pettiti (d), Mr C Russo (d), Mr J De Meyer, Mrs E Palm, Mr AN Loizou, Mr AB Baka (d), Mr J Makarczyk, Mr E Levits.

The new complaint under A 6(3)(a) was outside the scope of the case as defined by the Commission's decision on admissibility.

As the requirements A 6(3)(b) and (c) constituted specific aspects of the right to a fair trial, guaranteed under A 6(1), the Court would examine all the complaints under the three provisions taken together. The manner in which A 6 applied depended upon the special features of the proceedings involved. States had to ensure that everyone charged with a criminal offence benefited from the safeguards provided by A 6(3). Putting the onus on convicted appellants to find out when an allotted period of time started to run or expired was not compatible with the diligence which the Contracting States had to exercise to ensure that the rights guaranteed by A 6 were enjoyed in an effective manner. As there was no fixed date for filing a pleading and the Court of Cassation took less time than usual to hear the appeal, without the applicant being either warned of the fact by the registry or able to foresee it, he was deprived of the possibility of putting his case in the Court of Cassation in a concrete and effective manner. There had therefore been a violation of A 6.

Judgment constituted just satisfaction for non-pecuniary damage. Costs and expenses (FF 50,000).

Cited: Colozza v I (12.2.1985), Delcourt v B (17.1.1970), Hadjianastassiou v GR (16.12.1992), Melin v F (22.6.1993), Monnell and Morris v UK (2.3.1987), Scollo v I (28.9.1995).

Valenzuela Contreras v Spain 98/57

[Application lodged 2.5.1995; Commission report 11.4.1997; Court Judgment 30.7.1998]

Mr Cosme Valenzuela Contreras was deputy head of personnel of the W company. On 12 November 1984, following a complaint lodged by Mrs M, an employee, against a person or persons unknown in respect of insulting and threatening telephone calls and letters she had received, a criminal investigation was started. A number of people had their telephone lines monitored. On 19 November 1985 the investigating judge made an order, under the Constitution and the Code of Criminal Procedure, for the monitoring of the private telephone lines of the applicant. As a result of investigations, the applicant was committed for trial. On 8 May 1992 the Madrid Audiencia provincial convicted the applicant of making threats by letter and on the telephone and sentenced him to four months imprisonment, fines and ordered him to pay Mrs M compensation. The applicant's appeals to the Supreme Court and to the Constitutional Court were dismissed. He complained, *inter alia*, that the monitoring of his telephone line had infringed his right to respect for his private life.

Comm found by majority (11–6) V 8.

Court unanimously found no jurisdiction under 6, V 8.

Judges: Mr R Bernhardt, President, Mrs E Palm, Mr AN Loizou, Mr JM Morenilla, Sir John Freeland, Mr AB Baka, Mr L Wildhaber, Mr J Casadevall, Mr V Butkevych.

Since the compass of the case before the Court was delimited by the Commission's decision on admissibility, the Court had no jurisdiction to revive issues declared inadmissible, in this case under A 6.

Telephone calls from a person's home came within the notions of private life and correspondence referred to in A 8. The tapping of the applicant's telephone line between 26 November and 20 December 1985 constituted an interference by a public authority in the applicant's exercise of his right to respect for his private life and correspondence. There was a legal basis in Spanish law and the law was accessible. The requirement that the effects of the law be foreseeable meant, in the sphere of monitoring telephone communications, that the guarantees stating the extent of the authorities' discretion and the manner in which it was to be exercised had to be set out in detail in domestic law so that it had a binding force which circumscribed the judges' discretion in the application of such measures. The law had to be sufficiently clear in its terms to give citizens an adequate indication as to the circumstances in and the conditions on which public authorities were empowered to resort to this secret and potentially dangerous interference with the right to respect for private life and correspondence. The Spanish law, both written and unwritten, did not indicate with sufficient clarity at the material time the extent of the authorities' discretion in the domain concerned or the way in which it should be exercised. The applicant did not, therefore, enjoy the minimum degree of legal protection to which citizens were entitled under the rule of law in a democratic society. There had therefore been a violation of A 8.

No causal link between violation found and alleged pecuniary damage.

Costs and expenses (ESP 1,500,000).

Cited: Halford v UK (25.6.1997), Huvig v F (24.4.1990), Klass and Others v D (6.9.1978), Kopp v CH (25.3.1998), Kruslin v F (24.4.1990), Leutscher v NL (26.3.1996), Malone v UK (2.8.1984), Masson and Van Zon v NL (28.9.1995).

Vallée v France (1994) 18 EHRR 549 94/16

[Application lodged 9.6.1993; Commission report 7.12.1993; Court Judgment 26.4.1994]

Mr Alain Vallée was infected with the HIV virus between November 1984 and June 1985. As a haemophiliac, he had received frequent blood transfusions. On 12 December 1989 he submitted a

preliminary claim for compensation to the Minister for Solidarity, Health and Social Protection, maintaining that he had been infected as a result of the Minister's negligent delay in implementing appropriate rules for the supply of blood products. On 30 March 1990 the Director-General for Health rejected his claim. On 31 May 1990 he applied to the Administrative Court for the annulment of the ministerial decision and for compensation from the State. On 28 May 1993 the Paris Administrative Court gave judgment for the applicant. In the same decision the court referred the case to the Conseil d'Etat for an opinion on a point of law. On 15 October 1993 the Conseil d'Etat gave its opinion. On 5 January 1994 the Administrative Court ordered the payment of money to the applicant. The judgment was served on the applicant on 4 March 1994. Earlier, on 3 March 1992 the applicant had submitted a claim to the Compensation Fund set up by statute. Following court proceedings, the Fund sent the applicant a cheque for compensation on 18 December 1992. On 22 June 1992 the applicant had applied to the Paris Criminal Court to be joined as a civil party to the proceedings at the trial of certain senior officials of the blood transfusion service. On 23 October 1992 the court awarded him FF 300,000 as compensation for deception as to the quality of the products. The applicant alleged that his case had not been heard within a reasonable time as required under A 6(1).

Comm found unanimously V 6(1).

Court held unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr N Valticos, Sir John Freeland, Mr D Gotchev, Mr B Repik, Mr K Jungwiert.

It was not disputed that A 6(1) was applicable. The period to be taken into consideration began on 12 December 1989, when the applicant lodged his preliminary claim with the Minister for Solidarity, Health and Social Protection. At the time of the Court's judgment it had not yet ended, as the time-limit for filing an appeal against the judgment adopted by the Paris Administrative Court had not yet expired. It had already lasted more than four years. The reasonableness of the length of proceedings had to be assessed in the light of the circumstances of the case and having regard to the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what was at stake for the applicant in the litigation had to be taken into account. Even if the case was of some complexity, the information needed to determine the State's liability had been available for a long time. In any event, the opinion of the Conseil d'Etat could have been sought earlier in the proceedings. The problems raised by the existence of two parallel sets of proceedings in the administrative courts and before the Compensation Fund could not justify the length of the proceedings in question. The applicant did not contribute to the delay. What was at stake in the contested proceedings was of crucial importance for the applicant in view of his incurable disease and his reduced life expectancy. He was infected in 1985 and as early as 1987 was classified as having reached the last stage of infection. Exceptional diligence was called for in this instance, notwithstanding the number of cases which were pending, in particular as it was a controversy the facts of which had been known to the Government for several years and the seriousness of which must have been obvious to them. The Administrative Court did not use its powers to expedite the proceedings, although it was aware of case-law and of the applicant's state of health. Several periods were abnormally long: the 22 months between the application to the Versailles Administrative Court and the first hearing; the 7 months from the filing of the applicant's memorial to the second hearing; and the period of nearly 5 months between the adoption of the Conseil d'Etat's opinion and the notification of the Administrative Court's judgment. A period of more than four years to obtain a judgment in first-instance proceedings far exceeded a reasonable time in a case of this nature. Such a reasonable time had been exceeded even before the applicant was paid compensation by the Fund in December 1992. After that date, what was at stake in the proceedings in terms of compensation for both pecuniary and non-pecuniary damage continued to be of great importance for the applicant. There was a violation of A 6(1).

Damages (FF 200,000), costs and expenses (FF 59,300).

Cited: X v F (31.3.1992).

Vallon v Italy (1991) 13 EHRR 433 85/8

[Application lodged 23.10.1981; Commission report 8.5.1984; Court Judgment 3.6.1985]

Mr Daniel Vallon was wanted in France for murder and attempted murder, and was arrested in Genoa on an international warrant on 4 December 1976. Extradition proceedings were commenced on 25 September 1979 and refused. The applicant was not released, but prosecuted in Italy for the crimes committed in France. On 16 March 1982 he was sentenced to 14 years' imprisonment. After appeal, the judgment became final on 18 January 1983. He complained about the length of detention on remand and the length of the proceedings.

Comm found unanimously V 5(3) and 6(1).

Court struck the case from the list.

Judges: Mr G Wiarda, President, Mr D Evrigenis, Mr G Lagergren, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr C Russo.

The Court took formal note of the friendly settlement reached by the Government and the applicant. There were no reasons of public policy justifying the continuation of the proceedings. In particular, the Court recalled that it had already determined, in the context of A 5(3) and A 6(1), legal issues analogous to those arising in the instant case.

FS (ITL 6,000,000 compensation), therefore case struck out of the list.

Cited: Corigliano v I (10.12.1982), Eckle v D (15.7.1982), Foti v I (10.12.1982), Matznetter v A (10.11.1969), Neumeister v A (27.6.1968), Ringeisen v A (16.7.1971), Stögmüller v A (10.11.1969), Wemhoff v D (27.6.1968).

Valsamis v Greece 99/65

[Application lodged 25.4.1994; Commission report 11.4.1996; Court Judgment 18.12.1996]

Elias and Maria Valsamis and their daughter Victoria were Jehovah's Witnesses. Pacifism was a fundamental tenet of their religion and they were forbidden from conduct or practice associated with war or violence, even indirectly. As a result of an application by her parents, Victoria was exempted from attendance at religious-education lessons and Orthodox Mass. In October 1992 she was asked to take part in the National Day celebrations which commemorated the outbreak of war between Greece and Fascist Italy on 28 October 1940. Her request to be excused attendance was refused. She was punished by the school for her failure to attend with one day's suspension. The applicants complained of the penalties of suspension from school.

Comm found by majority (19–10) NV P1A2 in respect of the first two applicants, (17–12) NV 9 in respect of the third applicant, unanimously NV 3 in respect of the third applicant, by majority (24–5) V 13+P1A2 in respect of the first two applicants, (26–3) V 13+9 in respect of the third applicant, by majority (24–5) NV 13+3 in respect of the third applicant.

Court found by majority (7–2) NV P1A2, NV 9, unanimously NV 3, V 13+P1A2, 13+9, NV 13+3.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson (d), Mr N Valticos, Sir John Freeland, Mr MA Lopes Rocha, Mr L Wildhaber, Mr G Mifsud Bonnici, Mr D Gotchev, Mr P Jambrek (d).

The two sentences of P1A2 had to be read not only in the light of each other but also, in particular, of A 8, 9 and 10 of the Convention. When applying P1A2, in its ordinary meaning, 'convictions', taken on its own, was not synonymous with the words 'opinions' and 'ideas'. It denoted 'views that attained a certain level of cogency, seriousness, cohesion and importance'. Jehovah's Witnesses enjoyed both the status of a 'known religion' and the advantages flowing from that as regards observance. The applicants were therefore entitled to rely on the right to respect for their religious convictions within the meaning of P1A2. P1A2 enjoined the State to respect parents' convictions,

religious or philosophical, throughout the entire State education programme. That duty was broad in its extent as it applied not only to the content of education and the manner of its provision but also to the performance of all the 'functions' assumed by the State. 'Respect' meant more than 'acknowledge' or 'take into account'. In addition to a primarily negative undertaking, it implied some positive obligation on the part of the State. Although individual interests on occasion had to be subordinated to those of a group, democracy did not simply mean that the views of a majority must always prevail: a balance had to be achieved which ensured the fair and proper treatment of minorities and avoided any abuse of a dominant position. Given the discretion of a State, the second sentence of P1A2 forbade the State pursuing an aim of indoctrination that might be regarded as not respecting parents' religious and philosophical convictions. That was a limit that should not be exceeded. The imposition of disciplinary penalties was an integral part of the process whereby a school could achieve the object for which it was established, including the development and moulding of the character and mental powers of its pupils. There was nothing, either in the purpose of the parade or in the arrangements for it, which could offend the applicants' pacifist convictions to an extent prohibited by the second sentence of P1A2. Such commemorations of national events served, in their way, both pacifist objectives and the public interest. The presence of military representatives at some of the parades which took place did not in itself alter the nature of the parades. Furthermore, the obligation on the pupil did not deprive her parents of their right 'to enlighten and advise their children, to exercise with regard to their children natural parental functions as educators, or to guide their children on a path in line with the parents' own religious or philosophical convictions'. The Court could not rule on the expediency of other educational methods which, in the applicants' view, would be better suited to the aim of perpetuating historical memory among the younger generation. However, the penalty of suspension, which could not be regarded as an exclusively educational measure and might have some psychological impact on the pupil on whom it was imposed, was nevertheless of limited duration and did not require the exclusion of the pupil from the school premises. There had not therefore been a breach of P1A2.

The obligation to take part in the school parade was not such as to offend her parents' religious convictions. The impugned measure did not therefore amount to an interference with her right to freedom of religion under A 9.

Ill-treatment had to attain a minimum level of severity to fall within the scope of A 3. There had been no infringement of that provision.

The conclusions on the substantive articles did not mean that the allegations of failure to comply with P1A2 and A 9 were not arguable. They were arguable and the applicants were therefore entitled to have a remedy in order to raise their allegations. As regards the complaint under A 3, on which Miss Efstratiou did not expand, it contained no arguable allegation of a breach. It was not possible to apply to the Greek administrative courts for judicial review. The applicants could not therefore obtain a judicial decision that the disciplinary measure of suspension from school was unlawful. Such a decision, however, was a prerequisite for submitting a claim for compensation. The effectiveness of other remedies relied on by the Government had not been established. Having regard to all the circumstances of the case, the applicants did not have an effective remedy before a national authority in order to raise the complaints they later submitted at Strasbourg. There had consequently been a breach of A 13 taken together with P1A2 and A 9, but not taken together with A 3.

Judgment constituted just satisfaction for non-pecuniary damage. Costs and expenses (GRD 600,000).

Cited: Campbell and Cosans v UK (25.2.1982), Ireland v UK (18.1.1978), Johnston and Others v IRL (18.12.1986), Kjeldsen, Busk Madsen and Pedersen v DK (7.12.1976), Klass and Others v D (6.9.1978), Kokkinakis v GR (25.5.1993), Plattform 'Ärzte für das Leben' v A (21.6.1988), Powell and Rayner v UK (21.2.1990), Vilvarajah and Others v UK (30.10.1991), Young, James and Webster v UK (13.8.1981).

Van de Hurk v Netherlands (1994) 18 EHRR 481 94/14

[Application lodged 1.12.1989; Commission report 10.12.1992; Court Judgment 19.4.1994]

Mr Cornelis Petrus Maria Van de Hurk was a dairy farmer. On 29 June 1984 he filed a claim for a larger levy-free quantity of milk. His claim was rejected by the Director of Agriculture and Food Supply on 1 November 1984. His appeal to the Minister of Agriculture and Fisheries was dismissed He appealed unsuccessfully to the Industrial Appeals Tribunal. He complained that his case had not been dealt with by an independent and impartial tribunal, since the Crown and thus the Minister could decide that a judgment of the Tribunal should not be implemented or suspend its execution. He claimed that he had not been afforded a fair hearing by the Tribunal and that in its judgment the Tribunal had not, or not sufficiently, dealt with various arguments which he had advanced.

Comm found by majority (12–5) V 6(1).

Court found by majority (6–3) V 6(1) in that the applicant's civil rights and obligations were not determined by a tribunal, unanimously NV 6(1) as regards the requirements of fairness of proceedings.

Judges: Mr R Ryssdal, President (c), Mr SK Martens (pd), Mr I Foighel (pd), Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi, Mr G Mifsud Bonnici (pd), Mr J Makarczyk.

The power to give a binding decision which may not be altered by a non-judicial authority to the detriment of an individual party was inherent in the notion of a tribunal. There was nothing to indicate that the mere existence of the Crown's powers had any influence on the way the Tribunal handled and decided the cases which came before it. However, the measure was still law at the time of the events complained of and there was nothing to prevent the Crown from availing itself of the powers thereby conferred upon it had it considered such a course of action necessary or desirable in view of what it might perceive as the general interest. The Minister could partially or completely deprive a judgment of the Tribunal of its effect to the detriment of an individual party. One of the basic attributes of a 'tribunal' was therefore missing. A defect of that nature could, however, be remedied by the availability of a form of subsequent review by a judicial body that afforded all the guarantees required by A 6. However, none was available and there had accordingly been a violation of A 6(1) in that the applicant's civil rights and obligations were not determined by a tribunal.

The applicant had had a genuine opportunity to respond and had done so. No breach of the principle of equality of arms was therefore established. A 6(1) placed the tribunal under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they were relevant to its decision. The applicant had produced his new figures at the latest possible stage, namely at the oral hearing after the Minister had responded in writing to his written pleadings. Given those circumstances, the refusal of the Tribunal to consider the applicant's new figure did not constitute a violation of A 6(1). A 6(1) obliged courts to give reasons for their decisions, but could not be understood as requiring a detailed answer to every argument. Making a general assessment, the Court did not find that the judgment of the Industrial Appeals Tribunal was insufficiently reasoned. Consequently no violation of A 6(1) was established in this respect either.

Costs and expenses (by majority (8–1) NLG 35,000 and FF 6,336).

Cited: Belilos v CH (29.4.1988), Benthem v NL (23.10.1985), Costello-Roberts v UK (25.3.1993), De Jong, Baljet and Van den Brink v NL (22.5.1984), Dombo Beheer BV v NL (27.10.1993), H v B (30.11.1987), Holm v S (25.11.1993), Kraska v CH (19.4.1993), Modinos v CY (22.4.1993), Nortier v NL (24.8.1993), Ruiz-Mateos v E (23.6.1993).

Van Der Leer v Netherlands (1990) 12 EHRR 567 90/1

[Application lodged 18.5.1984; Commission report 14.7.1988; Court Judgment 21.2.1990]

Mrs Hendrika Wilhelmina van der Leer had been receiving treatment in a psychiatric hospital on a voluntary basis. On her husband's application, the Cantonal Court judge on 18 November 1983

ordered her compulsory confinement for 6 months. She was not told of the order, nor did she receive a copy of the decision. She found out about the order on 28 November 1993 and requested a discharge through her lawyers. The application was refused and she left the hospital, with the help of her husband, without authorisation on 31 January 1984. Without her knowledge she had been granted probationary leave on 7 February and the District Court ordered her discharge on 7 May 1984. She complained that her compulsory confinement in a psychiatric hospital had been neither ordered in accordance with a procedure prescribed by law nor was it lawful and that she had not been informed of the order of 18 November 1983 or given the possibility of having the lawfulness of her deprivation of liberty reviewed speedily by a court. Finally, she claimed that, in breach of A 6(1), she had been denied a fair hearing in the determination of her civil rights and obligations.

Comm found unanimously V 5(1), (2) and (4), NV 6(1).

Court held unanimously V 5(1), (2) and (4), not necessary to consider 6(1).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr A Spielmann, Mr J De Meyer, Mr JA Carrillo Salcedo, Mr N Valticos, Mr SK Martens.

In considering the lawfulness of detention, national law had to be considered and in addition there was a requirement that any deprivation of liberty should be consistent with the purpose of A 5, namely to protect individuals from arbitrariness. The Cantonal judge had failed to hear the applicant before authorising her confinement although the legal conditions under which a hearing may be dispensed with were not satisfied. This amounted to a violation of 5(1). The words 'arrest' and 'charge' should be interpreted autonomously, in particular in accordance with the aim and purpose of A 5, which was to protect everyone from arbitrary deprivation of liberty. Thus arrest extended beyond criminal law measures and the charge did not lay down a condition for applicability, but indicated an eventuality of which it took account. The right to a speedy determination of lawfulness of detention was only effective if the person was informed promptly and adequately of the reasons for deprivation of his liberty. Paragraph (4) did not make a distinction between persons deprived of their liberty on the basis of whether they had been arrested or detained. Neither the manner in which the applicant was informed of the measures depriving her of her liberty nor the time it took to communicate the information to her conformed with A 5(2). Although the applicant had absconded, and even though she was granted probationary leave, she could have been returned to the hospital against her will. The proceedings did not end until the judicial discharge, 5 months later. That lapse of time was excessive.

Before the Court the applicant withdrew the complaint under A 6.

Damages (NLG 15,000).

Cited: Bouamar v B (29.2.1988), Bozano v F (18.12.1987), De Wilde, Ooms, Versyp v B (18.6.1971), Winterwerp v NL (24.10.1979), X v UK (5.11.1981).

Van der Mussele v Belgium (1984) 6 EHRR 163 83/6

[Application lodged 7.3.1980; Commission report 3.3.1982; Court Judgment 27.10.1983]

Mr Eric Van der Mussele was a pupil lawyer who was officially appointed to represent an individual in criminal proceedings. On 31 July 1979, the Legal Advice and Defence Office of the Antwerp Bar appointed him to defend one Njie Ebrima, a Gambian national, in respect of theft and narcotics matters. Following the conclusion of the case, the Legal Advice and Defence Office notified the applicant that because of Mr Ebrima's lack of resources, no assessment of fees and disbursements could be made against him. He complained, not of this appointment, but because a refusal to act would have made him liable to sanctions and because he had not been entitled to any remuneration or reimbursement of his expenses. In his submission, these circumstances gave rise both to forced or compulsory labour and to treatment incompatible with P1A1 and there was discrimination in this respect between lawyers and certain other professions.

Comm found by majority (10–4) NV 4(2), (9–5) NV P1A1, (7–7 with the President's casting vote) NV 14+4(2) or 14+P1A1.

Court found unanimously NV 4, NV14+4, NV P1A1.

Judges: Mr G Wiarda, President, Mr R Ryssdal, Mr Thór Vilhjálmsson, Mr W Ganshof van der Meersch, Mrs D Bindschedler-Robert, Mr D Evrigenis, Mr G Lagergren, Mr L Liesch, Mr F Gölcüklü, Mr F Matscher, Mr E García de Enterría, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr C Russo, Mr J Gersing.

A 4: the adjectives 'forced or compulsory' labour meant that the work had to be exacted under the menace of any penalty and also performed against the will of the person concerned, that is, work for which he had not offered himself voluntarily. The penalties which the applicant faced for refusing, without good reason, to defend the individual were sufficiently daunting to constitute the menace of a penalty. Foresight of such service in order to gain access to the profession was not determinative of the applicant's voluntary acceptance. Of significance was whether the service imposed a burden that was so excessive or disproportionate to the advantages attached to the future exercise of that profession. Notwithstanding the lack of remuneration and of reimbursement of expenses which the Court noted was in itself far from satisfactory, no such imbalance was disclosed by the evidence before the Court. There was thus no compulsory labour for the purposes of A 4(2).

Although applicable, A 14 taken in conjunction with A 4 was not breached, as the evidence did not disclose any similarity between the disparate situations relating to other, including para-judicial, professions. Each profession was characterised by a corpus of rights and obligations of which it would be artificial to isolate one specific aspect.

P1A1 was not applicable either taken alone or in conjunction with A 14, in relation to the outlay by the applicant of expenses, as the duty prescribed by law to undertake the work, which was compatible with A 4, involved a certain outlay and, therefore, A 1 of Protocol No 1 could not be said to have been engaged. Nor was this article otherwise applicable as no assessment of fees was ever made because of the individual's lack of means and therefore no debt in favour of the applicant ever arose that could be said to have constituted 'his' possession.

Cited: Airey v UK (9.10.1979), 'Belgian Linguistic' case (9.2.1967), Guzzardi v I (6.11.1980), Marckx v B (13.6.1979).

Van Der Sluijs, Zuiderveld and Klappe v Netherlands (1991) 13 EHRR 461 84/6

[Applications lodged 1.1.1981, 31.3.1981, 19.2.1981; Commission report 13.10.1982; Court Judgment 22.5.1984]

Mr Jan Christian Martinus van der Sluijs, Mr Harm Pieter Zuiderveld and Mr Albertus Laurentius Klappe were forcibly drafted as conscript soldiers in the Netherlands Armed Forces and transferred to a military house of detention. They each refused, on account of their beliefs as conscientious objectors, to obey specific orders to put on a military uniform and to take receipt of a weapon. They were detained by the competent military officers and their detentions prolonged until trial. Following trial they were convicted of acts of insubordination and sentenced to 18 months' imprisonment. Their appeals to the Supreme Military Court were rejected. They complained that they had not been brought promptly before a judge or other officer authorised by law to exercise judicial power.

Comm found by majority (14–1) V 5(3).

Court unanimously rejected the Government's preliminary objection, found V 5(3).

Judges: Mr R Ryssdal, President, Mr G Wiarda, Mr J Cremona, Mrs D Bindschedler-Robert, Mr F Gölcücklü, Mr L-E Pettiti, Mr B Walsh.

Victim in A 25 denoted the person directly affected by the act or omission in issue, the existence of a violation being conceivable even in the absence of detriment. Consequently, the relevant deduction from sentence did not in principle deprive the applicant of his status as an alleged

victim, it was a matter to be taken into consideration solely for the purpose of assessing the extent of any prejudice he may have suffered. Mr Zuiderveld and Mr Klappe, who had each had the time spent in custody on remand deducted in its entirety from the sentence ultimately imposed on him, were directly affected by the matters which they alleged to be in breach of A 5(3) and could each claim to be a victim within the meaning of A 25. The Court took formal note of the Government's withdrawal of the preliminary objection of non-exhaustion.

The Court recalled its previous case-law under A 5(3). The 'officer', who could be either a judge or an official in the public prosecutor's department, had to offer guarantees befitting the judicial power conferred on him by law. The officer was not identical with the judge but had to have some of the latter's attributes, that is to say he had to satisfy certain conditions, each of which constituted a guarantee for the person arrested. The officer had to be independent of the executive and of the parties. There was a procedural requirement placing the officer under the obligation of hearing the individual brought before him and a substantive requirement imposing on him the obligation of reviewing the circumstances militating for or against detention, of deciding, by reference to legal criteria, whether there were reasons to justify detention and of ordering release if there are no such reasons. In determining Convention rights, consideration had to be given to looking beyond the appearances and the language used and concentrating on the realities of the situation. However, formal, visible requirements stated in the law were especially important for the identification of the judicial authority empowered to decide on the liberty of the individual in view of the confidence which that authority must inspire in the public in a democratic society. In this case there was no official directive or policy instruction to auditeurs-militair and referring officers regarding interpretation of the Military Code, only a purely internal practice of no binding force. That was not sufficient to constitute authority given by law to exercise the requisite judicial power contemplated by A5(3). In addition, the auditeur-militair did not enjoy the kind of independence demanded by A 5(3). Although independent of the military authorities, the same auditeur-militair could be called upon to perform the function of prosecuting authority after referral of the case to the Military Court. He would thereby become a committed party to any criminal proceedings subsequently brought against the serviceman on whose detention he was advising prior to referral for trial. Consequently, the procedure followed in the applicants' cases before the auditeur-militair did not provide the guarantees required by A 5(3). The three applicants were referred for trial before the Military Court five days, three days and two days respectively after their arrest. They appeared before the officier-commissaris, who was responsible for the preliminary investigation of their cases, subsequent to their referral for trial. The officier-commissaris was not authorised by law to exercise the requisite judicial power referred to in A 5(3), notably the power to decide on the justification for the detention and to order release if there was none. The procedure before the officier-commissaris was thus lacking one of the fundamental guarantees implicit in A 5(3). The Military Court did not hold a hearing on the issue of detention and give a decision on it until 12 days after Mr van der Sluijs's arrest, 11 days after Mr Zuiderveld's arrest and 14 days after Mr Klappe's. Whilst the question of promptness had to be assessed in each case according to its special features, intervals as long as those were far in excess of the limits laid down by A 5(3), even taking due account of the exigencies of military life and military justice.

Damages (NLG 300 to each applicant).

Cited: Artico v I (13.5.1980), Corigliano v I (10.12.1982), De Wilde, Ooms and Versyp v B (18.6.1971), Eckle v D (15.7.1982), Engel and Others v NL (8.6.1976), Ireland v UK (18.1.1978), Piersack v B (1.10.1982), Schiesser v CH (4.12.1979), Van Droogenbroeck v B (24.6.1982, 25.4.1983), Wemhoff v D (27.6.1968), Winterwerp v NL (24.10.1979).

Van der Tang v Spain (1996) 22 EHRR 363 95/24

[Application lodged 2.12.1991; Commission report 28.6.1994; Court Judgment 13.7.1995]

Mr Antonius Adrianus van der Tang worked as a lorry driver. In the early morning of 26 May 1989 he was arrested by the police; the lorry he was driving contained 1,300 kg of hashish. Others were detained in connection with the police operation. His applications for release were rejected and he

was committed for trial. The applicant's case was considered to be closely linked with other files relating to a nationwide operation to combat a large-scale drug-trafficking organisation, Operación Nécora, and was therefore transferred to Madrid on 29 October 1990. On 29 April 1992 the Audiencia Nacional allowed the applicant's release on conditions, which included a cash security, submission of address to the court, daily reporting to the police and not to leave Spanish territory. On 2 July 1992, the Audiencia Nacional allowed the applicant's request for a reduction in the amount of the security. On 24 July 1992 the security was deposited by the applicant's wife, whereupon he was released. On 9 October 1992, the conditions of his reporting were relaxed. On 23 December 1992 the applicant left Spain for The Netherlands. The trial took place in Madrid from 20 September 1993 to 24 May 1994 in the applicant's absence. He was convicted and sentenced to imprisonment and a fine of ESP 100 million. He complained that the period of his detention pending trial had been unreasonable.

Comm found by majority (17–9) V 5(3).

Court dismissed by majority (8–1) the Government's preliminary objection, found unanimously NV 5(3).

Judges: Mr R Ryssdal, President, Mr SK Martens, Mrs E Palm, Mr JM Morenilla (so), Mr MA Lopes Rocha, Mr D Gotchev, Mr B Repik, Mr P Jambrek, Mr K Jungwiert.

The alleged violation of the Convention by the Spanish authorities occurred before the applicant absconded in breach of his undertakings. While he remained within the jurisdiction of Spain, and in particular in custody, he was entitled to expect that the rights and freedoms set forth in the Convention would be secured to him in accordance with A 1. His subsequent act of flight, albeit wrongful, did not render illegitimate his interest in obtaining from the Convention institutions a ruling on the violation he was alleging. The Government's preliminary objection was therefore rejected.

Whether a period of pre-trial detention could be considered reasonable had to be assessed in each case according to its special features. The period to be taken into consideration began on 26 May 1989, the day when the applicant was arrested. Following a request by the applicant, the Audiencia Nacional on 2 July 1994 reduced the original security. The amount was not disproportionately high, but it would nonetheless appear reasonable that a number of days might be needed to collect the sum. In those circumstances, and since no negligence by the applicant as regards the deposit of his security had been established, the relevant date was that of the applicant's actual release, namely 24 July 1992, when his wife paid the security. The total period of the applicant's detention was therefore three years, one month and 27 days. The evidence adduced clearly established that the applicant was well aware as to why he was being kept in detention. In rejecting his applications for release, the judicial authorities put forward two main grounds: the seriousness of the alleged offences and the danger of the applicant's absconding. While it would certainly have been desirable for the Spanish courts to have given more detailed reasoning as to the grounds for the applicant's detention, that could not in itself, in the present case where the relevant circumstances, and particularly the evident and significant risk of his absconding, remained unchanged, amount to a violation of his rights under A 5(3). The alleged offences were of a serious nature and the evidence incriminating the applicant was cogent. However, the existence of a strong suspicion of the involvement of the person concerned in serious offences, while constituting a relevant factor, could not alone justify a long period of pre-trial detention. The existence of a substantial risk of the applicant's absconding, being confirmed by a number of relevant factors which persisted throughout the total period of his detention, constituted a relevant and sufficient ground for refusing his repeated applications for release. The right of an accused in custody to have his case examined with all necessary expedition should not hinder the efforts of the courts to carry out their tasks with proper care. The applicant's case did not appear particularly complex and could have been dealt with more speedily. However, once joined to the Nécora file, that being a measure which the Spanish courts were entitled to take and maintain, it became part of a complex process. The competent judicial authorities could not be said to have displayed a lack of

special diligence in handling the applicant's case in the broader context of the Nécora investigation, having regard to the difficulties intrinsic to the investigation of large-scale drug-trafficking offences committed by criminal organisations. Accordingly, the facts of the present case did not disclose a violation of A 5(3).

Cited: Kemmache v F (No 3) (24.11.1994), Tomasi v F (27.8.1992), W v CH (26.1.1993), Wemhoff v D (27.6.1968).

Van Droogenbroeck v Belgium (1982) 4 EHRR 443, (1991) 13 EHRR 546 82/3

[Application lodged 16.4.1977; Commission report 9.7.1980; Court Judgment 24.6.1982 (merits), 25.4.1983 (A 50)]

Mr Valery Van Droogenbroeck had no fixed occupation. He had a long history of criminal offences. He was ordered that he be 'placed at the Government's disposal' as he was a recidivist who manifested a persistent tendency to crime. He complained that he was held in servitude and forced to work contrary to A 4 of the Convention, that his deprivation of liberty, which in his view had been ordered by the Minister of Justice and not by a court, contravened A 5(1) and that he had not been able to seek a judicial review of the lawfulness of his various periods of detention, as was required by A 5(4).

Comm found unanimously V 5(4), by majority (10–2) NV 5(1), unanimously NV 4.

Court found unanimously NV 5(1), V 5(4), NV 4.

Judges: Mr G Wiarda, President, Mr M Zekia, Mr J Cremona, Mr W Ganshof Van Der Meersch, Mrs D Bindschedler-Robert, Mr D Evrigenis, Mr G Lagergren, Mr L Liesch, Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr E Garcia De Enterria, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr C Russo, Mr R Bernhardt, Mr J Gersing.

A 5(1): In Belgium – as in other Contracting States – it was traditional for the execution of sentences and other measures pronounced by criminal courts to fall within the province of the Minister of Justice. The Court saw no reason to doubt that that Minister was, by virtue of the general principles of Belgian public law concerning the attribution and the allocation of powers, an appropriate authority to act in the applicant's case. There had accordingly been no violation of A 5(1).

A 5(4): The Court recalled that the scope of the obligation undertaken by the Contracting States under A 5(4) would not necessarily be the same in all circumstances and as regards every category of deprivation of liberty. Nevertheless, in this context the nature and purpose of a given type of 'detention' were of more importance than was the place which it occupied in the structure of the Convention. The system of placing recidivists and habitual offenders at the Government's disposal was established with specific objectives in mind. A 5(4) did not guarantee a right to judicial control of such scope as to empower the court, on all aspects of the case, including questions of pure expediency, to substitute its own discretion for that of the decision-making authority. In the instant case, the Convention required an appropriate procedure allowing a court to determine speedily, on application by the applicant, whether the Minister of Justice was entitled to hold that detention was still consistent with the object and purpose of the domestic legislation. For the purposes of A 5(4), this was not simply a question of expediency but one that bore on the very lawfulness of the deprivation of liberty at issue. The Court rejected the Government's alternative plea that several remedies satisfying the requirements of A 5(4) would have been available to the applicant. Accordingly there had been a violation of A 5(4).

A 4: The situation complained of did not violate A 5(1). Accordingly, it could have been regarded as servitude only if it involved a particularly serious form of denial of freedom, which was not so in the present case. The applicant complained that he was forced to work whereas the Government said he was simply invited to work. That question of fact was left open. However, once release was conditional on the possession of savings from pay for work done in prison, one was not far away from an obligation in the strict sense of the term. However, it did not follow that the complaint was

well-founded, for failure to observe A 5(4) did not automatically mean that there had been failure to observe A 4: the latter Article authorised, in 4(3)(a), work required to be done in the ordinary course of detention which had been imposed, as was here the case, in a manner that did not infringe A 5(1). Moreover, the work which the applicant was asked to do did not go beyond what was 'ordinary' in that context since it was calculated to assist him in reintegrating himself into society and had as its legal basis provisions which found an equivalent in certain other Member States of the Council of Europe. Accordingly, the Belgian authorities did not fail to observe the requirements of A 4.

A 50 reserved

Cited: De Wilde, Ooms and Versyp v B (18.6.1971), Deweer v B (27.2.1980), Engel and Others v D (8.6.1976), Guzzardi v I (6.11.1980), Ireland v UK (18.1.1978), Winterwerp v NL (24.10.1979), X v UK (5.11.1981).

Van Geyseghem v Belgium 99/4

[Application lodged 25.10.1994; Commission report 3.12.1997; Court Judgment 21.1.1999]

Mrs Nicole Van Geyseghem and four others were prosecuted for importing drugs from Brazil. On 10 December 1992 the Brussels Criminal Court convicted the applicant *in absentia* and sentenced her to four years' imprisonment and a fine. On 26 April 1993 she applied to the same court to set aside its judgment. She attended the hearing of her application and on 7 May 1993 she was sentenced to three years' imprisonment and a fine. Both the applicant and the prosecution appealed. Neither the applicant nor her lawyer attended the appeal hearing and on 14 June 1993 the Brussels Court of Appeal, ruling in the applicant's absence, upheld the judgment of 7 May 1993 in its entirety and ordered the applicant's immediate arrest. On 26 August 1993 the applicant applied to set aside the Court of Appeal's judgment. She did not attend the hearing in person. Her counsel appeared and stated that he would be making submissions to the effect that the prosecution had become time-barred between the delivery of the Court of Appeal's judgment in absentia and the date on which the application to set it aside was to be heard by the Court of Appeal. The court refused her counsel leave to address it and make submissions on his client's behalf. The applicant's appeal on points of law against that judgment was dismissed by the Court of Cassation. She complained that she had been denied a fair hearing and that her defence rights had been infringed in that, because of her failure to appear, she had been unable to be represented by counsel in the Brussels Court of Appeal.

Comm found by majority (14–1) V 6.

Court found by majority (16–1) V 6(1) and 6(3)(c).

Judges: Mr L Wildhaber (jc), President, Mrs E Palm (jc), Mr CL Rozakis (jc), Sir Nicolas Bratza, Mr MP Pellonpää (d), Mr B Conforti, Mr A Pastor Ridruejo, Mr G Bonello (c), Mr J Makarczyk, Mr P Kûris, Mr R Türmen (jc), Mrs F Tulkens, Mr C Bîrsan (jc), Mr M Fischbach, Mrs HS Greve, Mr R Maruste, Mrs S Botoucharova.

The issue in the present case was not whether a trial in the accused's absence was compatible with A 6(1) and (3)(c), but that the Brussels Court of Appeal had decided the case without allowing her counsel to defend her and, in particular, make submissions on her behalf to the effect that the prosecution was time-barred. Since the incident occurred during the hearing of her application to set aside an appellate court's judgment, the applicant had no further opportunity of having arguments of law and fact presented at second instance in respect of the charge against her. The right of everyone charged with a criminal offence to be effectively defended by a lawyer was one of the basic features of a fair trial. An accused did not lose that right merely on account of not attending a court hearing. Even if the legislature had to be able to discourage unjustified absences, it could not penalise them by creating exceptions to the right to legal assistance. The legitimate requirement that defendants had to attend court hearings could be satisfied by means other than deprivation of the right to be defended. Even if the applicant did have several opportunities of defending herself, it was the Brussels Court of Appeal's duty to allow her counsel, who attended the hearing, to defend her, even in her absence. That was particularly true in this case since the

defence which the lawyer intended to put forward concerned a point of law. The lawyer intended to plead statutory limitation, an issue which the Court had described as crucial. Even if the Court of Appeal must have examined of its own motion the issue of statutory limitation, the fact remained that counsel's assistance was indispensable for resolving conflicts and his role was necessary in order for the rights of the defence to be exercised. There had therefore been a violation of A 6(1) taken together with A 6(3)(c).

Judgment constituted just satisfaction for any non-pecuniary damage. Costs and expenses (BEF 300,000).

Cited: Artico v I (13.5.1980), Hertel v CH (25.8.1998), Lala v NL (22.9.1994), Pelladoah v NL (22.9.1994), Poitrimol v F (23.11.1993).

Van Marle and Others v The Netherlands (1986) 8 EHRR 483 86/4

[Applications lodged 10.1.1979, 20.6.1979, 17.7.1979; Commission report 8.5.1984; Court Judgment 26.6.1986]

Mr Germen van Marle, Mr Johannes Petrus van Zomeren, Mr Johannes Flantua and Mr Roelof Hendrik de Bruijn all, at various dates between 1947 and 1950, practised as accountants. In 1974, each of the applicants applied to be registered as a certified accountant. They were asked by the Board of Admission to submit annual accounts and they were interviewed by the Board in the course of 1977. The Board finally rejected the applications. They appealed to the Board of Appeal, which also dismissed the appeals. They complained, *inter alia*, that their right to peaceful enjoyment of their possessions had been infringed.

Comm found by majority (8–4) 6(1) NA, (11 with one abstention) NV P1A1.

Court found by majority (11–7) 6 NA, (16–2) P1A1 applicable, unanimously NV P1A1.

Judges: Mr R Ryssdal, President (jc), Mr W Ganshof van der Meersch, Mr J Cremona (d), Mr G Wiarda, Mr Thór Vilhjálmsson (jd), Mrs D Bindschedler-Robert, Mr G Lagergren, Mr F Gölcüklü, Mr F Matscher (jc), Mr J Pinheiro Farinha, Mr L-E Pettiti (jd), Mr B Walsh, Sir Vincent Evans (jd), Mr R Macdonald (jd), Mr C Russo (jd), Mr R Bernhardt (jc), Mr J Gersing (jd), Mr A Spielmann (jd).

Conformity with the spirit of the Convention required that the word 'dispute' should not be construed too technically and should be given a substantive rather than a formal meaning. The dispute had to be genuine and of a serious nature. The dispute could relate not only to the actual existence of a right, but also to its scope or the manner in which it could be exercised. The dispute could concern both questions of fact and questions of law. The function of the Board of Appeal was both to review the proper conduct of Board of Admission proceedings and to reconsider whether applicants, as regards ability, experience, length of time in the profession, or diplomas or qualifications held, met the legal requirements for registration. The complaints made by the applicants to the Board of Appeal concerned, in essence, what they regarded as an incorrect assessment of their competence by the Board of Admission. The Board of Appeal re-examined the applicants, calling them to interviews at which they had the opportunity to comment on balance sheets they had drawn up and to answer questions on accountancy theory and practice. An assessment of that kind, evaluating knowledge and experience for carrying on a profession under a particular title, was akin to a school or university examination and was so far removed from the exercise of the normal judicial function that the safeguards in A 6 could not be taken as covering resultant disagreements. There was thus no dispute within the meaning of A 6, which therefore was not applicable in the case. The fact that, in domestic law, the Board of Appeal was considered to be a tribunal did not alter that conclusion.

The right relied upon by the applicants could be likened to the right of property embodied in P1A1: by dint of their own work, the applicants had built up a clientèle; that had in many respects the nature of a private right and constituted an asset and, hence, a possession within the meaning of the first sentence of P1A1. That provision was accordingly applicable in the present case. The refusal to register the applicants as certified accountants radically affected the conditions of their professional activities and the scope of those activities was reduced. Their income fell, as did the value of their clientèle and, more generally, their business. Consequently, there was interference

with their right to the peaceful enjoyment of their possessions. However, that interference was justified in terms of the second paragraph of P1A1. The legislation was designed to promote the 'general interest': its purpose was to structure a profession that was important to the entire economic sector by providing the public with guarantees of the competence of those who carry on that profession. A fair balance between the means used and the intended aim was at any rate ensured by transitional provisions enabling the former unqualified accountants to gain entry to the new profession on prescribed conditions. Therefore there was no breach of P1A1.

Cited: Albert and Le Compte v B (10.2.1983), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Sporrong and Lönnroth v S (23.9.1982).

Van Mechelen and Others v The Netherlands (1998) 25 EHRR 647 97/22

[Applications lodged 27.11.1992, 8.12.1992, 24.11.1992; Commission report 27.2.1996; Court Judgment 23.4.1997 (merits), 30.10.1997 (A 50)]

Mr Hendrik van Mechelen, Mr Willem Venerius, Mr Johan Venerius and Mr Antonius Amandus Pruijmboom and another man were charged with attempted murder – or, in the alternative, attempted manslaughter – and robbery with the threat of violence. The Regional Court convicted the accused. The evidence identifying the applicants as perpetrators of the crimes included statements made before the trial by anonymous police officers, none of whom gave evidence before either the Regional Court or the investigating judge. They were sentenced to ten years' imprisonment. The five convicted men appealed to the 's-Hertogenbosch Court of Appeal which convicted all four applicants in four separate but similar judgments on 4 February 1991. They were sentenced to fourteen years' imprisonment. The fifth suspect was acquitted. The applicants complained that their convictions were based to a decisive extent on the evidence of anonymous witnesses, police officers whose identity was not disclosed to them and who were not heard either in public or in their presence and therefore the rights of the defence had been unacceptably restricted.

Comm found by majority (20–8) NV 6(1) and 3(d).

Court found by majority (6–3) V 6(1)+6(3)(d).

Judges (merits): Mr R Bernhardt, President, Mr F Matscher (d), Mr C Russo, Mr N Valticos (d), Mr I Foighel, Mr B Repik, Mr K Jungwiert, Mr E Levits, Mr P van Dijk (d).

Judges (A 50): Mr R Bernhardt, President, Mr F Matscher, Mr C Russo, Mr N Valticos, Mr I Foighel (d)l, Mr B Repik, Mr K Jungwiert, Mr E Levits, Mr P van Dijk.

The admissibility of evidence was primarily a matter for regulation by national law and as a general rule it was for the national courts to assess the evidence before them. The Court's task under the Convention was not to give a ruling as to whether statements of witnesses were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair. In addition, all the evidence had to normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. There were exceptions to this principle, but they should not infringe the rights of the defence; as a general rule. The defendant had to be given an adequate and proper opportunity to challenge and question a witness against him, either when he made his statements or at a later stage. The use of statements made by anonymous witnesses to found a conviction was not under all circumstances incompatible with the Convention. If the anonymity of prosecution witnesses was maintained, the defence would be faced with difficulties which criminal proceedings should not normally involve. Accordingly, in such cases A 6(1) taken together with A 6(3)(d) required that the handicaps under which the defence laboured be sufficiently counterbalanced by the procedures followed by the judicial authorities.

A conviction should not be based either solely or to a decisive extent on anonymous statements. The balancing of the interests of the defence against arguments in favour of maintaining the anonymity of witnesses raised special problems if the witnesses in question were members of the

police force of the State. Although their interests – and those of their families – also deserved protection under the Convention, it had to be recognised that their position was to some extent different from that of a disinterested witness or a victim. They owed a general duty of obedience to the State's executive authorities and usually had links with the prosecution; for those reasons alone their use as anonymous witnesses should be resorted to only in exceptional circumstances. In addition, it was in the nature of things that their duties, particularly in the case of arresting officers, may involve giving evidence in open court. On the other hand, provided that the rights of the defence were respected, it may be legitimate for the police authorities to wish to preserve the anonymity of an agent deployed in undercover activities, for his own or his family's protection and so as not to impair his usefulness for future operations. Having regard to the place that the right to a fair administration of justice held in a democratic society, any measures restricting the rights of the defence should be strictly necessary. If a less restrictive measure could suffice then that measure should be applied. In the present case, the police officers in question were in a separate room with the investigating judge, from which the accused and even their counsel were excluded. All communication was via a sound link. The defence was thus not only unaware of the identity of the police witnesses but were also prevented from observing their demeanour under direct questioning, and thus from testing their reliability. It had not been explained to the Court's satisfaction why it was necessary to resort to such extreme limitations on the right of the accused to have the evidence against them given in their presence, or why less far-reaching measures were not considered. In the absence of any further information, the operational needs of the police did not provide sufficient justification. Nor was the Court persuaded that the Court of Appeal made sufficient effort to assess the threat of reprisals against the police officers or their families. Its decision was based exclusively on the seriousness of the crimes committed. The anonymous police officers were interrogated before an investigating judge, who had himself ascertained their identity and had, in a very detailed official report of his findings, stated his opinion on their reliability and credibility as well as their reasons for remaining anonymous. However those measures could not be considered a proper substitute for the possibility of the defence to question the witnesses in their presence and make their own judgment as to their demeanour and reliability. It thus could not be said that the handicaps under which the defence laboured were counterbalanced by the above procedures. Moreover, the only evidence relied on by the Court of Appeal which provided positive identification of the applicants as the perpetrators of the crimes were the statements of the anonymous police officers. That being so the conviction of the applicants was based to a decisive extent on those anonymous statements. Therefore the proceedings taken as a whole were not fair. There had been a violation of A 6(1) taken together with A 6(3)(d).

Costs and expenses (NLG 16,598.07 less FF 11,412 to Van Mechelen and Willem Venerius jointly, NLG 20,000 less FF 11,436 to Johan Venerius, NLG 11,905 to Pruijmboom). Non-pecuniary damage (NLG 30,000 to Mr van Mechelen, NLG 25,000 to Mr Johan Venerius, NLG 25,000 to Mr Willem Venerius, NLG 25,000 to Mr Pruijmboom), costs and expenses for proceedings in obtaining just satisfaction (to Mr van Mechelen, Mr Johan Venerius and Mr Willem Venerius jointly, NLG 2,000).

Cited: Doorson v NL (26.3.1996), Kostovski v NL (20.11.1989), Lüdi v CH (15.6.1992).

Van Oosterwijck v Belgium (1981) 3 EHRR 357 80/4

[Application lodged 1.9.1976; Commission report 1.3.1979; Court Judgment 6.11.1980]

Danielle Van Oosterwijck had been working since 1963 in the Secretariat of the Commission of the European Communities and was studying law. She had been registered at birth on 23 December 1944 as a female. She subsequently underwent a sex-change. On 18 October 1973, the applicant filed a petition for rectification of a civil states certificate so that his birth certificate should indicate a male child. His application was refused and he appealed to the Brussels Court of Appeal, which dismissed his appeal on 7 May 1974. He complained that his situation was one of civil death and was inhuman and degrading, that the application of the law obliged him to use documents which did not reflect his real identity and that since, by maintaining a distortion between his legal being

and his physical being, the contested court decisions prevented his marrying and founding a family.

Comm found unanimously V 8, by majority (7–3) V 11, not necessary to examine 3.

Court found by majority (13–4) domestic remedies not exhausted, therefore cognisance could not be taken of the merits of the case.

Judges: Mr G Balladore Pallieri, President, Mr G Wiarda, Mr M Zekia, Mr J Cremona, Mr Thór Vilhjálmsson (c), Mr R Ryssdal, Mr W Ganshof Van Der Meersch (pc), Sir Gerald Fitzmaurice, Mr D Evrigenis (jd), Mr G Lagergren, Mr L Liesch (jd), Mr F Gölcüklü (jd), Mr F Matscher (jd), Mr J Pinheiro Farinha, Mr E Garcia De Enterria, Mr L-E Pettiti, Mr B Walsh.

According to the Government, domestic remedies were not exhausted as the applicant had not appealed on a point of law to the Court of Cassation, had not pleaded the Convention either at first instance or on appeal, had not sought authorisation to change his forenames, pursuant to the domestic legislation, had not instituted an action d'état (action pertaining to personal status). The Court found that the applicant had not exhausted the domestic remedies available to him and there did not exist any special grounds capable of dispensing him from exercising the remedies taken into consideration by the Court.

Cited: Airey v IRL (9.10.1979), Artico v I (13.5.1980), De Wilde, Ooms and Versyp v B (18.6.1971), Deweer v B (27.2.1980), Ringeisen v A (16.7.1971), Stögmüller v A (10.11.1969).

Van Orshoven v Belgium (1998) 26 EHRR 55 97/32

[Application lodged 13.3.1992; Commission report 15.9.1995; Court Judgment 25.6.1997]

Mr Yvo Van Orshoven had a private practice as a doctor. At the beginning of 1987 he was the subject of an administrative inquiry by the National Institute for Sickness and Disability Insurance following a complaint by a mutual insurance company, which accused him of supplying treatment without a prescription and claiming payment for treatment that had not been given or in respect of which the conditions laid down by law had not been satisfied. On 24 March 1988 the Provincial Council held a hearing, which the applicant did not attend despite being summoned to do so. The council ordered that he should be struck off the register of the Ordre des médecins. His appeals to the Provincial Council and the Appeals Board of the Ordre were rejected. He appealed to the Court of Cassation. On 13 September 1991 a hearing was held at which the court heard in turn the reporting judge, counsel for the applicant, counsel for the Ordre and the avocat général, who after making his submissions took part in the court of Cassation's deliberations. On the same day the court dismissed the appeal. The applicant complained, *inter alia*, that he had not been able to reply to the procureur général's submissions at the hearing in the Court of Cassation.

Comm found by majority (20–7) V 6(1).

Court unanimously dismissed the Government's preliminary objection, found by majority (7–2) V 6(1).

Judges: Mr R Bernhardt, President, Mr L-E Pettiti (d), Mr R Macdonald, Mr JM Morenilla, Sir John Freeland, Mr AB Baka, Mr G Mifsud Bonnici (c), Mr E Levits, Mr M Storme (d), ad hoc judge.

The scope of the case before the Court was determined by the Commission's decision on admissibility. The only complaint declared admissible by the Commission in the present case was that it had been impossible for the applicant to reply to the submissions of the procureur général's department. That complaint therefore constituted the sole subject matter of the case. Consequently, the Government's preliminary objection as to the Court's jurisdiction had to be dismissed.

The main duty of the procureur général's department at the Court of Cassation at the hearing, as at the deliberations, was always to assist the Court of Cassation and to help ensure that its case-law was consistent. The procureur général's department acted with the strictest objectivity. Great importance had to be attached to the part actually played in the proceedings by the member of the procureur général's department, and more particularly to the content and effects of his submissions. These contained an opinion which derived its authority from that of the procureur

général's department itself. Although it was objective and reasoned in law, the opinion was nevertheless intended to advise and accordingly influence the Court of Cassation. Regard being had to what was at stake and to the nature of the submissions made by the avocat général, the fact that it was impossible for the applicant to reply to them before the end of the hearing infringed his right to adversarial proceedings. That right meant in principle the opportunity for the parties to a trial to have knowledge of and comment on all evidence adduced or observations filed. Accordingly, there had been a violation of A 6(1).

No causal link in respect of alleged pecuniary damage (no causal link). Judgment constituted just satisfaction for the alleged non-pecuniary damage. Costs and expenses (BEF 250,000).

Cited: Borgers v B (30.10.1991), Delcourt v B (17.1.1970), Lobo Machado v P (20.2.1996), Mauer v A (18.2.1997), Nideröst-Huber v CH (18.2.1997), Pakelli v D (25.4.1983), Pham Hoang v F (25.9.1992), Ruiz-Mateos v E (23.6.1993), Vermeulen v B (20.2.1996), Welch v UK (26.2.1996).

Van Pelt v France 00/151

[Application lodged 17.4.1996; Court Judgment 23.5.2000]

Mr Leonardus Van Pelt was extradited to France in 1987, where he was charged with drugs offences following an international drug trafficking inquiry. He was committed for trial in 1990 and the tribunal de grande instance, after conviction, sentenced him to 18 years' imprisonment and ordered his permanent exclusion from French territory. In 1991 the court of appeal acquitted him on appeal. The public prosecutor appealed and in February 1992 the Court of Cassation quashed the court of appeal's judgment and referred the case back to a different court of appeal. When the proceedings were resumed in 1993, the applicant's lawyers produced medical certificates stating that the appellant was in hospital in The Netherlands and could not appear in court. The court refused the adjournment request and convicted the applicant and issued a warrant for his arrest. An appeal on points of law by the applicant to the Court of Cassation was dismissed. He complained of violations of A 6.

Court found by majority (5–2) NV 6(1) with regard to length of proceedings, unanimously V 6(1)+6(3) with regard to the proceedings before the court of appeal, V 6(1) concerning the inadmissibility of the appeal on points of law.

Judges: Mr W Fuhrmann, President, Mr J-P Costa, Mr L Loucaides (so), Mr P Kûris, Mrs F Tulkens (pd), Mr K Jungwiert, Sir Nicolas Bratza (pd).

The period to be considered began on 30 January 1987, the date of the applicant's arrest. It ended on 19 October 1995, the date of the judgment of the Court of Cassation. The proceedings had therefore lasted 8 years, 8 months and 20 days. The reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case, taking into account the complexity of the case, conduct of the applicant and of the competent authorities. The length of the proceedings in this case had not been unreasonable.

With regard to the fact that the applicant's lawyers had been unable to argue his case in his absence, it was of importance that a defendant should appear, both because of his right to a hearing and because of the need to verify the accuracy of his statements and compare them with those of the victim, whose interests had to be protected, and of the witnesses. The legislature had to be able to discourage unjustified absences. However, it was also of crucial importance for the fairness of the proceedings that the accused be adequately defended. It was for the courts to ensure that counsel who attended trial for the purpose of defending the accused in his absence was given the opportunity to do so. Moreover, the right of everyone charged with a criminal offence to be effectively defended by a lawyer was one of the basic features of a fair trial. An accused did not lose that right merely on account of not attending a court hearing. In the present case the applicant's lawyers had been able to present argument only on the application for an adjournment, not on the merits. There had therefore been a violation of A 6(1) and (3).

Where an appeal on points of law was declared inadmissible solely because the appellant had not surrendered to custody pursuant to the judicial decision challenged in the appeal, that impaired

the applicant's right of appeal by imposing a disproportionate burden on the applicant, thus upsetting the fair balance that had to be struck between the legitimate concern to ensure that judicial decisions were enforced and the right of access to the Court of Cassation and exercise of the rights of the defence. The applicant had therefore suffered an excessive restriction of his right of access to court when he lost his right of appeal because of non-compliance with the warrant for his arrest.

Costs and expenses (FF 70,388).

Cited: Guérin v F (29.7.1998), Khalfaoui v F (14.12.1999), Lala v NL (22.9.1994), Pélissier and Sassi v F (25.3.1999), Pelladoah v NL (22.9.1994) Philis v GR (No 2) (27.6.1997).

Van Raalte v Netherlands (1997) 24 EHRR 503 97/6

[Application lodged 23.4.1992; Commission report 17.10.1995; Court Judgment 21.2.1997]

Mr Anton Gerard van Raalte had never been married and had no children. On 30 September 1987 the Inspector of Direct Taxes sent him an assessment of his contributions for the year 1985 under various social security schemes, including the General Child Care Benefits Act. He filed an objection to this assessment on the basis that under the legislation, unmarried childless women of 45 years or over were exempted from the obligation to pay contributions under the General Child Care Benefits Act and the prohibition of discrimination implied that that exemption should be extended to men in the same situation. His objection was rejected and he appealed to the Amsterdam Court of Appeal, which dismissed his appeal on 6 October 1989. His subsequent appeal on points of law to the Supreme Court was also dismissed. He complained that he had been the victim of discriminatory treatment with regard to the obligation to pay contributions under the General Child Care Benefits Act.

Comm found by majority (23–5) V 14+P1A1.

Court unanimously found V 14+P1A1.

Judges: Mr R Ryssdal, President, Mr C Russo, Mr N Valticos, Mrs E Palm, Mr I Foighel (d), Mr AB Baka, Mr J Makarczyk, Mr K Jungwiert, Mr P van Dijk.

A 14 complemented the other substantive provisions of the Convention and the Protocols. It had no independent existence since it had effect solely in relation to the enjoyment of the rights and freedoms safeguarded by those provisions. Although the application of A 14 did not presuppose a breach of those provisions, there could be no room for its application unless the facts in issue fell within the ambit of one or more of the latter. The case concerned the right of the State to secure the payment of taxes or other contributions and therefore came within the ambit of P1A1, and accordingly A 14 was applicable. A difference of treatment was discriminatory if it had no objective and reasonable justification, that is, if it did not pursue a legitimate aim or if there was not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Moreover, the Contracting States enjoyed a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justified a different treatment. However, very weighty reasons would have to be put forward before the Court could regard a difference in treatment based exclusively on the ground of sex as compatible with the Convention. In the present case there was a difference in treatment between persons in similar situations, based on gender. No compelling reasons had been adduced to justify a difference in treatment between men and women as regards the exemptions to the contributory obligations. There has therefore been a violation of A 14 taken together with P1A1.

Dismissed by majority (8–1) claims for pecuniary damage, unanimously found present judgment constituted just satisfaction in respect of any non-pecuniary damage sustained. Costs and expenses (NLG 23,271).

Cited: Karlheinz Schmidt v D (18.7.1994).

Varipati v Greece 99/70

[Application lodged 29.8.1997; Court Judgment 26.10.1999]

Mrs Maria Varipati had a piece of her land expropriated in 1964. In 1983 the court of appeal held that the expropriation order had been revoked. The judgment was declaratory and the applicant did not succeed in having the order formally revoked until 1991. The public-sector company occupying the land applied to the Supreme Administrative Court to have the decision quashed. The Supreme Court heard the case in January 1995 and gave judgment in March 1997 dismissing the company's application. The company continued to occupy the land until August 1997, when it reached an agreement with the applicant. She complained, *inter alia*, of the length of proceedings.

Court unanimously dismissed the Government's preliminary objection, found V 6(1), NV P1A1.

Judges: Mr Fischbach, President, Mr C Rozakis, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mr AB Baka, Mr E Levits.

The applicant had not abused the right to individual petition or waived her financial claims by reaching an agreement with the company. The Government's preliminary objection was therefore dismissed.

By applying for the decision in the applicant's favour to be quashed, the company had cast doubt on the legal status of the applicant's property so that a dispute had arisen between them, the outcome of which had been decisive for the applicant's right of property. A 6(1) therefore applied. The period to be taken into consideration began on 26 June 1992 and ended on 19 March 1997, a period of 4 years and 9 months at one level of jurisdiction. Despite the fact that the delays caused by the lawyer's strike could not be attributed to the State, the length of the proceedings could not be regarded as reasonable.

P1A1: any adverse financial effects entailed by the excessive length of the proceedings had to be regarded as consequences of the violation of the right guaranteed by A 6(1) and could only be taken into consideration for the purposes of the just satisfaction which the applicant could obtain as a result of that finding of violation.

Damages (GRD 3,000,000), costs and expenses (GRD 1,000,000).

Cited: Fayed v UK (21.9.1994), Pafitis and Others v GR (26.2.1998), Pélissier and Sassi v F (25.3.1999), Philis v GR (No 2) (27.6.1997).

Vasilescu v Romania (1999) 28 EHRR 241 98/36

[Application lodged 10.2.1995; Commission report 17.4.1997; Court Judgment 22.5.1998]

On 23 June 1966, police officers from the militia searched Mrs Elisabeta Vasilescu's house without a warrant, in connection with a police investigation that had been started in respect of her husband for unlawful possession of valuables. They seized 327 gold coins, most of which were pierced for use in jewellery. On 4 July 1966 these items were deposited in the National Bank of Romania. On 8 July 1966 the militia headquarters decided not to press charges against the applicant's husband and discontinued the investigation of the case, but they nevertheless decided to keep the items in question. The applicant made inquiries of State Counsel for the county and on 11 October 1990 lodged an application for restitution with the Procurator-General of Romania. In 1991 she brought an action for recovery of possession of 40 gold coins that had been made into a necklace and a pair of earrings against the National Bank, with which they had been deposited. The Court of First Instance found for the applicant and ordered the National Bank to return the items claimed. The National Bank appealed to the County Court, which dismissed the appeal on 7 October 1992. In 1994 the Procurator-General made an application to the Supreme Court of Justice to have the earlier judgment quashed. On 20 October 1994 the Supreme Court of Justice allowed the Procurator-General's application and quashed all the judgments concerned, holding that under domestic legislation, State Counsel for the county had sole jurisdiction to entertain Mrs Vasilescu's application for return of the items in issue. The applicant complained that the search of her home

and the seizure of her property had infringed A 8 of the Convention and that, contrary to A 6(1) and P1A1, the Supreme Court of Justice had deprived her of a tribunal that could have enabled her to recover possession of her property.

Comm found unanimously V 6(1), by majority (28–1) V P1A1, not necessary to consider 8.

Court unanimously dismissed the Government's preliminary objection, found V 6(1), V P1A1, not necessary to examine 8 and 13.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr AB Baka, Mr MA Lopes Rocha, Mr D Gotchev, Mr K Jungwiert, Mr E Levits, Mr J Casadevall, Mr M Voicu.

The Government's preliminary objection of failure to exhaust domestic remedies was not raised before the Commission and they were accordingly estopped from relying it.

Even where, as in the instant case, State Counsel for a county exercised powers of a judicial nature, he acted as a member of the Procurator-General's department, subordinated first to the Procurator-General and then to the Minister of Justice. Only an institution that had full jurisdiction and satisfied a number of requirements, such as independence of the executive and also of the parties, merited the description 'tribunal' within the meaning of A 6(1). Neither State Counsel nor the Procurator-General met those requirements. There had therefore been a violation of A 6(1).

Having regard to its finding of a violation of A 6(1), it was not necessary to rule on the complaint under A 13, which was moreover unsupported by any argument. Where the right claimed was a civil one, the role of A 6(1) in relation to A 13 was that of a *lex specialis*, the requirements of A 13 being absorbed by those of A 6(1).

The seizure of the property by the militia had been unlawful. The applicant was, and remained, the owner of the property and had been deprived of the use and enjoyment of the relevant property since 1966. Romania did not recognise the right of individual petition and the Court's jurisdiction until 20 June 1994. However, the applicant's complaint related to a continuing situation, which still obtained at the present time, and the judgment of the Supreme Court of Justice dated from 20 October 1994. In view of the lack of any basis in law, the continuing retention of the items in question could not be interpreted as a deprivation of possessions or control of the use of property allowed by P1A1. The applicant had obtained a court decision ordering the National Bank of Romania to return to her the 40 gold coins and the earrings she had claimed. However, that decision, together with the one upholding it, was quashed by the Supreme Court of Justice. She had already made approaches to State Counsel and to the Procurator-General, in 1990, but had had no greater success. The loss of all ability to dispose of the property in issue, taken together with the failure of the attempts made so far to have the situation remedied by the national authorities and courts, entailed sufficiently serious consequences for it to be held that the applicant has been the victim of a *de facto* confiscation incompatible with her right to the peaceful enjoyment of her possessions. There was a therefore a violation of P1A1.

Having regard to the finding in respect of P1A1 it was not necessary to examine the case under A 8 also.

Pecuniary damage (FF 60,000), non-pecuniary damage (FF 30,000), costs and expenses (FF 5,185).

Cited: Beaumartin v F (24.11.1994), Brualla Gómez de la Torre v E (19.12.1997), Demicoli v M (27.8.1991), Loizidou v TR (merits) (18.12.1996), Papamichalopoulos and Others v GR (24.6.1993; A 50 31.10.1995), Sakik and Others v TR (26.11.1997), Sporrong and Lönnroth v S (23.9.1982).

Vay v Italy 00/138

[Application lodged 9.4.1998; Court Judgment 28.4.2000]

Mrs Anna Maria Vay complained of the length of proceedings in the Audit Court.

Court found unanimously V 6(1).

Judges: Mr M Pellonpää, President, Mr B Conforti, Mr G Ress, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mrs N Vajic.

The period to be taken into consideration began on 13 November 1991 and ended on 30 January 1998. It lasted more than six years, two months at one level of jurisdiction. The period could not be considered reasonable.

Non-pecuniary damage (ITL 17,000,000), costs and expenses (ITL 3,000,000).

Cited: Bottazzi v I (28.7.1999).

Velikova v Bulgaria 00/150

[Application lodged 12.2.1998; Court Judgment 18.5.2000]

Ms Anya Velikova and Mr Slavtcho Tsonchev had lived together for about 12 years. On 24 September 1994 Mr Tsonchev was arrested on suspicion of stealing cows. He was too drunk to be questioned. He died about 12 hours later in police custody. The regional investigator ordered a criminal investigation into the death and an autopsy was carried out which stated that death was caused by haemorrhaging due to trauma caused by a blunt object. The applicant complained under A 2, 6, 13 and 14 of the Convention in respect of the death in police custody of Mr Tsonchev, the alleged ineffective investigation into this event, the alleged obstacles to the determination of her civil right to compensation arising out of the death, the alleged lack of effective remedies in this respect and the alleged discrimination on the basis of Mr Tsonchev's Romani ethnic origin.

Court unanimously dismissed the Government's preliminary objections, found V 2 in respect of the death of Mr Tsonchev, V 2 in respect of the respondent State's obligation to conduct an effective investigation, V 13, NV 14.

Judges: Mr M Pellonpää, President, Mr G Ress, Mr A Pastor Ridruejo, Mr I Cabral Barreto, Mr V Butkevych, Mr J Hedigan, Mrs S Botoucharova.

Regarding the Government's claim as to the authenticity of the claim, the applicant had declared that she had signed the power of attorney and demonstrated her ability to sign in the presence of the President of the Chamber and the representatives of the parties. The Government were not estopped from raising the objection of authenticity of the application, as it was based on a document which was created and came to light after 18 May 1999, the date of the admissibility decision in the present case. There were no serious doubts as to the applicant's wish to pursue her complaints and the application had been validly submitted on her behalf. Therefore, the first preliminary objection of the Government was dismissed. Regarding the Government's claims that the admissibility decision contained incorrect statements of fact and unjustified conclusions, they were all to be found in the summary of the applicant's complaints and submissions, which formed part of the text of the decision, without any of them being the expression of the Court's opinion. Regarding the other objections, the Government, for the most part, reiterate their objections as to the admissibility of the application, which were already examined by the Court and rejected by its earlier decision. There were no new elements justifying a re-examination of those matters. The remainder of the Government's preliminary objections were therefore dismissed.

Where an individual was taken into police custody in good health but was later found dead, it was incumbent on the State to provide a plausible explanation of the events leading to his death, failing which the authorities had to be held responsible under A 2. In assessing evidence, the general principle applied in cases had been to apply the standard of proof 'beyond reasonable doubt'. However, such proof could follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lay wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact would arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation. The cause of Mr Tsonchev's death was the acute loss of blood resulting from the large and deep haematomas in the upper limbs and the left buttock. It was undisputed that he had consumed a certain quantity of alcohol, was able to walk, that there was verbal communication between him, the police officers and other persons, that in the course of this verbal communication, at the time of the arrest and within the

next two hours, he did not complain of any ailment, and that no one in contact with him, including the police officers involved, reported any visible sign of such grave injuries as were found later by the autopsy. The Government's suggestion that Mr Tsonchev might have received his fatal injuries prior to his arrest was therefore implausible. Equally implausible was the suggestion that he might have been injured by falling on the ground as he was allegedly staggering. The post-mortem report mentioned such a possibility only in respect of the bruises on his face, which were not among the injuries that led to the acute loss of blood. According to the reports, the fatal injuries were the result of a deliberate beating. There was sufficient evidence to conclude beyond reasonable doubt that Mr Tsonchev died as a result of injuries inflicted while he was in the hands of the police and therefore the responsibility of the respondent State was engaged. In addition, there was no evidence of Mr Tsonchev having been examined, with the proper care due by a medical professional, at any time when he was in custody suffering from grave injuries and therefore, there had been a violation of A 2 in respect of his death.

As to the alleged lack of a meaningful investigation, certain references in the material submitted could lead to the supposition that there existed documents concerning the investigation into the death which had not been provided by the Government. It was not necessary to examine whether the Government had complied with their obligations under A 38. The Court was entitled to draw the inference that the material submitted to it contained all information about the investigation. There were numerous unexplained omissions from the very beginning and throughout the investigation; no expert was ever asked to comment on the timing of the injuries, there was no attempt by the investigator to identify the members of the medical team who, the police officers claimed, had visited the police station twice during the night, a number of important witnesses were never examined or questioned. The unexplained failure to undertake indispensable and obvious investigative steps was to be treated with particular vigilance and failing a plausible explanation by the respondent Government, the State's responsibility was engaged for a particularly serious violation of its obligation under A 2 to protect the right to life. The investigator did not proceed to collect available evidence and the investigation had remained dormant since December 1994. No plausible explanation for the reasons of the authorities' failure to collect key evidence was ever provided by the respondent Government. There had therefore been a violation of the respondent State's obligation under A 2 to conduct an effective investigation into the death of Mr Tsonchev.

The complaint regarding the excessive length of the investigation and the failure to carry out a thorough, effective and timely investigation fell to be examined under A 13. Having regard to the above conclusions, the respondent State had failed to comply with its obligation to carry out an effective investigation into the death of Mr Tsonchev. That failure undermined the effectiveness of any other remedies which might have existed. There had therefore been a violation of A 13 of the Convention.

The applicant's complaint under A 14 was grounded on a number of serious arguments. However, the respondent State failed to provide a plausible explanation as to the circumstances of the death and as to the reasons why the investigation omitted certain fundamental and indispensable steps which could have shed light on the events. The standard of proof required being 'proof beyond reasonable doubt', the material before the Court did not enable it to conclude beyond reasonable doubt that the killing and the lack of a meaningful investigation into it were motivated by racial prejudice, as claimed by the applicant. It followed that no violation of A 14 has been established.

Non-pecuniary damage (FF 100,000), pecuniary damage (BGL 8,000), costs and expenses (BGL 10,000 less FF 14,693).

Cited: Allenet de Ribemont v F (7.8.1996), Çakici v TR (8.7.1999), Ergi v TR (28.7.1998), Güleç v TR (27.7.1998), Ireland v UK (18.1.1978), Kaya v TR (19.2.1998), McCann and Others v UK (27.9.1995), Nikolova v BG (25.3.1999), Ogur v TR (20.5.1999), Selmouni v F (28.7.1999), Tanrikulu v TR (8.7.1999), Yasa v TR (2.9.1998).

Velosa Barreto v Portugal 95/46

[Application lodged 31.3.1991; Commission report 29.6.1994; Court Judgment 21.11.1995]

Mr Francisco Velosa Barreto was an office worker. He married in April 1979 and he and his wife had one child, born on 7 June 1980. When the applicant was still single, he lived with his parents. Since his marriage he had lived in a house rented by his parents-in-law. In November 1982 he inherited a house from his parents, which had been let for residential use to ER since 23 June 1964. On 6 April 1983 the applicant and his wife brought proceedings against ER and his wife in the Funchal Court of First Instance, asking the court to terminate the lease on the ground that they needed to occupy the property as their own home. The Funchal Court of First Instance found against the applicant and his wife on 13 March 1989 on the ground that they had not established facts which proved a real need to occupy the house themselves. On 6 April 1989 the applicant appealed to the Lisbon Court of Appeal which upheld the impugned judgment. He complained that the Portuguese courts, by not allowing him to terminate the lease on the house he owned, had infringed his right to respect for his private and family life.

Comm found by majority (8–3) V 8, NV P1A1.

Court found by majority (8–1) NV 8, NV P1A1.

Judges: Mr R Ryssdal, President, Mr R Macdonald, Mr J De Meyer, Mr AN Loizou, Mr F Bigi, Mr MA Lopes Rocha, Mr L Wildhaber, Mr D Gotchev (d), Mr P Jambrek.

Although the object of A 8 was essentially that of protecting the individual against arbitrary interference by the public authorities, it could also give rise to positive obligations, particularly the obligation to ensure respect for private and family life even in the sphere of interpersonal relations. A fair balance had to be struck between the general interest and the interests of the people concerned. The decisions complained of prevented the applicant from living in his house, as he intended. Nevertheless, effective protection of respect for private and family life could not require the existence in national law of legal protection enabling each family to have a home for themselves alone. It did not go so far as to place the State under an obligation to give a landlord the right to recover possession of a rented house on request and in any circumstances. The legislation applied in this case pursued a legitimate aim, namely the social protection of tenants, and it thus tended to promote the economic well-being of the country and the protection of the rights of others. In pursuit of those aims, the Portuguese legislature was entitled to make termination of a lease subject to the condition that the landlord 'needs the property in order to live there'. The Funchal Court of First Instance and the Lisbon Court of Appeal held that in the circumstances of the case existence of the 'need' required by law had not been proved. There was no evidence to suggest that by ruling as they did, the Portuguese courts acted arbitrarily or unreasonably or failed to discharge their obligation to strike a fair balance between the respective interests. Accordingly, the right guaranteed by A 8 had not been infringed.

The restriction on the applicant's right to terminate his tenant's lease constituted control of the use of property within the meaning of the second paragraph of P1A1. That restriction pursued a legitimate social policy aim. For the requirements of P1A1 to be satisfied, such an interference had to strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The considerations relating to A 8 were also applicable to his right to the peaceful enjoyment of his possessions. Accordingly there had been no breach of P1A1.

Cited: Airey v IRL (9.10.1979), B v F (25.3.1992), Keegan v IRL (26.5.1994), Scollo v I (28.9.1995), Sporrong and Lönnroth v S (23.9.1982), X and Y v NL (26.3.1985).

Vendittelli v Italy (1995) 19 EHRR 464 94/22

[Application lodged 11.1.1989; Commission report 31.3.1993; Court Judgment 18.7.1994]

Mr Manlio Vendittelli was an architect. On 19 May 1986 the Rome municipal police sealed his flat, on the ground that he had infringed the town-planning regulations. On 20 May 1986 the Rome

magistrate confirmed the sequestration and criminal proceedings were instituted against the applicant. He lodged three applications for release of his property from sequestration but they were dismissed for reasons of prevention and of preservation of evidence. Following trial on 15 December 1987 the applicant was given a suspended sentence of imprisonment and fined 10 million lire. He appealed. In a judgment of 4 July 1990, which became final on 30 October 1990, the Court of Appeal held that the offence had been amnestied and the prosecution barred as a result of a presidential decree. It did not, however, order that the property should be released from sequestration, nor was the judgment notified to the applicant, who had to obtain a copy from the registry on 5 December 1990. He made further applications to have his property released from sequestration. In an order of 17 May 1991, served on the applicant on 3 June, the Rome Court of Appeal allowed the application. The applicant complained of the length of the criminal proceedings against him and of an infringement of his right to the peaceful enjoyment of his possessions arising from the length of the proceedings and from the continued sequestration of his flat after the Rome Court of Appeal's judgment.

Comm unanimously found V 6(1) in respect of length of the proceedings, not necessary to consider P1A1 with respect to length of the criminal proceedings, V P1A1 on account of the failure to remove the seals after the judgment of the Court of Appeal.

Court found by majority (5–4) NV 6(1), NV P1A1+6(1), unanimously V P1A1 with respect to sequestration of the applicant's flat continuing beyond 30 October 1990.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr L-E Pettiti, Mr B Walsh (d), Mr C Russo, Mr A Spielmann (d), Mrs E Palm (d), Mr AN Loizou (d), Mr G Mifsud Bonnici.

The period to be taken into consideration began on 20 May 1986 with the decision by the Rome magistrate, who upheld the placing of seals on the applicant's flat. It ended on 30 October 1990, when the Rome Court of Appeal's decision became final. It therefore covered 4 years, 5 months and 10 days. The reasonableness of the length of proceedings had to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. Only delays attributable to the State could justify a finding that a reasonable time had been exceeded. The case was not particularly complex. The applicant bore some responsibility for the prolongation of the proceedings in the Court of Appeal. There had been delays on the part of the authorities. However, having regard to all the circumstances of the case, to the applicant's conduct, to the fact that two courts dealt with the case, and to the outcome, the overall length of the trial could not be considered to have been excessive. There had accordingly been no breach of A 6(1).

With regard to P1A1 taken together with A 6(1), in the instant case the sequestration of the flat was a measure ancillary to the criminal proceedings. That being so, given the conclusion in respect of A 6, no breach has been made out in this respect.

P1A1: the impugned measure was provided for by law and was designed not to deprive the applicant of his property but only to prevent him from using it. Consequently, the second paragraph of P1A1 applied in this instance. The sequestration, which was part of the criminal proceedings, had two objectives: to preserve the evidence of the offence and to prevent any aggravation of the offence. The measure therefore had a legitimate aim. The Court of Appeal ought to have ordered the immediate release of the property from sequestration without waiting for the applicant to raise the issue, as the considerations justifying sequestration until 30 October 1990 had ceased to exist thereafter. Continuing the sequestration after that date until 21 May 1991 therefore placed a disproportionate burden on the applicant. There had accordingly been a breach of P1A1 in this respect.

Claims for just satisfaction dismissed as being out of time.

Cited: Monnet v F (27.10.1993), Raimondo v I (22.2.1994), Wiesinger v A (30.10.1991).

Vereinigung demokratischer Soldaten Österreichs and Gubi v Austria (1995) 20 EHRR 55 94/49

[Application lodged 12.6.1989; Commission report 30.6.1993; Court Judgment 19.12.1994]

Vereinigung demokratischer Soldaten Österreichs (the VDSÖ), the first applicant, published a monthly magazine aimed at the soldiers serving in the Austrian army and entitled *Der Igel* (The Hedgehog). It contained information and articles, often of a critical nature, on military life. Mr Berthold Gubi, the second applicant, was a member of the VDSÖ and serving his military service in barracks. The Federal Minister for Defence refused a request from VDSO to have *Der Igel* distributed in the barracks in the same way as the only other two military magazines published by private associations and ordered the second applicant to stop distributing it. The second applicant's complaint about this ban to the Military Complaints Board was rejected. His appeal to the Constitutional Court was rejected. The applicants complained of the prohibition imposed in respect of the magazine *Der Igel* in Austrian barracks, and the second applicant of the order of 29 December 1987 requiring him to cease distributing the magazine in the barracks. They also maintained that they had not had an effective remedy and had been victims of discrimination on political grounds.

Comm found as regards the first applicant by majority (12–9) V 10, V 13, unanimously no separate issue under 14+10, as regards the second applicant (12–9) V 10, unanimously NV 13, unanimously no separate issue under 14+10.

Court found by majority (6–3) V 10 in respect of the first applicant, (8–1) V 10 in respect of the second applicant, (6–3) V 13 in respect of the first applicant, unanimously NV 13 in respect of the second applicant, unanimously not necessary to consider 14+10.

Judges: Mr R Bernhardt (pd), President, Mr Thór Vilhjálmsson (d), Mr F Matscher (pd), Mr C Russo, Mr A Spielmann, Mr SK Martens, Mrs E Palm, Mr I Foighel, Mr L Wildhaber.

The responsibility of a Contracting State was engaged if a violation of one of the rights and freedoms defined in the Convention was the result of non-observance by that State of its obligation under A 1 to secure those rights and freedoms in its domestic law to everyone within its jurisdiction. In the present case, the authorities effected themselves and at their own expense the distribution on a regular basis of military periodicals published by various associations, by sending them out with their official publications. Whatever the legal status of that arrangement, such a practice was bound to have an influence on the level of information imparted to the members of the armed forces and, accordingly, engaged the responsibility of the respondent State under A 10. Freedom of expression applied to servicemen just as it did to other persons within the jurisdiction of the Contracting States. Of all the periodicals for servicemen, only *Der Igel* was not allowed access to this type of distribution and the VDSÖ could therefore reasonably claim that this situation should be remedied. It followed that the Minister for Defence's rejection of its request was an interference with the exercise of its right to impart information and ideas. Although those provisions could not strictly constitute the legal basis of the minister's action, he nevertheless followed them. The provisions were formulated in general terms. However, the level of precision required of domestic legislation depended to a considerable degree on the content of the instrument considered, the field it was designed to cover and the number and status of those to whom it was addressed. As far as military discipline was concerned, it would scarcely be possible to draw up rules describing different types of conduct in detail. It might therefore be necessary for the authorities to formulate such rules more broadly. The relevant provisions, however, had to afford sufficient protection against arbitrariness and make it possible to foresee the consequences of their application. The provisions in question provided sufficient legal basis for the refusal of the VDSÖ's request. The first applicant had among its members servicemen who had access to these rules and it could therefore have been expected to be aware of the possibility that the minister might regard himself as bound to refer to them in relation to it. Therefore, the interference was prescribed by law. The impugned decision was taken with a view to preserving order in the armed forces, a legitimate aim for the purposes of A 10(2). Freedom of expression was also applicable to

information or ideas that offended, shocked or disturbed the State or any section of the population. The proper functioning of an army was hardly imaginable without legal rules designed to prevent servicemen from undermining military discipline. The denial of free distribution of *Der Igel* undoubtedly reduced considerably its chances of increasing its readership among service personnel. The fact that it retained the possibility of sending its journal to subscribers could not offset such a handicap. It could therefore only have been justified by imperative necessities since exceptions to the freedom of expression had to be interpreted narrowly. None of the issues of *Der Igel* submitted in evidence recommended disobedience or violence, or even questioned the usefulness of the army. Despite their often polemical tenor, it did not appear that they overstepped the bounds of what was permissible in the context of a mere discussion of ideas, which had to be tolerated in the army of a democratic State just as it had to be in the society that such an army served. The magazine could not be seen as a serious threat to military discipline. It followed that the measure in question was disproportionate to the aim pursued and infringed A 10.

The complaint was arguable. The Government had failed to show that the possible remedies cited would have been effective. It followed that the first applicant has been the victim of a violation of A 13. The Constitutional Court was competent to hear complaints of servicemen alleging a violation of their right to freedom of expression. Although the Constitutional Court declined to entertain the second applicant's complaint, the effectiveness of a remedy for the purposes of A 13 did not depend on the certainty of a favourable outcome. The second applicant consequently had available to him a remedy satisfying the requirements of that provision.

Having regard to its conclusions concerning A 10 it was not necessary to rule on the complaint under A 14.

Judgment constituted just satisfaction for the alleged non-pecuniary damage. Costs and expenses (ATS 180,000).

Cited: Boyle and Rice v UK (27.4.1988), Castells v E (23.4.1992), Chorherr v A (25.8.1993), Costello-Roberts v UK (25.3.1993), Engel and Others v NL (8.6.1976), Hadjianastassiou v GR (16.12.1993), Observer and Guardian v UK (26.11.1991), Open Door and Dublin Well Woman v IRL (29.10.1992), Sunday Times v UK (No 1) (26.4.1979).

Vereniging Weekblad Bluf! v Netherlands (1995) 20 EHRR 189 95/2

[Application lodged 4.5.1988; Commission report 9.9.1993; Court Judgment 9.2.1995]

The applicant association published a weekly called *Bluf!* for a left-wing readership. The editor of *Bluf!* proposed to publish an internal security service (BVD) confidential report with a commentary as a supplement to issue No 267 of the journal on 29 April 1987. Following a court order on an application by the public prosecutor, the police seized the entire print run of the particular issue and the supplement. During the night of 29 April 1987, unknown to the authorities, the staff of the applicant association managed to reprint the issue that had been seized. Some 2,500 copies were sold in the streets of Amsterdam the next day. The authorities decided not to put a stop to this so as not to cause any public disorder. The applicant association complained unsuccessfully of the seizure to the Regional Court and to the Supreme Court. The applicant association complained that the seizure and the subsequent withdrawal from circulation of issue No 267 of its periodical *Bluf!* infringed its right to freedom of expression.

Comm found by majority (160–2) V 10.

Court found unanimously V 10.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr C Russo, Mr A Spielmann, Mr SK Martens, Mrs E Palm, Sir John Freeland, Mr D Gotchev, Mr K Jungwiert.

The impugned measures amounted to interferences by a public authority in the applicant association's exercise of its freedom to impart information and ideas. National authorities had to be able to take such measures solely in order to prevent punishable disclosure of a secret without taking criminal proceedings against the party concerned, provided that national law afforded that

party sufficient procedural safeguards. Netherlands law satisfied that condition by allowing the party concerned to complain both of a seizure and of a withdrawal from circulation.

It was primarily for the national authorities to interpret and apply domestic law. There was no reason to suppose that Netherlands law was not correctly applied. The interferences were prescribed by law. They were designed to protect national security, a legitimate aim under A 10(2). Because of the nature of the duties performed by the internal security service, such an institution had to enjoy a high degree of protection where the disclosure of information about its activities was concerned. Nevertheless, it was open to question whether the information in the report was sufficiently sensitive to justify preventing its distribution. The document in question was six years old at the time of the seizure and was of a fairly general nature. In addition, the report was marked simply 'Confidential', which represented a low degree of secrecy – it was a document intended for BVD staff and other officials who worked for them. After the newspaper had been seized, the publishers reprinted a large number of copies and sold them in the streets of Amsterdam, which were very crowded. Consequently, the information in question had already been widely distributed when the journal was withdrawn from circulation and there was no reason to doubt that the BVD's report was made widely known. It was unnecessary to prevent the disclosure of certain information which had already been made public or had ceased to be confidential. In this case, the information in question was made accessible to a large number of people, who were able in their turn to communicate it to others. Furthermore, the events were commented on by the media. That being so, the protection of the information as a State secret was no longer justified and the withdrawal of Issue No 267 of *Bluf!* no longer appeared necessary to achieve the legitimate aim pursued. It would have been quite possible, however, to prosecute the offenders. As the measure was not necessary in a democratic society, there had been a breach of A 10.

Costs and expenses (NLG 60,000).

Cited: Chorherr v A (25.8.1993), Observer and Guardian v UK (26.11.1991), Open Door and Dublin Well Woman v IRL (29.10.1992), Sunday Times v UK (26.11.1991), Weber v CH (22.5.1990).

Vermeire v Belgium (1993) 15 EHRR 488 91/54

[Application lodged 1.4.1987; Commission report 5.4.1990; Court Judgment 29.11.1991 (merits), 4.10.1993 (A 50)]

Mrs Astrid Vermeire was the recognised illegitimate daughter of Jérôme Vermeire, who died unmarried in 1939. He was the son of the late Camiel Vermeire and his late wife Irma Vermeire née Van den Berghe, who also had two other children, Gérard and Robert. They died in 1951 and 1978 respectively, Gérard unmarried and without issue, Robert survived by two children of his marriage, Francine and Michel. The applicant's grandparents, who had brought her up after her father's death, both died intestate, the grandmother on 16 January 1975 and the grandfather on 22 July 1980. As the grandmother's heirs had remained co-owners in undivided shares up to the grandfather's death, the two estates were realised and distributed to the legitimate grandchildren Francine and Michel in a single procedure. Astrid Vermeire was excluded under the old Civil Code which did not allow illegitimate children any rights in the estates of their deceased parents. On 10 June 1981 she brought an action to claim a share in the estates before the Brussels Court of First Instance. In a judgment of 3 June 1983 that court allowed her the same rights as a legitimate descendant in the estates in question. The legitimate grandchildren appealed and on 23 May 1985 the Brussels Court of Appeal set aside the judgment. The Court of Cassation concurred and dismissed the applicant's appeal on 12 February 1987. The applicant complained that the Belgian courts, in denying her the status of an heir of her grandparents, had caused her to suffer a discriminatory interference with the exercise of her right to respect for her private and family life.

Comm found by majority (7–6) NV 14+8 as regards her grandmother's estate, unanimously V 14+8 with respect to her grandfather's estate.

Court found by majority (8–1) that the Belgian State was under no obligation to reopen the succession to the estate of the grandmother, unanimously that the applicant's exclusion from the estate of her grandfather violated 14+8.

Judges (merits): Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr B Walsh, Mr A Spielmann, Mr J De Meyer, Mr SK Martens (pd), Mr AN Loizou, Mr JM Morenilla.

Judges (A50): Mr R Ryssdal, President, Mrs D Bindschedler-Robert, Mr B Walsh, Mr R Macdonald, Mr A Spielmann, Mr J De Meyer, Mr SK Martens, Mr AN Loizou, Mr JM Morenilla.

The present case concerned the estates of a grandmother who died before and a grandfather who died after the date of the *Marckx* judgment. The succession to Irma Vermeire née Van den Berghe took place on her death and the estate devolved on her legitimate heirs as of that date. The estate was not wound up until after 13 June 1979, but by reason of its declaratory nature the distribution had effect as from the date of death, that is to say, 16 January 1975. The principle of legal certainty absolved the Belgian State from reopening legal acts or situations that antedated the delivery of the judgment.

The *Marckx* judgment held that the total lack of inheritance rights on intestacy, based only on the illegitimate nature of the affiliation, was discriminatory. That finding related to facts which were so close to those of the present case that it applied equally to the succession in issue, which took place after its delivery. There was nothing to prevent the Brussels Court of Appeal and the Court of Cassation from complying with the findings of the *Marckx* judgment, as the Court of First Instance had done. There was nothing imprecise or incomplete about the rule which prohibited discrimination on the grounds of the illegitimate nature of the kinship. An overall revision of the legislation, with the aim of carrying out a thoroughgoing and consistent amendment of the whole of the law on affiliation and inheritance on intestacy, was not necessary at all as an essential preliminary to compliance with the Convention. The freedom of choice allowed to a State as to the means of fulfilling its obligation under A 53 could not allow it to suspend the application of the Convention while waiting for such a reform to be completed, in this case over 10 years after the judgment. The applicant's exclusion from the estate of her grandfather Camiel Vermeire violated A 14 in conjunction with A 8.

Damage (BEF 22,192,511), costs and expenses (BEF 2,000,000).

Cited: Marckx v B (13.6.1979).

Vermeulen v Belgium 96/7

[Application lodged 6.11.1991; Commission report 11.10.1994; Court Judgment 20.2.1996]

On 6 May 1987, on an application by the department of the procureur du Roi and without any adversarial hearing, the Furnes Commercial Court adjudicated Mr Frans Vermeulen bankrupt and declared his company insolvent. It had heard the opinion of the deputy procureur du Roi but had not heard the applicant himself, who was in custody in Ghent prison on account of criminal proceedings against him for forgery, uttering, fraud and misappropriation. His applicant to have the judgment set aside and the case reheard was unsuccessful. He complained that he had not been able to reply, through his lawyer, to the avocat général's submissions or to address the court last at the hearing before the Court of Cassation and that the representative of the procureur général's department had taken part in the deliberations that had followed immediately afterwards.

Comm found by majority (11–5) V 6(1).

Court found by majority (15–4) V 6(1).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr F Gölcüklü (jd), Mr F Matscher (jd), Mr L-E Pettiti (jd), Mr B Walsh, Mr R Macdonald, Mr C Russo, Mrs E Palm, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou, Mr JM Morenilla, Sir John Freeland, Mr AB Baka, Mr MA Lopes Rocha, Mr K Jungwiert, Mr P Kûris, Mr J Van Compernolle (d), ad hoc judge.

The nature of the functions of the procureur général's department at the Court of Cassation did not vary according to whether the case was a civil or a criminal one. In both instances its main duty, at the hearing as at the deliberations, was to assist the Court of Cassation and to help ensure that its case-law was consistent. The fact that it could not raise grounds of appeal of its own motion concerned only the scope of its functions, not their nature. The procureur général's department acted with the strictest objectivity. Great importance had to be attached to the part actually played in the proceedings by the member of the procureur général's department, and more particularly to the content and effects of his submissions. Those contained an opinion which derived its authority from that of the procureur général's department itself. Although it was objective and reasoned in law, the opinion was nevertheless intended to advise and accordingly influence the Court of Cassation. Regard being had to what was at stake for the applicant in the proceedings in the Court of Cassation and to the nature of the submissions made by the avocat général, the fact that it was impossible for the applicant to reply to them before the end of the hearing infringed his right to adversarial proceedings. That right meant in principle the opportunity for the parties to have knowledge of and comment on all evidence adduced or observations filed, even by an independent member of the national legal service, with a view to influencing the court's decision. That amounted to a breach of A 6(1). The breach in question was aggravated by the avocat général's participation in the court's deliberations, albeit only in an advisory capacity. The deliberations afforded the avocat général, if only to outward appearances, an additional opportunity to bolster his submissions in private, without fear of contradiction. The fact that his presence gave the procureur général's department the chance to contribute to maintaining the consistency of the case-law could not alter that finding, since having a member present was not the only means of furthering that aim, as was shown by the practice of most other Member States of the Council of Europe. There had therefore been a breach of A 6(1) in that respect also.

Judgment constituted just satisfaction in respect of the alleged non-pecuniary damage. Costs and expenses (BEF 250,000).

Cited: Borgers v V (30.10.1991), Delcourt v B (10.11.1969), Kerojärvi v SF (19.7.1995), McMichael v UK (24.2.1995), Pakelli v D (25.4.1983), Pham Hoang v F (25.9.1992), Ruiz-Mateos v E (23 .6.1993).

Vernillo v France (1991) 13 EHRR 880 91/23

[Application lodged 22.11.1985; Commission report 6.2.1990; Court Judgment 20.2.1991]

Mr Generoso Vernillo and his wife Maria, née Siciliano, were Italian citizens who lived near Naples. On 10 October 1967 they bought a three-room flat in Nice from Mr Ange Torzuoli and his wife (their aunt) for a down payment followed by monthly payments to the vendors during their lifetimes and to the survivor of the two, without any reduction on the death of the first. On 18 July 1977 the applicants were served with a formal notice to pay arrears and service charges. They failed to do so and on 12 December 1977 Mr and Mrs Torzuoli summoned the applicants before the Nice tribunal de grande instance for rescission of the contract. The public hearing took place on 10 March 1981. In a judgment of 16 June 1981, the court refused to declare that the contract of sale was rescinded. Mrs Torzuoli appealed (her husband having died in the meantime) to the Aix-en-Provence Court of Appeal which on 29 June 1983 reversed the decision of the court below and granted a declaration that the sale was rescinded through the fault of the applicants. The applicants appealed to the Court of Cassation which, on 5 June 1985, dismissed the appeal. The applicants complained of the length of the civil proceedings.

Comm found unanimously V 6(1).

Court unanimously dismissed the Government's preliminary objection, found NV 6(1).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mrs D Bindschedler-Robert, Mr L-E Pettiti, Sir Vincent Evans, Mr A Spielmann, Mr N Valticos, Mr I Foighel, Mr A Loizou.

It was for the national courts in the first instance to determine whether a given remedy was likely to afford any prospect of success. An action for damages might be relevant for the purposes of A 26, but the only remedies which that article required to be exhausted were those that related to the breaches alleged and at the same time were available and sufficient. The existence of such remedies had to be sufficiently certain not only in theory but also in practice, failing which they would lack the requisite accessibility and effectiveness; it fell to the respondent State to establish that those various conditions were satisfied. The Code of Judicial Organisation circumscribed the State's liability very narrowly. Furthermore, the applicants did not claim to be the victims of a denial of justice or even of gross negligence, and it did not appear from the quite large number of decisions drawn to the Court's attention by the Government that the French courts had interpreted the concept of gross negligence sufficiently broadly to include, for example, every delay exceeding the reasonable time laid down in A 6(1). The preliminary objection was accordingly dismissed.

The period to be considered began on 12 December 1977, when the applicants were summoned before the Nice tribunal de grande instance, and ended on 5 June 1985, when the Court of Cassation delivered its judgment. It therefore amounted to about seven and a half years. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. Although the Code of Civil Procedure left the initiative to the parties, that did not dispense the courts from ensuring compliance with A 6 as to the reasonable time requirement. The case was not a very complex one. Only delays attributable to the State could justify a finding of a failure to comply with the reasonable time requirement. The parties showed little alacrity in filing their submissions and did much to prolong the proceedings. In requiring cases to be heard within a reasonable time, the Convention underlined the importance of administering justice without delays which might jeopardise its effectiveness and credibility. The Court was not unaware of the difficulties which sometimes delayed the hearing of cases by national courts and which were due to a variety of factors. At least two periods appeared to be abnormal in the present case. However, having regard to all the circumstances of the case and, more particularly, to the parties' responsibilities in the conduct of the trial, those periods were not so long as to warrant the conclusion that the total duration of the proceedings was excessive. The Court therefore considered that the applicants' complaint was unfounded.

Cited: Bozano v F (18.12.1986), Capuano v I (25.6.1987), De Jong, Baljet and van den Brink v NL (22.5.1984), H v F (24.10.1989), Moreira de Azevedo v P (23.10.1990).

Vero v Italy 00/142

[Application lodged 24.11.1996; Court Judgment 28.4.2000]

Mr Francesco Vero complained of the length of proceedings in the Audit Court.

Court found unanimously V 6(1).

Judges Mr Pellonpää, President, Mr B Conforti, Mr G Ress, Mr A Pastor Ridruejo, Mr L Caflisch, Mr J Makarczyk, Mrs N Vajic.

The period to be taken into consideration began on 24 August 1972 and ended on 23 March 1998; it had lasted 25 years and seven months at two levels of jurisdiction, including 24 years and seven months after the date on which the recognition of the right of petition became effective.

Non-pecuniary damage (ITL 80,000,000).

Cited: Bottazzi v I (28.7.1999).

Veznedaroglu v Turkey 00/128

[Application lodged 6.4.1996; Court Judgment 11.4.2000]

Mrs Sevtap Veznedaroglu, the applicant, was arrested on 4 July 1994 on suspicion of membership of the Kurdistan Workers Party (PKK), an illegal organisation. She alleged that she was tortured

for four days, blindfolded and interrogated by approximately 15 policemen, hung by her arms and given electric shocks to her mouth and sexual organs and that she was threatened with death and rape. Medical reports prepared prior to her release noted bruising on her arm and leg. She complained both to the public prosecutor and the State Security Court judge before whom she was brought. On 30 October 1995 she was acquitted by the State Security Court on the ground of lack of evidence.

Court found unanimously V 3 on account of the failure of the authorities of the respondent State to investigate the applicant's complaint of torture.

Judges: Mr CL Rozakis, President, Mr M Fischbach, Mr G Bonello (Pd), Mr P Lorenzen, Mr Ab Baka, Mr E Levits, Mr F Gölcüklü, ad hoc judge.

A 3 enshrined one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibited in absolute terms torture or inhuman or degrading treatment or punishment. Ill-treatment had to attain a minimum level of severity if it was to fall within the scope of A 3. The assessment of that minimum was relative: it depended on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, recourse to physical force which had not been made strictly necessary by his own conduct diminished human dignity and was in principle an infringement of the right set forth in A 3. The facts were in dispute. It was impossible to establish on the basis of the evidence before the Court whether or not the applicant's injuries were caused by the police or whether she was tortured to the extent claimed. The Court was not persuaded that the hearing of witnesses by it would clarify the facts of the case or make it possible to conclude, beyond reasonable doubt, that the applicant's allegations were substantiated. However, the difficulty rested with the failure of the authorities to investigate her complaints. Where an individual raised an arguable claim that he had been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of A 3, that provision, read in conjunction with the State's general duty under A 1, required by implication that there should be an effective official investigation capable of leading to the identification and punishment of those responsible. The applicant's insistence on her complaint of torture taken with the medical evidence in the file should have been sufficient to alert the public prosecutor to the need to investigate the substance of the complaint. However, no steps were taken either to obtain further details from the applicant or to question the police officers at her place of detention about her allegations. In the circumstances the applicant had laid the basis of an arguable claim that she had been tortured. She had persisted in her allegations right up to the stage of trial. The inertia displayed by the authorities in response to her allegations was inconsistent with the procedural obligation which devolved on them under A 3. Consequently there had been a violation of that article on account of the failure of the authorities of the respondent State to investigate the applicant's complaint of torture.

Non-pecuniary damage (USD 2,000), legal fees (USD 1,000).

Cited: Aksoy v TR (18.12.1996), Assenov v BG (28.9.1998), Aydin v TR (25.9.1997), Tekin v TR (9.6.1998).

Vicari v Italy 00/76

[Application lodged 29.8.1997; Commission report 4.3.1999; Court Judgment 15.2.2000]

Mr Domenico Vicari complained about the length of civil proceedings which had commenced on 20 November 1984 and concluded on 11 March 1997.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr Fischbach, President, Mr L Ferrari Bravo, Mr G Bonello, Mrs M Tsatsa-Nikolovska, Mr P Lorenzen, Mr Ab Baka, Mr E Levits.

The proceedings had lasted more than 12 years and three months at two levels of jurisdiction, which could not be regarded as reasonable.

Non-pecuniary damage (ITL 25,000,000) costs and expenses (ITL 5,000,000).

Cited: Bottazzi v I (28.7.1999).

Vidal v Belgium 92/47

[Application lodged 7.7.1986; Commission report 14.1.1991; Court Judgment 22.4.1992]

Mr Frans Vidal was a prison warder. Following a failed escape attempt on 6 February 1983 by Mr Bosch Hernandez, an inmate of Namur Prison serving a life sentence, the applicant was charged with offences relating to the provision of a weapon and assisting in the escape of a prisoner. A promissory note signed by the applicant had been found on Mr Bosch Hernandez when he was caught. The applicant was committed for trial. On 9 August 1984 the Namur Criminal Court acquitted him. The prosecution and the civil party seeking damages appealed. By a unanimous judgment of 26 October 1984, the Liège Court of Appeal convicted the applicant and sentenced him to imprisonment. He appealed, and the Court of Cassation quashed the judgment on 29 May 1985. The case was remitted to the Brussels Court of Appeal which on 11 December 1985 convicted the applicant and sentenced him to imprisonment. The applicant's appeal to the Court of Cassation was dismissed on 12 February 1986. The applicant complained that he had been unable to have four defence witnesses called and questioned before the Court of Appeal.

Comm found by majority (12–1) V 6(1)+6(3)(d).

Court found by majority (8–1) V 6.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson (d), Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr C Russo, Mr R Bernhardt, Mr J De Meyer, Mrs E Palm.

As a general rule, it was for the national courts to assess the evidence before them as well as the relevance of the evidence which defendants sought to adduce. More specifically, A 6(3)(d) left it to them, as a general rule, to assess whether it was appropriate to call witnesses. It did not require the attendance and examination of every witness on the accused's behalf: its essential aim was equality of arms. The Brussels Court of Appeal did not hear any witness, whether for the prosecution or for the defence, before giving judgment. The applicant had originally been acquitted after several witnesses had been heard. When the appellate judges substituted a conviction, they had no fresh evidence; apart from the oral statements of the two defendants (at Liège) or the sole remaining defendant (at Brussels), they based their decision entirely on the documents in the case-file. Moreover, the Brussels Court of Appeal gave no reasons for its rejection, which was merely implicit, of the submissions requesting it to call the four witnesses. The complete silence of the judgment of 11 December 1985 on the point in question was not consistent with the concept of a fair trial which was the basis of A 6. This was all the more the case as the Brussels Court of Appeal increased the sentence which had been passed on 26 October 1984, by substituting four years for three years and not suspending it. The rights of the defence were restricted to such an extent in the present case that the applicant did not have a fair trial. There had consequently been a violation of A 6.

A 50 reserved.

Cited: Asch v A (26.4.1991), Barberà, Messegué and Jabardo v E (6.12.1988), Bricmont v B (7.7.1989), Delcourt v B (17.1.1970), Delta v F (19.12.1990), Engel and Others v NL (8.6.1976), Isgrò v I (21.2.1991).

Viero v Italy 97/57

[Application lodged 14.5.1993; Commission report 28.11.1995; Court Judgment 2.9.1997]

Mr Dario Viero was employed by a local medical and welfare centre. On 23 January 1987 he instituted proceedings in the Veneto Regional Administrative Court for judicial review of a decision of the Regional Council classifying his post in a lower staff category than the one which

corresponded to the duties he actually performed, and claimed on that account payment of the difference in remuneration. On 6 April 1995 the Administrative Court gave judgment against the applicant, who then appealed to the Consiglio di Stato. The proceedings were still pending. The applicant complained of the length of the proceedings

Comm found by majority (24–5) V 6.

Court found by majority (8–1) 6(1) not applicable.

Judges: Mr R Bernhardt, President, Mr C Russo, Mr N Valticos, Mr R Pekkanen (d), Mr AB Baka, Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr P Kûris, Mr E Levits.

Disputes relating to the recruitment, careers and termination of service of civil servants were as a general rule outside the scope of A 6(1). In the present case the applicant was essentially seeking judicial review of his employer's decision to assign him to a staff category lower than the one to which he considered himself to be entitled. The dispute raised by him thus clearly related to his career and did not concern a 'civil' right within the meaning of A 6(1). With regard to his claim for payment of the difference in remuneration, the Court observed that the award of such compensation by the administrative courts was directly dependent on a prior finding that the employer had acted unlawfully. Accordingly, A 6(1) was not applicable in the case.

Cited: Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993), Neigel v F (17.3.97), Scollo v I (28.9.1995).

Viezzer v Italy 91/14

[Application lodged 6.11.1986; Commission report 5.12.1989; Court Judgment 19.2.1991]

Mr Antonio Viezzer was a colonel in the Carabinieri. On 21 May 1981 he was arrested on the grounds that, while serving in the State Security Services, he had obtained documents classified as secret with a view to political espionage, and had also divulged information which should have remained confidential in the domestic and international political interests of the State. New charges were brought against him in June 1989. The investigation was still pending. The applicant complained of the length of the proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Sir Vincent Evans, Mr C Russo, Mr J De Meyer, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla.

The period to be taken into consideration began on 21 May 1981 with the applicant's arrest. It had not yet ended. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case. The investigation was of some complexity owing to the nature of the facts to be established, but the applicant did nothing to slow it down, and the Court could not regard as reasonable in the instant case a lapse of time for the investigation stage alone which was already more than nine and a half years. There had therefore been a violation of A 6(1).

Non-pecuniary damage (ITL 25,000,000), costs and expenses (ITL 4,800,400).

Cited: Obermeier v A (28.6.1990).

Vijayanathan and Pusparajah v France (1993) 15 EHRR 62 92/54

[Application lodged 10.12.1990, 10.1.1991; Commission report 5.9.1991; Court Judgment 27.8.1992]

Mr Ampalam Vijayanathan and Mr Nagalingam Pusparajah were Sri Lankan citizens of Tamil ethnic origin. They were both refused refugee status and ordered to leave French territory. Neither did so. They alleged that their repatriation to Sri Lanka, which was imminent, would expose them to persecution and treatment prohibited by A 3.

Comm found by majority (9–6) NV 3.

Court held unanimously unable to consider the merits of the case.

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr R Macdonald, Mr J De Meyer, Mr JM Morenilla, Mr L Wildhaber.

No expulsion order had been made with respect to the applicants. If the Commissioner of Police were to decide that they should be removed, there was an appeal open to them, with all its attendant safeguards; if they were to attempt to bring such an appeal at present, the courts appealed to would probably declare it inadmissible as being premature or devoid of purpose. The Government's preliminary objection was accepted, the applicants could not claim to be the victims of a violation within the meaning of A 25(1).

Cited: Soering v UK (7.7.1989), Vilvarajah and Others v UK (30.10.1991).

Vilvarajah and Others v UK (1992) 14 EHRR 248 91/46

[Applications lodged 26.8.1987, 15.12.1987; Commission report 8.5.1990; Court Judgment 30.10.1991]

Mr Nadarajah Vilvarajah, Mr Vaithialingam Skandarajah, Mr Saravamuthu Sivakumaran, Mr Vathanan Navratnasingam and Mr Vinnasithamby Rasalingam were Tamils from Sri Lanka. They applied for asylum alleging ill-treatment by government forces. Their claims were rejected and they were returned to Sri Lanka, where some said they continued to suffer ill-treatment. Their appeals subsequently succeeded and they returned to the UK. They complained that as young male Tamils they feared treatment in breach of A 3 if returned to Sri Lanka and that they had no effective remedy in the UK.

Commission found by a majority (7–7 with President's casting vote) NV 3, (13–1) V 13.

Court found by a majority (8–1) NV 3, (7–2) NV 13.

Judges: Mr J Cremona, President, Mr B Walsh (pd), Sir Vincent Evans, Mr R Macdonald, Mr C Russo (jpd/d), Mr R Bernhardt, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou.

States had a right to control entry, residence and expulsion of aliens; the Convention and Protocols did not contain a right to political asylum. Expulsion of an asylum seeker may raise an issue under A3 if substantial grounds were shown for believing the applicant would face a real risk of being subject to torture or inhuman or degrading treatment in the country to which he was being returned. Ill-treatment had to achieve a minimum level of severity and the courts' examination of the risk had to be rigorous in view of the absolute character of A 3. In the light of the reports on the general situation and the applicants' personal situation, the applicants' position was no worse than that of any other young male Tamil returning to Sri Lanka. Of the applicants who said they had in fact been ill-treated, there were no distinguishing features in the case to enable the Secretary of State to foresee that they would be treated in that way. A mere possibility of ill-treatment was not sufficient. The UK authorities had experience of the Sri Lankan situation. Substantial grounds had not been established for believing the applicants would be exposed to a real risk of being subject to inhuman or degrading treatment.

The effect of A 13 was to require the provision of a remedy which allowed the substance of the Convention complaint to be dealt with and provided appropriate relief. A 13 did not require any particular form of remedy, nor did its effectiveness depend on the certainty of a favourable outcome. Judicial review proceeding provided an effective degree of control over the decisions of the administrative authorities in asylum cases and were sufficient to satisfy the requirements of A 13.

Cited: Boyle and Rice v UK (27.4.1988), Cruz Varas v S (20.3.1991), Moustaquim v B (18.2.1991), Soering v UK (7.7.1989), Swedish Engine Drivers' Union v S (6.2.1976).

Vinci v Italy 00/28

[Application lodged 15.11.1997; Court Judgment 25.1.2000]

Mrs Angelina Francesca Vinci complained about the length of civil proceedings.

Court found unanimously V 6(1).

Judges: Mr J-P Costa, President, Mr B Conforti, Mr L Loucaides, Mr P Kûris, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

The period to be taken into consideration began on 5 May 1986 and was still pending on 19 February 1999. It had, to date, already lasted more than 12 years and nine months at one level of jurisdiction, which could not be considered to be reasonable.

Non-pecuniary damage (ITL 36,000,000) costs and expenses (ITL 4,500,000).

Cited: Bottazzi v I (28.7.1999).

Vitale and Others v Italy 99/76

[Application lodged 15.2.1997; Commission report 8.7.1998; Court Judgment 2.11.1999]

Mr Andrea and Mr Giuseppe Vitale and Mrs Maria Clementina Vitale and Mrs Maria Rosa Torrisi complained of the length of civil proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr M Fischbach, President, Mr L Ferrari Bravo, Mr G Bonello, Mrs V Stráznická, Mr P Lorenzen, Mr AB Baka, Mr E Levits.

The period to be taken into consideration began on 2 November 1992 for the first applicant and on 15 October 1994 for the other three and was still pending. It and already lasted more than six years 11 months for one applicant and five years for the other three. The period could not be considered as reasonable.

Non-pecuniary damage (ITL 15,000,000 for the first applicant, ITL 10,000,000 for the other three applicants), costs and expenses (ITL 8,000,000).

Cited: Bottazzi (28.7.1999).

Vocaturo v Italy 91/33

[Application lodged 20.9.1985; Commission report 6.3.1990; Court Judgment 24.5.1991]

On 26 June 1973, Mr B brought an action before the Rome District Court against the 'Istituto Nazionale delle Assicurazioni' (INA) and against Mr Nicola Vocaturo, the INA's property manager. He sought recognition of his status as an employee and asked that the INA and the applicant, as employers, be ordered to pay the differences in remuneration to which he claimed to be entitled in respect of work carried out between 1969 and 1972 at the INA's property management office. On 29 April 1985 the applicant's appeal to the Court of Cassation was dismissed and the text of the judgment was deposited with the registry on 27 November 1985. The applicant complained of the length of the proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Sir Vincent Evans, Mr C Russo, Mr SK Martens, Mr JM Morenilla.

The period to be taken into consideration began not on 26 June 1973, when the action against the applicant and INA was commenced in the Rome District Court, but on 1 August 1973, when the Italian declaration recognising the right of individual petition took effect. In order to determine whether the length of time which elapsed after that date was reasonable, regard had to be had, however, to the state of the case at that time. The relevant period ended when the Court of Cassation's judgment was deposited on 27 November 1985. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and the criteria laid down in the Court's case-law. As regards the excessive workload, it was for the Contracting States to organise their legal systems in such a way that their courts could meet the requirements of A 6. Employment disputes by their nature called generally for expeditious

decision. At first instance and in the Court of Cassation there was a period of stagnation of over four years. There had therefore been a violation of A 6(1).

Damages (ITL 10,500,000), costs and expenses (ITL 3,000,000).

Cited: Brigandì v I (19.2.1991), H v F (24.10.1989), Obermeier v A (28.6.1990), Santilli v I (19.2.1991), Zanghì v I (19.2.1991).

Vogt v Germany (1996) 21 EHRR 205 95/26

[Application lodged 13.2.1991; Commission report 30.11.1993; Court Judgment 26.9.1995]

Mrs Dorothea Vogt was a member of the German Communist Party (DKP). She qualified as a secondary-school teacher and obtained a post from 1 August 1977, with the status of probationary civil servant. On 1 February 1979, before the end of her probationary period, she was appointed a permanent civil servant. Disciplinary proceedings were issued against her on the ground that she had failed to comply with the duty of loyalty to the Constitution that she owed as a civil servant under the Lower Saxony Civil Service Act. It was said that she had engaged in various political activities on behalf of the DKP since the autumn of 1980 and in particular had stood as the DKP candidate in the 1982 elections to the Parliament of the Land of Lower Saxony. The Disciplinary Division ordered her dismissal. Her appeal to the Lower Saxony Disciplinary Court was dismissed on 31 October 1989 and that decision was upheld by the Administrative Court. She appealed to the Federal Constitutional Court which decided on 7 August 1990 not to entertain the constitutional complaint, on the ground that it had insufficient prospects of success. She complained that her right to freedom of expression and to freedom of association had been infringed.

Comm found by majority (13–1) V 10, V 11, not necessary to examine 14.

Court found by majority (17–2) 10 applicable, (10–9) V 10, unanimously 11 applicable, (10–9) V 11, unanimously not necessary to examine 14+10.

Judges: Mr R Ryssdal, President, Mr R Bernhardt (jd), Mr F Gölcüklü (jd), Mr F Matscher (jd), Mr L-E Pettiti, Mr R Macdonald, Mr A Spielmann, Mr J De Meyer, Mr S K Martens, Mrs E Palm, Mr I Foighel, Mr A N Loizou (jd), Mr J M Morenilla, Mr M A Lopes Rocha, Mr G Mifsud Bonnici (statement), Mr D Gotchev (jd/supplementary dissenting opinion), Mr P Jambrek (d), Mr K Jungwiert (jd), Mr P Kûris (jd).

The right of recruitment to the civil service was deliberately omitted from the Convention. Consequently, the refusal to appoint a person as a civil servant could not as such provide the basis for a complaint under the Convention. That did not mean, however, that a person who had been appointed as a civil servant could not complain on being dismissed if that dismissal violated one of his or her rights under the Convention. Civil servants did not fall outside the scope of the Convention. Accordingly, the status of permanent civil servant that Mrs Vogt had obtained when she was appointed a secondary-school teacher did not deprive her of the protection of A 10. There had been an interference with the exercise of the applicant's right protected by A 10. The interference had been based on the Lower Saxony Civil Service Act, as construed in the case-law of the relevant courts and had therefore been prescribed by law. Her dismissal pursued a legitimate aim of protecting national security, preventing disorder and protecting the rights of others. She became a member of the DKP in 1972. It had not been disputed that this was known to the authorities when, in 1979, even before the end of her probationary period, she was appointed a permanent civil servant. The duty of political loyalty to which German civil servants were subject entailed for all civil servants the duty to dissociate themselves unequivocally from groups that attacked and cast aspersions on the State and the existing constitutional system. At the material time the German courts had held – on the basis of the DKP's own official programme – that its aims were the overthrow of the social structures and the constitutional order of the Federal Republic of Germany and the establishment of a political system similar to that of the German Democratic Republic. A democratic State was entitled to require civil servants to be loyal to the constitutional principles on which it was founded. Even so, the absolute nature of that duty as construed by the German courts was striking. It was owed equally by every civil servant,

regardless of his or her function and rank. It implied that every civil servant, whatever his or her own opinion on the matter, had to unambiguously renounce all groups and movements which the competent authorities held to be inimical to the Constitution. It did not allow for distinctions between service and private life; the duty was always owed, in every context. Another relevant consideration was that at the material time a similarly strict duty of loyalty did not seem to have been imposed in any other Member State of the Council of Europe, whilst even within Germany the duty was not construed and implemented in the same manner throughout the country. However, the dismissal of a secondary-school teacher by way of disciplinary sanction for breach of duty was a very severe measure (due to effect of the measure on the reputation of the person concerned, loss of livelihood and the near impossibility of finding another job as a teacher). Moreover, the applicant was a teacher of German and French in a secondary school, a post which did not intrinsically involve any security risks. Although teachers were figures of authority to their pupils and their special duties and responsibilities to a certain extent also applied to their activities outside school, there was no evidence that the applicant, even outside her work at school, actually made anti-constitutional statements or personally adopted an anti-constitutional stance. The only criticisms retained against her concerned her active membership of the DKP, the posts she had held in that party and her candidature in the elections for the Parliament of the Land. The DKP had not been banned by the Federal Constitutional Court and, consequently, the applicant's activities on its behalf were entirely lawful. In all the circumstances, although the reasons put forward by the Government in order to justify their interference with Mrs Vogt's right to freedom of expression were relevant, they are not sufficient to establish convincingly that it was necessary in a democratic society to dismiss her. Even allowing for a certain margin of appreciation, the conclusion had to be that to dismiss the applicant by way of disciplinary sanction from her post as secondary-school teacher was disproportionate to the legitimate aim pursued. There had accordingly been a violation of A 10.

Notwithstanding its autonomous role and particular sphere of application, A 11 had, in the present case also to be considered in the light of A 10. The protection of personal opinions, secured by A 10, was one of the objectives of the freedoms of assembly and association as enshrined in A 11. The applicant was dismissed from her post as a civil servant for having persistently refused to dissociate herself from the DKP on the ground that in her personal opinion membership of that party was not incompatible with her duty of loyalty. There had accordingly been an interference with the exercise of the right protected by A 11(1). The notion of 'administration of the State' (para 2) had to be interpreted narrowly, in the light of the post held by the official concerned. However, even if teachers were to be regarded as being part of the 'administration of the State' for the purposes of A 11(2) – a question which the Court did not consider it necessary to determine in the instant case -, the applicant's dismissal was, for the reasons previously given in relation to A 10, disproportionate to the legitimate aim pursued. There had accordingly also been a violation of A 11.

The applicant did not raise her complaint under A 14 taken in conjunction with A 10 before the Court. The Court did not consider it necessary to examine the question of its own motion.

A 50 reserved.

Cited: Chorherr v A (25 August 1993), Ezelin v F (26.4.1991), Glasenapp v D (28.8.1986), Handyside v UK (7.12.1976), Jersild v DK (23.9.1994), Kosiek v (28.8.1986), Lingens v A (8.7.1986), Young, James and Webster v UK (13.8.1981).

Voisine v France 00/65

[Application lodged 3.4.1995; Commission report 21.10.1998; Court Judgment 8.2.2000]

Mr Rémy Voisine was ordered by a court to pay a fine of FF 1,500 and had his driving licence suspended for seven days for speeding. The Dijon Court of Appeal increased the fine to FF 3,000 and the suspension to one month. The applicant appealed on points of law, drafting his pleadings unaided. He was not aware of the avocat général's submissions to the Court of Cassation or of the

date of hearing. The Court of Cassation dismissed his appeal on 4 January 1995 as they had been filed out of time. He complained of violations of A 6.

Comm found unanimously V 6(1).

Court found by majority (5–2) V 6(1).

Judges: Sir Nicolas Bratza, President, Mr J-P Costa (d), Mr L Loucaides, Mr P Kûris, Mrs F Tulkens, Mr K Jungwiert (d), Mrs HS Greve.

The applicant had not had the benefit of the practice by which the avocat général at the Court of Cassation informed the advisers of the parties of the contents of his submissions before the date of the hearing so that they could reply to them. The practice was reserved exclusively for barristers at the Court of Cassation. However, the applicant had chosen, as was his right, to defend himself without the benefit of a barrister at the Court of Cassation. He had not had access to the avocat général's submissions and so had not been able to reply to them before the Court of Cassation rejected his appeal. Accordingly, there had been a violation of A 6. Although the applicant had not applied for legal aid so that he could be represented by a lawyer, it did not mean that he had waived the benefit of the safeguards relating to *inter partes* proceedings. In addition, the specificity of the proceedings in the Court of Cassation could not justify depriving an appellant who had decided to defend himself the procedural safeguards protecting the right to a fair trial.

Costs and expenses (FF 10,000).

Cited: Colozza v I (12.2.1985), Ekbatani v S (26.5.1988), Foucher v F (18.3.1997), Reinhardt et Slimane-Kaïd v F (31.3.1998).

Vorrasi v Italy 92/25

[Application lodged 31.10.1986; Commission report 15.1.1991; Court Judgment 27.2.1992]

Mrs Maria Vorrasi was a housewife. By a writ served on 15 March 1978 she instituted proceedings against her mother, Mrs L, and her three brothers before the Melfi District Court, asking for the division of her father's estate. The proceedings were still continuing and she complained about their length.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr AN Loizou, Mr JM Morenilla, Mr F Bigi.

The period to be taken into consideration began on 15 March 1978 when the proceedings were instituted against the defendants in the Melfi District Court. It had not yet ended, since that court has still not given judgment. The reasonableness of the length of proceedings had to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. The problem to be determined was a complex one concerning the apportionment of indivisible property among several heirs. The State was not responsible for the long period from 15 April 1980 to 11 July 1984 during which the parties sought a number of adjournments in connection with their attempt to achieve an out-of-court settlement. However, there were periods of inactivity for which the State was wholly responsible. Although there was said to be a lack of judges appointed to the Melfi District Court, A 6(1) imposed on the Contracting States the duty to organise their legal systems in such a way that their courts could meet each of its requirements. Taking the proceedings as a whole, the Court could not regard as reasonable in this instance a lapse of time which was already more than 13 and a half years.

Costs and expenses (ITL 4,000,000).

Cited: Vocaturo v I (24.5.1991).

W

W v Switzerland (1994) 17 EHRR 60 93/1

[Application lodged 20.9.1988; Commission report 10.9.1991; Court Judgment 26.1.1993]

The applicant was a Swiss businessman who, with 11 accomplices, was prosecuted for a series of economic offences, including a large number of frauds in the management of some 60 companies. He was arrested on 27 March 1985 and placed in pre-trial detention with six of his co-accused, on the grounds that there was a risk of absconding, collusion and repetition of offences. He made applications for release which were rejected. The trial before the Economic Criminal Court opened on 17 February 1989 and ended on 30 March 1989 with the applicant being convicted and sentenced to 11 years' imprisonment and a fine. He complained of the length of his pre-trial detention.

Comm found by majority (19–1) V 5(3).

Court found by majority (5–4) NV 5(3)

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti (d), Mr B Walsh (d), Mr J De Meyer (d), Mr SK Martens, Mr AN Loizou (d), Sir John Freeland, Mr L Wildhaber.

The period to be taken into consideration began on 27 March 1985, the date of the applicant's arrest, and ended on 30 March 1989 with his conviction by the Berne Economic Criminal Court. It thus lasted for four years and three days. The reasonableness of an accused person's continued detention had to be assessed in each case according to its special features. Continued detention could be justified in a given case only if there were specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighed the rule of respect for individual liberty. In refusing to release the applicant, the Swiss courts relied, in addition to the serious suspicion against him, on three principal grounds: the danger of absconding, the risk of collusion, and the need to prevent the accused committing further offences. The danger of absconding could not be gauged solely on the basis of the severity of the possible sentence; it had to be assessed with reference to a number of other relevant factors which might either confirm the existence of a danger of absconding or make it appear so slight that it could not justify pre-trial detention. In this context regard had to be had in particular to the character of the person involved, his morals, his assets, his links with the State in which he was being prosecuted and his international contacts. There was no reason for the Court to reach a different conclusion from the domestic courts. The investigation in the case constantly brought to light further offences which were likely to result in a more severe sentence. In addition, the circumstances of the case and the applicant's character entitled the relevant courts to decline his offer to provide security. The fact that, once convicted, the applicant returned to prison after each leave could not retrospectively invalidate the view taken by the courts. With regard to the risk of collusion, the risks alleged would diminish with the passing of time as inquiries were effected, statements taken and verifications carried out. However, in the present case, the national authorities were entitled to regard the circumstances of the case as justification for using the risk of collusion as a further ground for the detention in issue. It was not necessary to consider the danger of repetition of offences, the dangers of absconding and collusion were relevant and sufficient reasons in themselves to justify the continued detention. With regard to the conduct of the proceedings, the length of the detention in issue was essentially attributable to the exceptional complexity of the case and the conduct of the applicant. Although he was not obliged to co-operate with the authorities, he had to bear the consequences which his attitude may have caused for the progress of the investigation. Accordingly there had not been a violation of A 5(3).

Cited: Clooth v B (12.12.1991), Neumeister v A (27.6.1968), Stögmüller v A (10.11.1969), Tomasi v F (27.8.1992), Wemhoff v D (27.6.1968).

W v United Kingdom (1988) 10 EHRR 29 87/14

[Application lodged 18.1.1982; Commission report 15.10.1985; Court Judgment 8.7.1987 (merits), 9.6.1988 (A 50)]

The applicant and his wife had three children; the present case concerned only the youngest of them, S, who was born on 31 October 1978. The couple had a history of serious marital and financial difficulties. On 16 August 1979, the Local Authority assumed parental rights in respect of S, but in September it reached agreement with the natural parents with a view to returning S to them in February 1980 if they overcame their domestic difficulties. Because of deterioration in the family circumstances, the Authority decided that S should be placed with long-term foster parents with a view to adoption. This decision was approved by the Authority's Adoption and Foster Care Committee on 31 March 1980. In April 1980 the Authority decided that access of the applicant and his wife to S should be terminated. Applications made by the applicant and his wife in November 1980 for the discharge of the Authority's parental rights resolutions in respect of S were granted by the juvenile court in January 1981. However, on 22 June 1981, following wardship proceedings by the Authority in the High Court, confirmed by the Court of Appeal on 6 October 1981, it was decided that it was in S's best interests and in view of the time that had elapsed that he should remain with the foster parents with whom he had been placed in May 1980 and that the applicant and his wife should not have access to him. The applicant complained about the procedures applied in reaching the decisions to restrict and then terminate his access to S and about the remedies available to him in that connection.

Comm found by majority (11–2 with one abstention) V 6(1) during the time when the parental rights resolution affecting the applicant was in force in that he was denied access to court for the determination of his civil right of access to S, (13–1) no separate issue arose under 6(1) in regard to the length of the wardship proceedings, (13–1) V 8 (8–6) no separate issue under 13.

Court found unanimously V 8, V 6(1) during the currency of the parental rights resolution, by majority (14–3) not necessary to decide whether duration of the subsequent wardship proceedings gave rise to a further violation of 6(1), unanimously not necessary to examine 13.

Judges (merits and A 50 (unanimous)): Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr G Lagergren (jo), Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha (jo), Mr L-E Pettiti (jo), Mr B Walsh, Sir Vincent Evans, Mr R Macdonald (jo), Mr C Russo, Mr R Bernhardt, Mr J Gersing (pc/pd), Mr A Spielmann, Mr J De Meyer (jo/so), Mr N Valticos (jo).

The present judgment was not concerned with the merits of the judicial or local authority decisions regarding the applicant's children. The scope of the case before the Court was delimited by the Commission's decision on admissibility. The Court was not in the circumstances competent to examine or comment on the justification for such matters as the taking into public care or the adoption of the child or the restriction or termination of the applicant's access to him.

The exercise of parental rights and the mutual enjoyment by parent and child of each other's company constituted fundamental elements of family life. The natural family relationship was not terminated by reason of the fact that the child was taken into public care. The Authority's decisions resulting from the procedures at issue amounted to interferences with the applicant's right to respect for family life. The Authority's decisions were in accordance with the law and pursued a legitimate aim, namely, the protection of health or the rights and freedoms of others. The authorities were allowed a measure of discretion in this area. Predominant in the consideration of the case had to be the fact that the decisions might prove to be irreversible. The relevant considerations to be weighed by a local authority in reaching decisions on children in its care had to include the views and interests of the natural parents. What had to be determined was whether, having regard to the particular circumstances of the case and the serious nature of the decisions to be taken, the parents had been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests. If they had not, there would have been a failure to respect their family life and the interference resulting from the

decision would not be capable of being regarded as 'necessary' within the meaning of A 8. In conducting its review in the context of A 8 the Court could also have regard to the length of the local authority's decision-making process and of any related judicial proceedings. The evidence revealed an insufficient involvement of the applicant in the Authority's decision-making process. The duration of the wardship proceedings was a relevant, though subsidiary, factor. In the circumstances, and notwithstanding the UK's margin of appreciation in this area, there had been a violation of A 8.

Regarding the applicability of A 6, it could be said, at least on arguable grounds, that even after the adoption of the parental rights resolution the applicant could claim a right in regard to his access to S. There was clearly a dispute between the applicant and the Authority on the access question. The parental right of access was a civil right. A 6(1) was therefore applicable in the present case. There would be no possibility of a determination in accordance with the requirements of A 6(1) of the parent's right in regard to access, unless he or she could have the local authority's decision reviewed by a tribunal having jurisdiction to examine the merits of the matter. It did not appear from the material supplied by the Government (applying for judicial review or of instituting wardship proceedings) or otherwise available to the Court that the powers of the English courts were of sufficient scope to satisfy fully this requirement during the currency of the parental rights resolution. There was accordingly a violation of A 6(1).

Since the length of the wardship proceedings had been taken into account under A 8, it was not necessary to examine the issue of the reasonableness of the length of the proceedings separately under A 6(1).

Having regard to the decision on A 6(1), it was not necessary to examine the case under A 13 as its requirements were less strict than, and were here absorbed by, those of A 6(1).

Non-pecuniary damage (GBP 12,000). Claim for costs and expenses struck out of list following friendly settlement between Government and applicant (GBP 25,350 less amounts received from Council of Europe by way of legal aid).

Cited: Gillow v UK (24.11.1986), Johnston and Others v IRL (18.12.1986), Leander v S (26.3.1987), Lithgow and Others v UK (8.7.1986), Malone v UK (2.8.1984), Marckx v B (13.6.1979), Sporrong and Lönnroth v S (23.9.1982).

WR v Austria 99/124

[Application lodged 13.2.1995; Commission report 3.3.1998; Court Judgment 21.12.1999]

The applicant was a practising lawyer by profession. On 30 April and 15 May 1985, respectively, the president of the Mauerkirchen District Court laid a disciplinary information against him. On 15 June 1987 the Disciplinary Council of the Upper Austrian Bar Chamber decided to open disciplinary proceedings against him. He was charged with several counts of professional misconduct. On 18 January 1989 the Disciplinary Council convicted him on three counts and acquitted him on three other counts. He was ordered to pay a fine. His appeal to the Appeals Board was dismissed on 2 January 1993; in addition, the Board found him guilty of two disciplinary offences for which he had been acquitted by the Disciplinary Council. The applicant lodged a complaint with the Constitutional Court, complaining in particular about the length of the disciplinary proceedings against him. On 12 October 1994 the Constitutional Court dismissed his complaint.

Comm found by majority V 6(1).

Court found unanimously V 6(1).

Judges: Mr P Kûris, President, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mrs HS Greve, Mr K Traja, Mr M Ugrekhelidze.

The scope of the case before the Court was determined by the Commission's decision on admissibility. The applicant's submissions that his disciplinary conviction violated his right to freedom of expression had not been declared admissible. The scope of the present case was limited to the sole complaint declared admissible; length of proceedings.

The applicant's right to practise as a lawyer was a civil right within the meaning of A 6(1). Disciplinary proceedings in which the right to continue to exercise a profession was at stake gave rise to disputes over civil rights within the meaning of A 6(1). The possible penalties for disciplinary offences in the present case included a suspension of the right to practise as a lawyer for up to one year. Therefore, the applicant's right to continue to practise as a lawyer was at stake in the disciplinary proceedings against him. Accordingly, A 6(1) was applicable under its civil head. It was not necessary to decide on the question whether there was also a 'criminal charge' against the applicant, as the reasonable time requirement of A 6(1) applied to civil and to criminal matters. The overall duration of the disciplinary proceedings of seven years and four months, at three levels of jurisdiction, could not be considered 'reasonable' within the meaning of A 6(1).

Non-pecuniary damage (ATS 30,000), costs and expenses (ATS 42,860).

Cited: Albert and Le Compte v B (10.2.1983), Bladet Tromsø and Stensaas v N (20.5.1999), De Moor v B (23.6.1994), Diennet v F (26.9.1995), Fusco v I (2.9.1997), Gautrin and Others v F (20.5.1998), H v B (30.11.1987), König v D (28.6.1978), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Philis v GR (No 2) (27.6.1997).

Wabl v Austria 00/93

[Application lodged 7.7.1994; Commission report 4.3.1998; Court Judgment 21.3.2000]

In June 1988, Mr Andreas Wabl, a member of Parliament and a member of the Green Party, participated in a protest campaign against the stationing of interceptor fighter planes near Graz airport. In the course of the protest it was alleged that he had scratched a police officer's arm. Proceedings against him were subsequently discontinued. On 14 August 1988 a newspaper article called for the applicant to have an AIDS test as the policeman scratched feared that he had been infected. In the course of complaining and commenting about the article, the applicant stated that he believed the article to be politically motivated and said that it was 'Nazi-journalism'. The newspaper brought injunction proceedings against the applicant to prohibit him from repeating the statement. The Graz Regional Civil Court dismissed the injunction claim finding that the expression 'Nazi-journalism' was a value-judgment. The Graz Court of Appeal dismissed the plaintiff's appeal. On 14 December 1993 the Austrian Supreme Court, on the plaintiff's further appeal, reversed the Appeal Court's decision and issued an injunction against the applicant prohibiting him from repeating the statement that the article of 14 August 1988 amounted to 'Nazi-journalism', and similar statements. The Supreme Court noted that while the statement was intended as a value-judgment, balancing all circumstances, the applicant's interests did not outweigh those of the newspaper. It found that the applicant had exceeded the limits of acceptable criticism. He complained that the judgment on 14 December 1993 constituted a violation of A 10.

Comm found by majority NV 10.

Court found by majority (6–1) NV 10.

Judges: Mr J-P Costa, President, Mr P Kûris, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mrs HS Greve (d), Mr K Traja.

The Supreme Court's injunction constituted an interference with the applicant's right to freedom of expression. The interference was prescribed by law and pursued a legitimate aim, namely the protection of the reputation or rights of others. The dispute in the case related to the question whether the interference was necessary in a democratic society. The reasons given by the Supreme Court were relevant with regard to the aim pursued. It had duly balanced the interests involved, the detailed reasons given by it were sufficient for the purposes of A 10(2). In coming to that conclusion, the Court had particular regard to the special stigma which attached to activities inspired by National Socialist ideas. The article published in the newspaper about the applicant was defamatory and it was open to doubt whether it contributed to a debate of general concern as it contained hardly any information about the protest in which the applicant had participated. Even though the applicant was a politician, who inevitably and knowingly lay himself open to close scrutiny of his every word and deed by both journalists and the public at large and had to

display a greater degree of tolerance, the article was an understandable ground for indignation. However, the applicant did not use the expression 'Nazi-journalism' as an immediate reaction, but only a few days later when the newspaper published a rectification which included a statement drafted by the applicant himself. The applicant could himself have brought injunction proceedings under the Civil Code. He had taken a private prosecution against the company publishing the newspaper, which resulted in the latter's conviction for defamation, pursuant to the Media Act. The injunction was confined to prohibiting the applicant from repeating the statement that the article of 14 August 1988 amounted to 'Nazi-journalism', or the making of similar statements. He retained the right to voice his opinion regarding the reporting by the newspaper in other terms. In the light of those considerations, the Supreme Court was entitled to consider that the injunction was necessary in a democratic society for the protection of the reputation and rights of others. Accordingly, there had been no violation of A 10 of the Convention.

Cited: Lingens v A (8.7.1986), Oberschlick (No 2) v A (1.7.1997), Sunday Times (No 2) v UK (26.11.1991).

Waite and Kennedy v Germany 99/6

[Application lodged 24.11.1994; Commission report 2.12.1997; Court Judgment 18.2.1999]

Mr Richard Waite and Mr Terry Kennedy were systems programmers and were placed at the disposal of the European Space Agency (ESA) to perform services at the European Space Operations Centre in Darmstadt. When their contracts were not renewed, they brought proceedings in the Labour Court against the ESA, arguing that, under the German Provision of Labour (Temporary Staff) Act, they had acquired the status of employees of ESA. The ESA relied on its immunity from jurisdiction. The Labour Court declared the applicants' actions inadmissible. The applicants complained that they had been denied access to a court for a determination of their dispute with ESA in connection with an issue under German labour law.

Comm found by majority (17–15) NV 6(1).

Court found unanimously NV 6(1).

Judges: Mr L Wildhaber, President, Mrs E Palm, Mr L Ferrari Bravo, Mr L Caflisch, Mr J-P Costa, Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach, Mr B Zupancic, Mrs N Vajic, Mr J Hedigan, Mrs W Thomassen, Mrs M Tsatsa-Nikolovska, Mr T Pantiru, Mr E Levits, Mr K Traja, Mr E Klein, ad hoc judge.

A 6(1) embodied the 'right to a court', of which the right of access, that is, the right to institute proceedings before courts in civil matters, constituted only one aspect. The applicants' action had been declared inadmissible. The Labour Court had concentrated on the question of whether or not ESA could validly rely on its immunity from jurisdiction. According to its constituent instrument, ESA enjoyed immunity from jurisdiction and execution. The labour court's decision to give effect to the immunity from jurisdiction of ESA could not be regarded as arbitrary. The right of access to the courts secured by A 6(1) was not absolute, but may be subject to limitations; these were permitted by implication since the right of access, by its very nature, called for regulation by the State. Contracting States enjoyed a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rested with the Court. The attribution of privileges and immunities to international organisations was an essential means of ensuring the proper functioning of such organisations free from unilateral interference by individual governments. The rule of immunity from jurisdiction, which the German courts applied to ESA in the present case, had a legitimate objective. Where States established international organisations in order to pursue or strengthen their co-operation in certain fields of activities, and where they attributed to those organisations certain competences and accorded them immunities, there might be implications as to the protection of fundamental rights. It would be incompatible with the purpose and object of the Convention if the Contracting States were thereby absolved from their responsibility under the Convention in relation to the field of activity covered by such attribution. The Convention was intended to guarantee not theoretical or illusory rights, but rights that were practical and effective. A material factor in determining whether granting ESA immunity from

German jurisdiction was permissible under the Convention was whether the applicants had available to them reasonable alternative means to protect effectively their rights under the Convention. As the applicants argued an employment relationship with ESA, they could and should have had recourse to the ESA Appeals Board which was independent of the Agency and had jurisdiction to hear disputes relating to any explicit or implicit decision taken by the Agency and arising between it and a staff member. It was open to temporary workers to seek redress from the firms that employed them and hired them out. The test of proportionality could not be applied in such a way as to compel an international organisation to submit itself to national litigation in relation to employment conditions prescribed under national labour law. Such a reading of A 6(1) would thwart the proper functioning of international organisations and run counter to the current trend towards extending and strengthening international co-operation. In view of all those circumstances, in giving effect to the immunity from jurisdiction of ESA, the German courts did not exceed their margin of appreciation. Taking into account in particular the alternative means of legal process available to the applicants, it could not be said that the limitation on their access to the German courts with regard to ESA impaired the essence of their 'right to a court' or was disproportionate for the purposes of A 6. Accordingly, there had been no violation of A 6.

Cited: Airey v IRL (9.10.1979), Aït-Mouhoub v F (28.10.1998), Fayed v UK (21.9.1994), Golder v UK (21.2.1975), Osman v UK (28.10.1998), Pérez de Rada Cavanilles v E (28.10.1998).

Wassink v The Netherlands 90/21

[Application lodged 17.10.1986; Commission report 12.7.1989; Court Judgment 27.9.1990]

On 15 November 1985 the Burgomaster of Emmen ordered Mr Jan Wassink's emergency confinement in a psychiatric hospital pursuant to s 35 (b) of the Mentally Ill Persons Act 1884. On 19 November 1985 the Crown requested the President of the District Court of Assen to extend the applicant's confinement. On 20 November, in the presence of Mr Jongeneelen, the applicant's 'confidential counsellor', the District Court President interviewed the applicant together with a psychiatrist. He then consulted three other persons by telephone - two doctors and Mr Wassink's wife. By telephone, he gave a summary of the resulting information to Mr Jongeneelen. On 25 November 1985 the President ordered the continuation of the applicant's confinement pursuant to the Mentally Ill Persons Act. Mr Wassink left the hospital on 20 December 1985. On 24 January 1986 the applicant filed an appeal on points of law with the Supreme Court against the order of 25 November 1985. He complained that the President of the District Court had not specified sufficiently the nature of the danger which his mental illness represented for himself and for public order, that the President had held a hearing without a registrar's being present to draw up a record and, finally, that, before making the order, the President had failed to communicate to him the text of the statements of the persons whom he had telephoned, thereby depriving the applicant of any opportunity to react thereto. On 18 April 1986 the Supreme Court declared the appeal inadmissible, finding that Mr Wassink no longer had any interest in having the contested order quashed since the maximum period for an emergency confinement had already expired. The applicant complained that his confinement in a psychiatric hospital had not been ordered in accordance with a procedure prescribed by law and had not been lawful, he also complained that he had not been given the possibility of having the lawfulness of the order of 25 November 1985 reviewed speedily by a court, nor obtained compensation in respect of this breach. Finally, he claimed that, in violation of A 6(1) he had not received a fair trial in proceedings to obtain a decision on a dispute relating to his civil rights and obligations.

Comm found unanimously V 5(1), by majority (17–1) V 5(4) and 5(5), unanimously NV 6(1).

Court found by majority (6–1) V 5(1), NV 5(4), unanimously NV 5(5), not necessary to examine 6(1).

Judges: Mr R Ryssdal (d A 5(4)), President, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr L-E Pettiti, Mr B Walsh (d A 5(1)), Mr J De Meyer, Mr HLJ Roelvink, ad hoc judge.

Any deprivation of liberty had to be consistent with the purpose of A 5, namely to protect individuals from arbitrariness. Regarding the assessment of whether there was a danger for the

purposes of s 35(b) of the 1884 Act, it was in the first place for the national authorities to evaluate the evidence adduced before them in deciding whether an individual should be detained as a person of unsound mind; the Court's task was to review under the Convention the decisions of those authorities. The President of the District Court had available to him four different medical opinions. There was no grounds for questioning the weight of the evidence on which the President relied to reach his decision that it was necessary to extend the applicant's confinement. The President did not read to the applicant's confidential counsellor the notes which he had drawn up following his telephone conversations, but informed him of the substance of the statements which he had thereby obtained. The fact that no registrar was present at the hearing infringed Article 72 of Regulation I made in pursuance of the Judiciary (Organisation) Act and that was also the opinion of the Attorney General. Consequently, there was in that respect a failure to comply with a procedure prescribed by law, which amounted to a breach of A 5(1).

There were risks inherent in the questioning by telephone of Mr Wassink's wife and two doctors. However, it took place on the initiative and under the responsibility of an independent judicial officer acting under an emergency procedure whose effects were limited as to their duration. The President did not read out the text of his notes to the applicant's confidential counsellor, but he gave to him a summary of his conversations and told him that they had not produced any new information. In so doing, he gave him an opportunity to comment on them. Even though the procedure prescribed by law within the meaning of A 5(1) was not strictly followed as regards one aspect, the judge nevertheless reviewed at the outset the lawfulness of the detention as such to an extent consistent with the requirements of A 5(4).

A 5 was complied with where it was possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to A 5. It did not prohibit the Contracting States from making the award of compensation dependent upon the ability of the person concerned to show damage resulting from the breach. In the context of A 5(1), the status of victim may exist even where there was no damage, but there could be no question of compensation where there was no pecuniary or non-pecuniary damage to compensate. More generally, the evidence provided to the Court did not lead to the conclusion that an action based on Article 1401 of the Netherlands Civil Code would have failed to satisfy the requirements of A 5(5) of the Convention.

Before the Court the applicant withdrew his complaint under A 6(1).

Finding of violation constituted sufficient just satisfaction. Costs and expenses (NLG 11,897.40 less FF 8,657.50).

Cited: Belilos v CH (29.4.1988), Bouamar v B (29.2.1988), Brogan and Others v UK (29.11.1988), De Wilde, Ooms and Versyp v B (18.6.1971), Huvig v F (24.4.1990), Luberti v I (23.2.1984), Van der Leer v NL (21.2.1990), Winterwerp v NL (24.10.1979).

Weber v Switzerland (1990) 12 EHRR 508 90/11

[Application lodged 15.5.1984; Commission report 16.3.1989; Court Judgment 22.5.1990]

Mr Franz Weber was a journalist. On 2 April 1980 together with one of the associations he ran, *Helvetia Nostra*, the applicant lodged a complaint alleging defamation against RM, who had written a letter published in the letters column of another paper against the applicant. On 2 March 1982 at a press conference in Lausanne the applicant informed the public that defamation proceedings had been taken against RM, that orders had been made for the production and then for the sequestration of the associations' accounts and that these had been handed over under seal. He also stated that he had lodged a challenge and a complaint against the investigating judge. He had already divulged the first three items of information at a press conference in Berne on 11 May 1981, during which he denounced 'the plot hatched against him by the Vaud authorities in order to intimidate him'. Under the Vaud Code of Criminal Procedure, the President of the Criminal Cassation Division of the Vaud Cantonal Court commenced of his own motion a summary investigation for breach of the confidentiality of a judicial investigation. On 27 April 1982 the President of the Cassation Division imposed a fine of 300 Swiss francs on him, together with a probationary period of a year for the purposes of deletion of the fine from the cantonal register. On

15 October 1982 an appeal that he brought against that decision was unanimously dismissed by the Criminal Cassation Division sitting in private. His public-law appeal with the Federal Court was dismissed on 16 November 1983. He paid the fine in January 1985. He complained of a failure to comply with the requirements of A 6(1) in that the summary proceedings had been conducted in chambers and without any hearing of the parties or the witnesses. He also complained that the imposition of a fine was an unjustified interference with his right to freedom of expression.

Comm found by majority (9–4) NV 6(1), unanimously V 10.

Court held by majority (6–1) V 6(1), unanimously V 10.

Judges: Mr R Ryssdal, President, Mrs D Bindschedler-Robert (d), Mr B Walsh, Mr R Macdonald, Mr C Russo, Mr J De Meyer (c), Mr I Foighel.

In determining the applicability of A 6(1), the State's definition was a starting point. In considering the nature of the offence the Court noted that parties are subject to the jurisdiction of the court and do not come with the disciplinary sphere of the judicial system as others such as judges and lawyers do. In this case the relevant provision, the Code of Criminal Procedure, affected the whole population and attached a punitive sanction and was therefore criminal. With regard to the nature and degree of the penalty incurred, the fine could be converted into a term of imprisonment. A 6 applied. The Swiss Government's reservation in respect of A 6(1), deposited with the instrument of ratification of the Convention, was invalid. The applicant was therefore entitled to a public hearing. The fact that the proceedings in the Federal Court had been public did not cure the defect as the latter court only considered that there had been no arbitrariness and did not determine the disputed questions of fact and law. The applicant had not waived his right to hearing and the case did not come within any of the exceptions in the second sentence of A 6(1).

There had been an interference by a public authority with the exercise of the A 10 right. It was prescribed by law, based on the Code of Criminal Procedure, and pursued the legitimate aim of protection of the authority and impartiality of the judiciary. States had a margin of appreciation in assessing whether and to what extent an interference was necessary and the necessity for a restriction had to be convincingly established. At the relevant time the interest in maintaining the confidentiality of the judicial investigation no longer existed; there had been a previous press conference at which the information had been disclosed. At the time, the investigation was practically complete and the applicant could not be said to be attempting to bring pressure on the investigating judge. In those circumstances the interference, conviction and sentence were not necessary in a democratic society for achieving the legitimate aim pursued.

Finding of violation constituted sufficient just satisfaction for non-pecuniary damage. Costs and expenses (CHF 8,482.50).

Cited: Barthold v D (25.3.1985), Belilos v CH (29.4.1988), Campbell and Fell v UK (28.6.1984), Engel and Others v NL (8.6.1976), Groppera Radio AG v CH (28.3.1990), Öztürk v D (21.2.1984).

Weeks v United Kingdom (1987) 10 EHRR 293 87/2

[Application lodged 6.4.1982; Commission report 7.12.1984; Court Judgment 2.3.1987 (merits), 5.10.1988 (A 50)]

In December 1966 Mr Robert Malcolm Weeks, then aged 17, went into a pet shop with a starting pistol that fired blanks and stole 35 pence, which was subsequently found on the floor of the shop. He pleaded guilty to armed robbery, assaulting a police officer and being in the unlawful possession of a firearm, was sentenced to life imprisonment in respect of the robbery and concurrent terms of imprisonment for the other offences. He was released on licence, but because of breach of parole conditions, further petty crime and absconding, he was recalled. He was released on licence a first time in March 1976 but recalled to prison in June 1977 by decision of the Home Secretary. He was released on licence a second time in October 1982 but re-detained in April 1985, his licence having previously been revoked by the Home Secretary in November 1984. He remained in prison until September 1985 when he was once more released on licence. This licence was revoked in March 1986, although as at 27 January 1987 Mr Weeks was still at liberty, having

fled to France. He complained that his re-detention in June 1977 was not in accordance with A 5(1) and that, contrary to A 5(4), he was unable to challenge the lawfulness of his re-detention before a court or to have periodic reviews of his detention at reasonable intervals throughout his imprisonment.

Comm found by majority (10–1) NV 5(1) (7–4) V 5(4).

Court found by majority (16–1) NV 5(1), (13–4) V 5(4).

Judges (merits): Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson (pc/pd), Mrs D Bindschedler-Robert, Mr G Lagergren (pc/pd), Mr F Gölcüklü, Mr F Matscher, Mr J Pinheiro Farinha, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans (pc/pd), Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr J Gersing (pc/pd), Mr A Spielmann, Mr J De Meyer (pd).

Judges (A 50): Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt, Mr A Spielmann, Mr J De Meyer.

A sufficient connection, for the purposes of A 5(1)(a), existed between the applicant's conviction in 1966 and his recall to prison in 1977. Accordingly, his recall to prison in 1977 and the period of his subsequent detention were not incompatible with A 5(1).

However, precisely because the expressed aim of the life sentence had not been to incarcerate the applicant for life but to be able to supervise him for life, the applicant should be able under A 5(4) to take proceedings to test the lawfulness of his detention when changed circumstances, whether of fact or law, dictated it, and judicial review on its own did not satisfy that requirement. The Court was of the opinion that although the Parole Board was sufficiently independent to constitute an acceptable 'court' and that its duty to review such cases and receive oral and written representations from the applicant guaranteed access, its limited powers to 'advise' the Home Secretary and the lack of full disclosure to the applicant meant that the Board lacked the necessary powers and procedural guarantees for the purposes of A 5(4).

Damages (GBP 8,000), costs and expenses struck out (agreement reached between Government and applicant).

Cited: Ashingdane v UK (28.5.1985), Bozano v F (18.12.1986), Campbell and Fell v UK (28.6.1984), De Wilde, Ooms, and Versyp v B (18.6.1971), Ireland v UK (18.1.1978), Luberti v I (23.2.1984), Matznetter v A (10.11.1969), Sanchez-Reisse v CH (21.10.1986), Van Droogenbroeck v B (24.6.1982), X v UK (5.11.1981).

Welch v UK (1995) 20 EHRR 247 95/3

[Application lodged 22.6.1990; Commission report 15.10.1993; Court Judgment 9.2.1995]

On 3 November 1986 Mr Peter Welch was arrested for suspected drug offences. On 4 November he was charged in respect of offences concerning the importation of large quantities of cannabis. After further investigations, including forensic examinations, further evidence came to light and on 24 February 1987 he was charged with the offence of possession with intent to supply cocaine alleged to have been committed on 3 November 1986. Subsequently, on 5 May 1987, he was charged with conspiracy to obtain cocaine within intent to supply in respect of activities which occurred between 1 January 1986 and 3 November. On 24 August 1988, he was found guilty on five counts and was given an overall sentence of 22 years' imprisonment. In addition, the trial judge imposed a confiscation order pursuant to the Drug Trafficking Offences Act 1986 ('the 1986 Act') in the amount of GBP 66,914. In default of the payment of this sum he would be liable to serve a consecutive two years' prison sentence. The operative provisions of the 1986 Act had come into force on 12 January 1987. The Act applied only to offences proceedings for which were instituted after that date. On 11 June 1990 the Court of Appeal reduced Mr Welch's overall sentence by two years. In addition it reduced the confiscation order by GBP 7,000 to GBP 59,914. He complained under A 7 that the confiscation order imposed on him constituted the imposition of a retrospective criminal penalty.

Comm found by majority (7–7 with the President's casting vote) NV 7.

Court unanimously found V 7(1).

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr R Macdonald, Mr J De Meyer (c), Mr I Foighel, Mr R Pekkanen, Sir John Freeland, Mr L Wildhaber, Mr K Jungwiert.

The retrospective imposition of the confiscation order was not in dispute in the present case. The order was made following a conviction in respect of drugs offences which had been committed before the 1986 Act came into force. The only question to be determined therefore was whether the order constituted a penalty within the meaning of the second sentence of A 7. The concept of a penalty was an autonomous Convention concept. The starting-point in any assessment of the existence of a penalty was whether the measure in question was imposed following conviction for a criminal offence. Other factors that could be taken into account as relevant in that connection were the nature and purpose of the measure in question; its characterisation under national law; the procedures involved in the making and implementation of the measure; and its severity. Taking into consideration the combination of punitive elements, the confiscation order amounted, in the circumstances of the present case, to a penalty. Accordingly, there had been a breach of A 7(1). That conclusion concerned only the retrospective application of the relevant legislation and did not call into question in any respect the powers of confiscation conferred on the courts as a weapon in the fight against the scourge of drug trafficking.

Costs and expenses (GBP 13,852.60 less FF 10,420). A 50 reserved.

Cited: Campbell and Fell v UK (28.6.1984), Demicoli v M (27.8.1991), Duinhof and Duijf v NL (22.5.1984), Van Droogenbroeck v B (24.6.1982), X v F (31.3.1992).

Wemhoff v Germany (1979–80) 1 EHRR 55 68/2

[Application lodged 9.1.1964; Commission report 1.4.1966; Court Judgment 27.6.1968]

Mr Karl-Heinz Wemhoff, a broker, was arrested on 9 November 1961 for breach of trust. Several requests for release were made but were refused on the ground of danger of suppression of evidence and fear of absconding. His trial began on 9 November 1964. Following conviction on 7 April 1965 he was sentenced to six years and six months imprisonment and DM 500 fine. He was conditionally released on 8 November 1966. He complained, *inter alia*, of the length of detention.

Judges: Mr H Rolin, President, Mr E Rodenbourg, Mr T Would (so), Mr H Mosler, Mr M Zekia (d), Mr A Favre (so), Mr S Bilge (so).

Comm found by majority (7–3) V 5(3), unanimously NV 5(1)(c), NV 6(1).

Court found by majority (6–1) NV 5(3), unanimously NV 6(1).

The applicant had been arrested and detained in order to bring him before the competent legal authority, there being reasonable suspicion that he had committed an offence and reasonable grounds for believing it was necessary to prevent his fleeing after having done so. He was informed promptly of the reasons for his arrest and brought promptly before a judge. Consequently NV 5(1)(c) or first part 5(3). The word 'reasonable' in A 5(3) applied to the time within which a person was entitled to trial. It was the provisional detention of accused persons which should not be prolonged beyond a reasonable time. The Court had to reconcile the English and French texts: it was impossible to see why the protection against unduly long detention on remand which A 5 sought to ensure for persons suspected of offences should not continue up to delivery of judgment rather than cease the moment the trial opened. The end of the period of detention with which A 5 was concerned was not the day on which a conviction became final, but that on which the charge was determined, even if only by a court of first instance. A person who had cause to complain about his continued detention after conviction, because of delay in determining his appeal, could not avail himself of A 5(3) but could possibly allege disregard of reasonable time provided for in A 6(1). The reasonableness of an accused person's continued detention had to be assessed in each case according to its special features. The Court would not apply a set of criteria but would judge whether the reasons given by the national authorities to justify continued detention were relevant and sufficient to show that detention was not

unreasonably prolonged contrary to A 5(3). Regarding the danger of suppression of evidence, the anxiety of the German courts was justified in view of the character of the offences and extreme complexity of the case. Regarding the danger of flight, the severity of sentence was a legitimate factor to consider although the effect of that fear diminished as detention continued. The concluding words of A 5(3) showed that, when the only remaining reasons for continued detention was fear of absconding, release pending trial must be ordered if it was possible to obtain guarantees that would ensure appearance. In this case there should have been deposit of bail or provision of security, but the applicant in this case did not indicate he would have been prepared to furnish such guarantees. The length of the proceedings were justified by the exceptional complexity of the case and further unavoidable delay. While an accused person in detention was entitled to have his case given priority and conducted with expedition, that should not stand in the way of the efforts of judges to clarify fully the facts in issue, give both parties all facilities to put forward their evidence and state their case and to pronounce judgment only after careful reflection on whether the offences were committed and on sentence.

Regarding A6(1), the period to be taken into account lasted at least until acquittal or conviction, even if that decision was reached on appeal. The period to be taken into account ran from the date the first charges were levelled and his arrest ordered (9 November 1961) and coincided for the most part with his period of detention under A 5(3). The Court having found no failure by the judicial authorities in their duty of particular diligence under A 5(3) must *a fortiori* accept no contravention under A 6(1). Even if the length of review proceedings were taken into account, they did not exceed the reasonable limit.

Werner v Austria (1998) 26 EHRR 310 97/87

[Application lodged 16.3.1993; Commission report 3.9.1996; Court Judgment 24.11.1997]

Mr Johannes Werner was arrested on 1 July 1991 on suspicion of having aided and abetted in the fraudulent use of a credit card. On 3 July he was detained pending trial, he was released on 19 July. The proceedings were discontinued and he claimed for compensation. He complained that, when ruling on his claim for compensation for his detention, the Vienna Regional Court and Court of Appeal had not held a public hearing and had not pronounced judgment publicly. He also maintained that he had not had a fair hearing in the Vienna Court of Appeal as he had been unable to reply to the principal public prosecutor's submissions or to have any witnesses examined.

Comm found by majority (25–4) V 6(1) on account of the lack of a public hearing, (27–2) on account of the failure to pronounce judgment publicly, (26–3) on account of the lack of a fair hearing in the Vienna Court of Appeal.

Court unanimously dismissed the Government's preliminary objection (joined to merits), V 6(1) on account of the lack of a public hearing and failure to pronounce the judgments publicly, by majority (8–1) V 6(1) on account of Court of Appeal's failure to communicate the principal public prosecutor's observations to the applicant.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr F Matscher (pc/pd), Mr L-E Pettiti, Mr A Spielmann, Mr N Valticos, Mrs E Palm, Mr L Wildhaber, Mr B Repik.

The Government's preliminary objection of non-exhaustion of domestic remedies in respect of the complaint concerning the lack of a public hearing was closely bound up with the merits of the case and would therefore be joined to it.

Applicability of A 6: the Court recalled its previous case-law. The applicant had a right to be compensated for his detention pending trial; there had been a dispute over a right. The outcome of the proceedings in the relevant criminal courts was directly decisive for his right. His right to compensation was a civil one. Accordingly, A 6(1) was applicable to the proceedings.

The Government did not raise the issue of the Austrian reservation in their memorial to the Court and were therefore estopped from raising it. It was not necessary for the Court to consider it of its own motion.

The holding of court hearings in public constituted a fundamental principle enshrined in A 6(1). Neither the Vienna Regional Court nor the Vienna Court of Appeal held a public hearing of the applicant's compensation claim. The applicant was in principle entitled to a public hearing as none of the exceptions laid down in the second sentence of A 6(1) applied. In practice, there was never a public hearing in such proceedings. The applicant could not therefore be blamed for not having made an application which had no prospects of success. The compensation proceedings could not be regarded as an 'appellate stage' of the main proceedings in the criminal courts. The protection of the applicant's private life should not have been made to prevail over the principle laid down in A 6(1) that proceedings must be public.

The decisions of the Vienna Regional Court and Court of Appeal were served on the applicant and not delivered at public sittings. The leave that could be given to a third party to inspect the files and obtain copies of the judgments they contained if he showed a legitimate interest was granted only at the discretion of the relevant courts, so that the full texts of the judgments were not made available to everyone. The possibility of obtaining the full texts of judgments from the court registry existed only in respect of judgments of the Supreme Court, the Administrative Court and the Constitutional Court. In addition, it was not necessary for the relevant courts to make statements which would breach the principle of presumption of innocence laid down in A 6(2). Accordingly, as no judicial decision was pronounced publicly and publicity was not sufficiently ensured by other means, there had been a breach of A 6(1) in that respect.

The principle of equality of arms was only one feature of the wider concept of a fair trial, which also included the fundamental right that proceedings should be adversarial. The right to adversarial proceedings meant that each party had to be given the opportunity to have knowledge of and comment on the observations filed or evidence adduced by the other party. In this case the principle of equality of arms dictated that the principal public prosecutor's observations should have been communicated to the applicant and he should have had the opportunity to comment on them. As that did not happen, he found himself at a substantial disadvantage vis-à-vis his opponent. There had therefore been a breach of A 6(1) on account of the Court of Appeal's failure to communicate the principal public prosecutor's observations to the applicant.

No causal link between breaches and alleged pecuniary damage. Costs and expenses (ATS 128,501.40).

Cited: Ankerl v CH (23.10.1996), Axen v D (8.12.1983), Diennet v F (26.9.1995), Dombo Beheer BV v NL (27.10.1993), Editions Périscope v F (26.3.1992), Georgiadis v GR (29.5.1997), Håkansson and Sturesson v S (21.2.1990), Lobo Machado v P (20.2.1996), Masson and Van Zon v NL (28.9.1995), Nideröst-Huber v CH (18.2.1997), Pauger v A (28.5.1997), Pretto and Others v I (8.12.1983), Ruiz-Mateos v E (23.6.1993), Schuler-Zgraggen v CH (24.6.1993), Sutter v CH (22.2.1984), Szücs v A (24.11.1997), Vermeulen v B (20.2.1996), Zumtobel v A (21.9.1993).

Wiesinger v Austria (1993) 16 EHRR 258 91/44

[Application lodged 12.8.1985; Commission report 6.6.1990; Court Judgment 30.10.1991]

Mr Konrad Wiesinger and his wife Klara were farmers. They complained of consolidation measures taken in respect of their land since July 1975. The applicants complained, *inter alia*, of the length of time to consider their case and that they had suffered an unjustified interference with their property rights pending the adoption of the final consolidation scheme.

Comm found unanimously V 6(1), P1A1, not necessary to consider A 14.

Court found unanimously V 6(1), by majority (8–1) NV P1A1, unanimously not necessary to examine 14+P1A1.

Judges: Mr J Cremona (so), President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Sir Vincent Evans, Mr A Spielmann, Mr I Foighel, Mr R Pekkanen, Mr AN Loizou.

The consolidation scheme in issue affected the applicants' property rights, and was thus decisive for their private rights and obligations. A 6(1) was applicable. The consolidation proceedings started on 22 July 1975 and the provisional transfer of the parcels covered by the scheme, all of which were at the time designated as agricultural land, was ordered on 13 October 1978. However,

no dispute arose in this case until 10 August 1982. The consolidation proceedings had not yet given rise to a decision which disposed of the dispute since the applicants' appeal to the Constitutional Court was still pending. The proceedings had thus lasted so far more than nine years. The reasonableness of the length of proceedings had to be assessed in each case according to the particular circumstances and having regard to the criteria laid down in the Court's case-law. In addition, only delays attributable to the State could justify a finding of a failure to comply with the reasonable time requirement. Land consolidation was by its nature a complex process. No substantial delay could be attributed to the applicants. Having particular regard to the difficulties occasioned by the lack of co-ordination between the various authorities concerned, the applicants' case had not been determined within a reasonable time.

The Court's jurisdiction was delimited by the Commission's decision on admissibility and the Commission had not found admissible the complaint regarding lack of compensation. There was an interference with the applicants' right of property. The applicants had not been deprived of their possessions, the transfer effected in October 1978 was only provisional. The purpose of consolidation was to improve the infrastructure and the pattern of agricultural holdings, by redistributing the land and providing communal facilities. It served the interest of both the landowners concerned and the community as a whole by increasing the rentability of holdings and rationalising cultivation. The applicants voluntarily surrendered their plots and received other plots in exchange which they cultivated as they wished. Only a small area of the land covered by the consolidation scheme was the object of any dispute and the decisions of the national courts to include the plots in question could not be regarded as inadequate and disproportionate. Following amendments to the provincial legislation and the applicants' appeal, the Provincial Board could be said to have reacted promptly. Subsequently the District Authority reallocated to the applicants in the consolidation scheme part of their former land and the Provincial Board, after the failure of friendly settlement negotiations, again improved their position in January 1990. It was therefore still possible that some of the applicants' former land may be returned to them when the scheme was definitively approved. Having regard to all the circumstances of the case, the interference with the applicants' right of property could not be held to be disproportionate to the demands of the general interest involved in the consolidation proceedings. Accordingly, no violation of P1A1 had been established.

The applicants did not pursue the matter under A 14+P1A1 as a separate issue before the Court which saw no reason to examine it.

Non-pecuniary damage (ATS 200,000 to Mr Wiesinger) costs and expenses (ATS 500,000 to both applicants).

Cited: Erkner and Hofauer v A (23.4.1987), Fredin v S (18.2.1991), Poiss v A (23.4.1987), Powell and Rayner v UK (21.2.1990), Zimmermann and Steiner v CH (13.7.1983).

Wille v Liechtenstein 99/73

[Application lodged 25.8.1995; Commission report 17.9.1998; Court Judgment 28.10.1999]

Mr Herbert Willie was a member of the Liechtenstein Government until May 1993 and from December 1993 was President of the Liechtenstein Administrative Court. In 1992 a controversy arose between His Serene Highness Prince Hans-Adam II of Liechtenstein and the Liechtenstein Government on political competences in connection with the plebiscite on the question of Liechtenstein's accession to the European Economic Area. Following an argument between the Prince and members of the Government at a meeting on 28 October 1992, the matter was settled on the basis of a common declaration by the Prince, the Diet and the Government. On 16 February 1995, in the context of a series of lectures on questions of constitutional jurisdiction and fundamental rights, the applicant gave a public lecture on the 'Nature and Functions of the Liechtenstein Constitutional Court' in which he expressed the view that the Constitutional Court was competent to decide on the interpretation of the Constitution in case of disagreement between the Prince (Government) and the Diet. The lecture was reported in the local press. On 27 February

1995 the Prince addressed a letter to the applicant concerning the lecture. He disagreed with the applicant's views and stated that he believed the applicant did not feel bound by the Constitution, that his opinions infringed the Constitution and that he was therefore disqualified from holding a public office and would not be appointed to one. Further correspondence passed between the Prince and the applicant. In April 1997 the applicant's term of office as President of the Administrative Court expired. On 14 April 1997 the Liechtenstein Diet decided to propose the applicant again as President of the Administrative Court. The Prince refused to appoint him. The applicant complained that the Prince's letter announcing his intention not to appoint the applicant to a public office again constituted a breach of his right to freedom of expression.

Comm found by majority (15–4) V 10, (17–2) not necessary to examine 6, (16–3) V 13+10, (17–2) no separate issue under 14+10.

Court found by majority (16–1) V 10, V 13, unanimously not necessary to consider 6 and 14+10.

Judges: Mrs E Palm, President, Mr C Rozakis, Mr L Ferrari Bravo, Mr G Ress, Mr L Caflisch (c), Mr I Cabral Barreto (d), Mr J-P Costa, Mr W Fuhrmann, Mr K Jungwiert, Mr B Zupancic (c), Mrs N Vajic, Mr J Hedigan (c), Mrs W Thomassen, Mrs M Tsatsa-Nikolovska, Mr T Pantiru, Mr E Levits, Mr K Traja.

The status of civil servant obtained by the applicant when he was appointed President of the Liechtenstein Administrative Court did not deprive him of the protection of A 10. The responsibility of a State under the Convention could arise for acts of all its organs, agents and servants; their rank was immaterial, since the acts by persons accomplished in an official capacity were imputed to the State in any case. The letters of the Prince were not private correspondence and did constitute an act of State. The Prince's letter of 27 February 1995 amounted to an interference with the exercise of the applicant's right to freedom of expression. Assuming that the interference was prescribed by law and pursued a legitimate aim (to maintain public order and promote civil stability, and to preserve judicial independence and impartiality), as the Government claimed, the Court considered that it was not necessary in a democratic society. In assessing whether the interference corresponded to a pressing social need and was proportionate to the legitimate aim pursued, the Court considered the impugned statement in the light of the case as a whole, attaching particular importance to the office held by the applicant, the applicant's statement and the context in which it was made and the reaction to it. The applicant was a high-ranking judge at the time. Whenever the right of freedom of expression of persons in such a position was at issue, the duties and responsibilities referred to in A 10(2) assumed a special significance since it could be expected of public officials serving in the judiciary that they should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of judiciary were likely to be called in question. Nevertheless, an interference with the freedom of expression of a judge in a position such as the applicant's called for close scrutiny on the part of the Court. The lecture formed part of a series of academic lectures on questions of constitutional jurisdiction and fundamental rights. As it dealt with matters of constitutional law, it inevitably had political implications. However, that element alone should not have prevented the applicant from making any statement on this matter. The opinion expressed by the applicant could not be regarded as an untenable proposition since it was shared by a considerable number of persons in Liechtenstein. Moreover, there was no evidence to conclude that the applicant's lecture contained any remarks on pending cases, severe criticism of persons or public institutions or insults of high officials or the Prince. The Prince's reaction was based on general inferences drawn from the applicant's previous conduct in his position as a member of Government, in particular on the occasion of the political controversy in 1992. No reference was made to any incident suggesting that the applicant's view, as expressed at the lecture in question, had a bearing on his performance as President of the Administrative Court or on any other pending or imminent proceedings. In addition, the Government did not refer to any instance where the applicant, in the pursuit of his judicial duties or otherwise, had acted in an objectionable way. Therefore, on the facts of the present case, while relevant, the reasons relied on by the Government in order to justify the interference with the applicant's right to freedom of expression were not sufficient to show that the interference complained of was necessary in a democratic society. Even allowing for a certain margin of

appreciation, the Prince's action appeared disproportionate to the aim pursued. Accordingly there had been a violation of A 10.

The applicant complained that he did not have an effective judicial or other remedy enabling him to challenge the action taken by the Prince, the Government, had failed to show that there existed any precedent in the Constitutional Court's case-law, since its establishment in 1925, that that court had ever accepted for adjudication a complaint brought against the Prince. They had therefore failed to show that such a remedy would have been effective. It followed that the applicant had also been the victim of a violation of A 13.

Before the Court the applicant did not reiterate his complaints under A 6 and 14+10 and the Court did not find it necessary to deal with the matter of its own motion.

Non-pecuniary damage (CHF 10,000), costs and expenses (CHF 91,014.05).

Cited: Boyle and Rice v UK (27.4.1988), Glasenapp v D (28.8.1986), Kosiek v D (28.8.1986), Mentes v TR (28.11.1997), Powell and Rayner v. UK (21.2.1990), Vereinigung Demokratischer Soldaten Österreichs and Gubi v A (19.12.1994), Vogt v D (26.9.1995).

Windisch v Austria (1991) 13 EHRR 281 90/22

[Application lodged 2.10.1986; Commission report 12.7.1989; Court Judgment 27.9.1990 (merits), 28.6.1993 (A 50)]

Mr Harald Windisch was arrested for burglary following information from two witnesses who wished to remain anonymous. He was identified by them after a covert confrontation. At the trial, police officers gave evidence of the statements of the witnesses who were not called. The applicant was convicted and sentenced to three years' imprisonment. His appeal to the Supreme Court was dismissed. He complained that he had been convicted solely on the basis of evidence given by two anonymous witnesses, who had not been heard by the Regional Court and whom he had had no opportunity to examine.

Comm found unanimously V 6(1)+(3)(d).

Court found unanimously V 6(3(d)+6(1).

Judges (merits and A 50): Mr R Ryssdal, President, Mr J Cremona, Mr F Matscher, Mr R Macdonald, Mr R Bernhardt, Mr J De Meyer, Mr I Foighel.

The two unidentified persons would be regarded as witnesses for the purposes of A 6(3)(d), in the autonomous interpretation given by the Court. In principle, all evidence had to be produced in the presence of the accused at a public hearing with a view to adversarial argument. However, the use of evidence of statements obtained at pre-trial stage was not in itself inconsistent with paras (3)(d) and (1) of A 6 provided the defendant was given adequate and proper opportunity to challenge and question witnesses against him. In this case, the applicant had not had the opportunity to directly examine the witnesses and the opportunity to indirectly question their statements through the police officers was restricted by the decision to preserve their anonymity. Being unaware of their anonymity, the defence could not test reliability or credibility or observe demeanour. Collaboration of the public was of great importance for the police in the struggle against crime: The Convention did not preclude reliance, at the investigation stage, on sources such as anonymous informants. However, the subsequent use of their statements at trial was a different matter, the right to a fair trial could not be sacrificed. In this case, the commission of the offence had not been observed, the evidence of the anonymous witnesses was the only evidence indicating the applicant's presence at the scene of the crime and the trial court relied on that evidence to a large extent. The use of the evidence limited the rights of the defence in this case and the applicant could not be said to have had a fair trial. There had been a violation of A 6(3)(d) taken together with A 6(1).

Costs and expenses (ATS 86,526 less FF 5,290).

Cited: Bönisch v A (6.5.1985), Campbell and Fell v UK (28.6.1984), Kostovski v NL (20.11.1989), Luedicke, Belkacem and Koç v D (28.11.1978), Piersack v B (A 50, 26.10.1984).

Wingrove v United Kingdom (1997) 24 EHRR 1 96/56

[Application lodged 18.6.1990; Commission report 10.1.1995; Court Judgment 25.11.1996]

Mr Nigel Wingrove was a film director. He wrote the shooting script for, and directed the making of, a video work entitled *Visions of Ecstasy*. The applicant submitted the video to the British Board of Film Classification in order that it could lawfully be sold, hired out or otherwise supplied to the general public or a section of it. The Board rejected the application for a classification certificate on 18 September 1989. The applicant appealed to the Video Appeals Committee, which rejected the appeal on 23 December 1989. As a result of the Board's determination, as upheld on appeal, the applicant would commit an offence under the Video Recordings Act 1984 if he were to supply the video in any manner, whether or not for reward, without a classification. The applicant complained that the refusal of a classification certificate for his video work *Visions of Ecstasy* was in breach of his freedom of expression.

Comm found by majority (14–2) V 10.

Court found by majority (7–2) NV 10.

Judges: Mr R Bernhardt (c), President, Mr Thór Vilhjálmsson, Mr L-E Pettiti (c), Mr J De Meyer (d), Mr JM Morenilla, Sir John Freeland, Mr G Mifsud Bonnici, Mr D Gotchev, Mr U Lôhmus (d).

The refusal by the British Board of Film Classification to grant a certificate for the applicant's video work *Visions of Ecstasy*, seen in conjunction with the statutory provisions making it a criminal offence to distribute a video work without this certificate, amounted to an interference by a public authority with the applicant's right to impart ideas. The impugned restriction was prescribed by law. The aim of the interference as stated by the Board was to protect against the treatment of a religious subject in such a manner as to be calculated to outrage those who had an understanding of, sympathy towards and support for the Christian story and ethic, because of the contemptuous, reviling, insulting, scurrilous or ludicrous tone, style and spirit in which the subject was presented. The aim was the protection of the rights of others. The fact that the law of blasphemy did not treat on an equal footing the different religions practised in the UK did not detract from the legitimacy of the aim pursued in the present context. Whereas there was little scope under A 10(2) for restrictions on political speech or on debate of questions of public interest, a wider margin of appreciation was generally available to the Contracting States when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion. There was no uniform European conception of the requirements of the protection of the rights of others in relation to attacks on their religious convictions. The Court's task was to determine whether the reasons relied on by the national authorities to justify the measures interfering with the applicant's freedom of expression were relevant and sufficient for the purposes of A 10(2). As regards the content of the law itself, English law of blasphemy did not prohibit the expression, in any form, of views hostile to the Christian religion. As the English courts had indicated, it was the manner in which views were advocated rather than the views themselves which the law sought to control. Bearing in mind the safeguard of the high threshold of profanation embodied in the definition of the offence of blasphemy under the law as well as the State's margin of appreciation in that area, the reasons given to justify the measures taken could be considered as both relevant and sufficient for the purposes of A 10(2). It was in the nature of video works that once they became available on the market they could, in practice, be copied, lent, rented, sold and viewed in different homes, thereby easily escaping any form of control by the authorities. The measures taken by the authorities amounted to a complete ban on the film's distribution. However, that was an understandable consequence of the opinion of the competent authorities that the distribution of the video would infringe the criminal law and of the refusal of the applicant to amend or cut out the objectionable sequences. Having reached the conclusion that they did as to the blasphemous content of the film it could not be said that the authorities overstepped their margin of appreciation. The national authorities were entitled to consider that

the impugned measure was justified as being necessary in a democratic society within the meaning of A 10(2). There had therefore been no violation of A 10.

Cited: Castells v E (23.4.1992), Goodwin v UK (27.3.1996), Klass and Others v D (6.9.1978), Lingens v A (8.7.1986), Müller and Others v CH (24.5.1988), Observer and Guardian v UK (26.11.1991), Open Door and Dublin Well Woman v IRL (29.10.1992), Otto-Preminger-Institut v A (20.9.1994), Sunday Times v UK (No 1) (26.4.1979), Thorgeir Thorgeirson v ISL (25.6.1992), Tolstoy Miloslavsky v UK (13.7.1995).

Winterwerp v Netherlands (1979–80) 2 EHRR 387 79/4

[Application lodged 13.12.1972; Commission report 15.12.1977; Court Judgment 24.10.1979 (merits) 27.11.1981 (A 50)]

In 1968 Mr Frits Winterwerp was committed to a psychiatric hospital by his local burgomaster in accordance with an emergency procedure prescribed in the Mentally Ill Persons Act. Six weeks later, on his wife's application, he was confined in the same hospital under an order made by the local District Court. On his wife's further application, and subsequently at the request of the Public Prosecutor, the order was renewed from year to year by the Regional Court on the basis of medical reports from the doctor treating the applicant. The applicant complained of the procedure followed in his case. In particular, he objected that he was never heard by the various courts or notified of the orders, that he did not receive any legal assistance and that he had no opportunity of challenging the medical reports. His complaints were also directed against the decision on his requests for discharge and against his loss of civil capacity.

Comm unanimously found V 5(4), NV 5(1); refused to state a view on A 6(1).

Court found unanimously NV 5(1), V 5(4), V 6(1).

Judges (merits): Mrs H Pedersen, President, Mr G Wiarda, Mr D Evrigenis, Mr P-H Teitgen, Mr G Lagergren, Mr L Liesch, Mr F Gölcüklü.

Judges (A 50): Mr D Evrigenis, President, Mr G Wiarda, Mr P-H Teitgen, Mr G Lagergren, Mr L Liesch, Mr F Gölcüklü, Mr F Matscher.

There was no dispute that the Applicant had been deprived of his liberty, except for a few short periods, since 1968 in pursuance of the Mentally Ill Persons Act. A 5(1): the article could not be taken as permitting the detention of a person simply because his views or behaviour deviated from the norms prevailing in a particular society, nor should anyone be dispossessed of his liberty in an arbitrary fashion. The nature of what had to be established before the competent authority called for objective medical expertise, and the degree of the disorder must be of a kind or degree warranting compulsory confinement, and the validity of continued confinement depended upon the persistence of such a disorder. The applicant's confinement during all the various phases under consideration constituted the lawful detention of a person of unsound mind within A 5(1). 'A procedure prescribed by law' referred to a procedure prescribed by domestic law, *viz*, Netherlands law, which had to itself be in conformity with the Convention, including the requirements of natural justice and due process. The Applicant's detention had been 'in accordance with a procedure prescribed by law'; although the emergency order for six weeks might be considered excessive, and, although there were gaps in the continuity of appropriate subsequent orders, those imperfections were not so excessive or unlawful as to reach a conclusion that A 5(1) had been breached.

A 5(4): it was essential that a person concerned should have access to a court and the opportunity to be heard either in person, or, where necessary, through some form of representation, failing which he would not have been afforded the fundamental guarantees of procedure applied in matters of deprivation of liberty. Mental illness may entail restricting or modifying the manner of exercise of such a right. On the facts of this case the Applicant was never associated, either personally or through a representative, in the proceedings leading to the various detention orders made against him: he was never notified of the proceedings or of their outcome, nor was he heard by the courts or given the opportunity to argue his case, therefore the guarantees demanded by A 5(4) were lacking both in law and in practice and did not meet the requirements of the article.

A 6(1): the applicant lost the capacity to administer his property on his confinement to a psychiatric hospital. The capacity to deal personally with one's property involved the exercise of private rights and hence affected 'civil rights and obligations' within the meaning of A 6(1). Divesting the applicant of that capacity amounted to a 'determination' of such rights and obligations. Since, based on the facts above, the applicant was never given the opportunity to be heard, and, in any event those proceedings never considered his civil rights and obligations, it could not be said that he had a fair hearing within the meaning of A 6(1) on the question of his civil capacity. There had accordingly been a breach of A 6(1).

FS (promotion of placement of applicant in hostel, NLG 10,000 to applicant's new guardian for resocialisation of applicant), therefore A 50 struck out of list.

Cited: Delcourt v B (17.1.1970), De Wilde, Ooms, and Versyp v B (18.6.1971), Engel v D (8.6.1976); Golder v UK (21.2.1975); Handyside v UK (7.12.1976), Ireland v UK (18.1.1978), Klass v D (16.9.1978), König v D (28.6.1978), Lawless v IRL (1.7.1961), Ringeisin v A (16.7.1971), Stögmüller v A (10.11.1969), Sunday Times v UK (26.4.1979).

Worm v Austria (1998) 25 EHRR 454 97/49

[Application lodged 28.7.1993; Commission report 23.5.1996; Court Judgment 29.8.1997]

Mr Alfred Worm was a journalist working for *Profil*, an Austrian periodical dealing mostly with politics. For several years, he investigated into and reported on the case of Mr Hannes Androsch, a former Vice-Chancellor and Minister of Finance, who was involved in certain criminal proceedings. In 1989 Mr Androsch had been convicted by the Vienna Court of Appeal of having made false statements as a witness on two occasions. In 1991 the Vienna Regional Criminal Court convicted him of tax evasion between 1973 and 1981 and fined him. On 1 July 1991 *Profil* published an article written by the applicant, relating to the criminal proceedings. The applicant was charged under the Media Act for having exercised prohibited influence on criminal proceedings. On 12 May 1992 the Vienna Regional Criminal Court acquitted the applicant. On 19 October 1992, the Vienna Court of Appeal, after a hearing following an appeal by the public prosecutor, convicted the applicant of having exercised prohibited influence on criminal proceedings and imposed on him a fine of ATS 48,000 or 21 days' imprisonment in default of payment. The publishing firm was made jointly and severally liable for payment of the fine. The applicant complained that his conviction under the Media Act violated his right to freedom of expression.

Comm found by majority (18–11) V 10.

Court unanimously dismissed the Government's preliminary objection, found by majority (7–2) NV 10.

Judges: Mr R Bernhardt, President, Mr F Gölcüklü, Mr F Matscher, Mr B Walsh, Mr JM Morenilla, Mr B Repik, Mr K Jungwiert (pd), Mr U Lôhmus, Mr J Casadevall (pd)

Under domestic law and practice, the applicant was entitled to be served *ex officio* a written copy of the Court of Appeal's judgment, and the long delay for the service was exclusively the responsibility of the judicial authorities. The final version of the judgment ran to over nine pages and contained detailed legal reasoning. In those circumstances, the object and purpose of A 26 were best served by counting the six-month period as running from the date of service of the written judgment. The judgment of the Vienna Court of Appeal was served on the applicant on 25 March 1993 and the application to the Commission was introduced less than six months thereafter. Therefore, the Government's preliminary objection had to be dismissed.

The applicant's conviction constituted an interference with his right to freedom of expression. Convictions for 'prohibited influence on criminal proceedings' had a legal basis in domestic law, namely the Media Act. The conviction was aimed at maintaining the authority and impartiality of the judiciary and thus pursued a legitimate aim under the Convention. The phrase 'authority of the judiciary' included, in particular, the notion that the courts were, and were accepted by the public at large as being, the proper forum for the settlement of legal disputes and for the determination of a person's guilt or innocence on a criminal charge; further, that the public at large

had respect for and confidence in the courts' capacity to fulfil that function. 'Impartiality' normally denoted lack of prejudice or bias. However, what was at stake in maintaining the impartiality of the judiciary was the confidence which the courts in a democratic society had to inspire in the accused, as far as criminal proceedings were concerned, and also in the public at large. It followed that, in seeking to maintain the authority and impartiality of the judiciary, Contracting States were entitled to take account of considerations going beyond the concrete case, to the protection of the fundamental role of courts in a democratic society. The reasons given by the Court of Appeal were relevant with regard to the aim pursued. The domestic margin of appreciation was not identical as regards each of the aims listed in A 10(2). Restrictions on freedom of expression permitted by the second paragraph of A 10 for maintaining the authority and impartiality of the judiciary did not entitle States to restrict all forms of public discussion on matters pending before the courts. Courts could not operate in a vacuum. Whilst the courts were the forum for the determination of a person's guilt or innocence on a criminal charge, that did not mean that there could be no prior or contemporaneous discussion of the subject matter of criminal trials elsewhere, such as in specialised journals, in the general press or amongst the public at large. Provided that it did not overstep the bounds imposed in the interests of the proper administration of justice, reporting, including comment, on court proceedings contributed to their publicity and was thus perfectly consonant with the requirement under A 6(1) that hearings be public. Not only did the media have the task of imparting such information and ideas: the public also had a right to receive them. That was all the more so where a public figure was involved, such as, in the present case, a former member of the Government. Such persons inevitably and knowingly laid themselves open to close scrutiny by both journalists and the public at large. Accordingly, the limits of acceptable comment were wider as regards a politician as such than as regards a private individual. However, public figures were entitled to the enjoyment of the guarantees of a fair trial set out in A 6 on the same basis as every other person. The Court of Appeal's judgment was not directed to restricting the applicant's right to inform the public in an objective manner about the development of Mr Androsch's trial. Its criticism went essentially to the unfavourable assessment the applicant had made of the former minister's replies at trial, an element of evidence for the purposes of the Media Act. The Court of Appeal's judgment took into account the incriminated article in its entirety. The content of the article could not be said to be incapable of warranting the conclusion arrived at by the Vienna Court of Appeal as to the article's potential for influencing the outcome of Mr Androsch's trial. Having regard to the State's margin of appreciation, it was also in principle for the appellate court to evaluate the likelihood that at least the lay judges would read the article as it was to ascertain the applicant's criminal intent in publishing it. The Court of Appeal pointed out that it could be inferred from the article that the applicant wished to usurp the position of the judges dealing with the case. Against that background, the reasons adduced by the Vienna Court of Appeal to justify the interference with the applicant's right to freedom of expression resulting from his conviction were sufficient for the purposes of A 10(2). In particular, the respective interests of the applicant and the public in imparting and receiving his ideas concerning a matter of general concern which was before the courts were not such as to outweigh the considerations relied on by the Vienna Court of Appeal as to the adverse consequences of the diffusion of the impugned article for the authority and impartiality of the judiciary in Austria. Given the amount of the fine and the fact that the publishing firm was ordered to be jointly and severally liable for payment of it, the sanction imposed could not be regarded as disproportionate to the legitimate aim pursued. Accordingly the national courts were entitled to consider that the applicant's conviction and sentence were necessary in a democratic society for maintaining both the authority and the impartiality of the judiciary within the meaning of A 10(2). Therefore there had been no violation of A 10.

Cited: Chorherr v A (25.8.1993), Fey v A (24.2.1993), Goodwin v UK (27.3.1996), Jersild v DK (23.9.1994), Lingens v A (8.7.1986), Piersack v B (1.10.1982), Sunday Times v UK (No 1) (26.4.1979), Sunday Times v UK (No 2) (26.11.1991).

Woukam Moudefo v France 88/13

[Application lodged 8.9.1983; Commission report 8.7.1987; Court Judgment 11.10.1988]

Mr Gabriel Woukam Moudefo, a Cameroonian, was arrested in France on 1 October 1980 on suspicion of involvement in armed robbery. Two days later he was charged with aggravated theft and attempted murder. He submitted seven applications for his release which were all rejected, as were his appeals. He asked the President of the Conseil d'Etat to appoint a lawyer for him and was told that the services of a lawyer were not obligatory in criminal proceedings, but that his case would be investigated and defence counsel appointed if a genuine ground of appeal were found to exist. The President of the Bar Association subsequently responded that a colleague who had examined the case had been unable to find a ground which could be usefully relied upon. On 23 December 1983 the investigating judge ordered the applicant's discharge on the ground of insufficient evidence. The applicant claimed compensation and was awarded FF 30,000, the compensation board acknowledging that the length of detention on remand, three years and three months, appeared manifestly excessive. The applicant complained of the length of both his detention on remand and the criminal proceedings and the fact that he had not received the assistance of a lawyer in the Court of Cassation.

Comm found by majority (11 with one abstention) V 5(3) and 6(1), (6–5 with one abstention) V 5(4).

Court unanimously struck case out of list.

Judges: Mr R Ryssdal, President, Mr J Pinheiro Farinha, Mr L-E Pettiti, Sir Vincent Evans, Mr C Russo, Mr JA Carrillo Salcedo, Mr N Valticos.

The Court took formal note of the friendly settlement reached by the Government and the applicant. The Court recalled other cases in which it had to reviewed the length of detention on remand or of criminal proceedings as to their reasonableness. The Court's case-law also provided some guidance for the interpretation of A 6(3)(c) and 5(4).

FS (FF 134,000 compensation), therefore SO.

Cited: Baggetta v I (25.6.1987), Corigliano v I (10.12.1982), Eckle v D (15.7.1982), Foti and Others v I (10.12.1982), Matznetter v A (10.11.1969), Milasi v I (25.6.1987), Neumeister v A (27.6.1968), Ringeisen v A (16.7.1971), Stögmüller v A (10.11.1969), Wemhoff v D (27.6.1968).

Wynne v United Kingdom 94/23

[Application lodged 15.6.1989; Commission report 4.5.1993; Court Judgment 18.7.1994]

In 1964 Mr Edward Wynne was convicted of murder and sentenced to a mandatory term of life imprisonment. In May 1980 he was released on life licence after a recommendation by the Parole Board. In June 1981 the applicant killed again. In December 1981 his plea of not guilty to murder, but guilty to manslaughter on the ground of diminished responsibility was accepted and in January 1982 a discretionary sentence of life imprisonment was imposed. The trial judge considered that a life sentence was appropriate in view of the extreme danger to the public, which the applicant represented. The court, at the same time, revoked his life licence. The applicant was considered for parole by the Parole Board in January 1989. The Board recommended that his case be referred again to the local review committee in 1994. He subsequently learned that the 'tariff' period fixed by the trial judge in respect of his second offence expired in June 1991. In June 1992 the applicant was informed that the 'tariff' in respect of his conviction in 1964 had now been served and that his continued detention was based on the risk he represented. The applicant complained under A 5(4) that he was unable to have the continued lawfulness of his detention reviewed by a tribunal.

Comm found by a majority (10–5) NV 5(4).

Court held unanimously NV 5(4).

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr F Matscher, Mr B Walsh, Mr C Russo, Mr A Spielmann, Sir John Freeland, Mr MA Lopes Rocha, Mr L Wildhaber.

The applicant claimed that it was the discretionary life sentence which had become the real and effective basis for his detention since his conviction in 1982. He received a mandatory life sentence in 1964 and was released on life licence in 1980, which was revoked by the trial judge in 1982 following the conviction for manslaughter. The Court held that his detention thereafter was based on both the mandatory sentence, which remained in force, and the new discretionary life sentence. The fact that he committed a further offence in 1981 and was judged to be suffering from a mental disorder at that time in no way affected under English law the continued validity of the original sentence or its reactivation on his recall. It merely provided a supplementary legal basis for his detention. The mandatory sentence belonged to a different category from the discretionary sentence in the sense that it was imposed automatically as the punishment for the offence of murder irrespective of considerations pertaining to the dangerousness of the offender. That mandatory life prisoners did not actually spend the rest of their lives in prison and that a notional tariff period was also established in such cases did not alter that essential distinction between the two types of life sentence. As regards mandatory life sentences, the guarantee of A 5(4) was satisfied by the original trial and appeal proceedings and conferred no additional right to challenge the lawfulness of continuing detention or re-detention following revocation of the life licence. Accordingly, there were no new issues of lawfulness which entitled the applicant to a review of his continued detention under the original mandatory life sentence. The Court did not accept the applicant's additional claim that at the very least A 5(4) conferred on him the right to challenge the lawfulness of his detention on the basis of the discretionary life sentence. A review of the lawfulness of the applicant's detention following his conviction for manslaughter would be devoid of purpose since he was also serving a mandatory life sentence for murder at the same time and enjoyed no possibility of release until the Secretary of State considered that it was in the public interest to do so. There was no violation of A 5(4).

Cited: Cossey v UK (27.9.1990), Fox, Campbell and Hartley v UK (30.8.1990), Thynne, Wilson and Gunnell v UK (25.10.1990).

X

X v France (1992) 14 EHRR 483 92/45

[Application lodged 19.2.1991; Commission report 17.10.1991; Court Judgment 31.3.1992]

The applicant was a haemophiliac who had undergone blood transfusions. In June 1985 it was discovered that he was HIV positive. The French Association of Haemophiliacs unsuccessfully attempted to obtain compensation for him. He claimed compensation himself against the Minister for Solidarity, Health and Social Protection. His claim was rejected in March 1990. In 1990 he developed AIDS and died on 2 February 1992 with his appeal pending before the Court of Appeal. His parents continued the action, complaining of the length of proceedings.

Comm found by majority (13–2) V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr J Cremona, Mr F Gölcüklü, Mr L-E Pettiti, Mr R Macdonald, Mr A Spielmann, Mr N Valticos, Mr JM Morenilla, Mr AB Baka.

The notion of a 'civil right and obligation' was not to be interpreted solely by reference to the State's domestic law, A 6(1) applied irrespective of the parties status and of the nature of the legislation governing the manner in which the dispute was to be determined. It was sufficient that the outcome of the proceedings should be decisive for the private rights and obligations. Accordingly, A 6 applied. The period to be taken into account was 2 years and continuing. The reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case, taking into account the complexity of the case, conduct of the applicant and of the competent authorities. The present case was of some complexity but the government ought to have obtained information and reports earlier. The applicant had acted diligently. Given that the applicant was suffering from an incurable disease and his life expectancy was reduced, exceptional diligence was called for. The Administrative Court did not order expedited proceedings, even though it was aware of the deterioration in the applicant's health. A reasonable time had been exceeded and there had been a violation of A 6(1).

Damages (FF 150,000), costs and expenses (FF 30,000).

Cited: Bock v D (29.3.1989), G v I (27.2.1992), H v UK (8.7.1987), H v F (24.10.1989), Pandolfelli and Palumbo v I (27.2.1992), Vocaturo v I (24.5.1991).

X v United Kingdom (1982) 4 EHRR 188, (1983) 5 EHRR 192 81/5

[Application lodged 14.7.1974; Commission report 16.7.1980; Court Judgment 5.11.1981 (merits), 18.10.1982 (A 50)]

The applicant pleaded guilty to a charge of wounding with intent to cause grievous bodily harm on 22 October 1968. Following his conviction and the consideration of medical reports, the court made an order for his admission to and detention in Broadmoor Hospital, a special secure mental hospital for the criminally insane. During his detention in Broadmoor Hospital, his case was frequently reviewed by the hospital authorities. On 19 May 1971, the Home Secretary ordered the applicant's conditional discharge. Throughout the time of his conditional discharge, the applicant lived with his wife. He committed no further criminal offence. On 5 April 1974, he was recalled to Broadmoor Hospital by warrant of the Home Secretary. He remained confined there until February 1976 when he was allowed out of hospital on leave. Earlier proceedings to secure his release were unsuccessful. He was conditionally discharged a second time on 28 July 1976 and died on 17 January 1979. The applicant lodged his application in 1974 complaining that his recall was a deprivation of liberty and that he had no possibility of having the lawfulness of his readmission judicially determined.

Comm found by majority (14–2) NV 5(1), unanimously V 5(2), V 5(4).

Court found unanimously NV 5(1), unanimously V 5(4), by majority (6–1) not necessary to examine 5(2).

Judges (merits): Mr G Wiarda, President, Mr M Zekia, Mr D Evrigenis (d), Mr F Matscher, Mr J Pinheiro Farinha, Mr B Walsh, Mr R Jennings, ad hoc judge.

Judges (A 50): Mr G Wiarda, President, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr L Liesch, Mr F Matscher, Mr J Pinheiro Farinha, Sir Robert Jennings, ad hoc judge.

There was a conviction by a competent court and, following that, a lawful detention ordered by the same court: para 5(1)(a) applied. The court had committed him to a mental hospital for treatment and therefore sub-para (e), relating to the detention of persons of unsound mind, also applied. The applicant's deprivation of liberty therefore fell within the ambit of both sub-paragraphs. There were three minimum conditions which had to be satisfied in order for there to be the lawful detention of a person of unsound mind within the meaning of A 5(1)(e): the individual concerned had to be reliably shown to be of unsound mind, the mental disorder had to be of a kind or degree warranting compulsory confinement and the validity of continued confinement depended upon the persistence of such a disorder. Section 66 of the Mental Health Act was framed in very wide terms, but it was apparent from other sections in the Act that the Home Secretary's discretionary power under s 66(3) was not unlimited. Where a provision of domestic law was designed, amongst other things, to authorise emergency confinement of persons capable of presenting a danger to others, it would be impracticable to require thorough medical examination prior to any arrest or detention. A wide discretion had to be enjoyed by the national authority empowered to order such emergency confinements. The terms of s 66 of the Act, read in their context, did not grant an arbitrary power to the Home Secretary. The conditions under the 1959 Act governing the recall to hospital of restricted patients did not appear to be incompatible with the meaning under the Convention of the expression 'the lawful detention of persons of unsound mind'. The applicant's deprivation of liberty was effected in accordance with a procedure prescribed by law and throughout it was lawful in the sense of being in conformity with the relevant domestic law. The object and purpose of A 5(1) was to ensure that no one would be deprived of his liberty in an arbitrary fashion. Regard had to be had to the applicant's mental health history and to the system under the 1959 Act governing the discharge and recall of restricted patients. In the circumstances, the interests of the protection of the public prevailed over the individual's right to liberty to the extent of justifying an emergency confinement in the absence of the usual guarantees implied in A 5(1)(e). On the facts of the present case, there was sufficient reason for the Home Secretary to have considered that the applicant's continued liberty constituted a danger to the public, and in particular to his wife. While those considerations were enough to justify X's recall as an emergency measure and for a short duration, his further detention in hospital until February 1976 had to also satisfy the three minimum conditions. Those conditions were satisfied in the case of X: he was examined after his re-admission and the responsible medical officer was of the opinion that he should be further detained for treatment. This opinion was maintained until December 1975 when an improvement in his condition was noted. There was no reason to doubt the objectivity and reliability of the medical judgment. Therefore there was no breach of A 5(1).

By virtue of A 5(4), a person of unsound mind compulsorily confined in a psychiatric institution for an indefinite or lengthy period was in principle entitled, at any rate where there was no automatic periodic review of a judicial character, to take proceedings at reasonable intervals before a court to put in issue the 'lawfulness' of his detention, whether that detention was ordered by a civil or criminal court or by some other authority. The word 'court' in A 5(4) was not necessarily to be understood as signifying a court of law of the classic kind, integrated within the standard judicial machinery of the country. The term served to denote bodies which exhibited not only common fundamental features, of which the most important was independence of the executive and of the parties to the case, but also the guarantees appropriate to the kind of deprivation of liberty in question of a judicial procedure. During the period of his detention subsequent to his re-admission to Broadmoor Hospital in April 1974, X should have been enabled to take proceedings attended by such 'guarantees'. At that stage, the proceedings that had been held in 1968 before the criminal court were no longer sufficient to satisfy the requirements of A 5(4). Although X had access to a court which ruled that his detention was 'lawful' in terms of English law, that could not

of itself be decisive as to whether there was a sufficient review of 'lawfulness' for the purposes of A 5(4). The remedy of *habeas corpus* could on occasions constitute an effective check against arbitrariness in this sphere. However, a judicial review as limited as that available in the *habeas corpus* procedure in the present case was not sufficient for a continuing confinement such as the one undergone by X. The review had to be wide enough to bear on those conditions which, according to the Convention, were essential for the lawful detention of a person on the ground of unsoundness of mind, especially as the reasons capable of initially justifying such a detention might have ceased to exist. That meant that in the instant case, A 5(4) required an appropriate procedure allowing a court to examine whether the patient's disorder still persisted and whether the Home Secretary was entitled to think that a continuation of the compulsory confinement was necessary in the interest of public safety. The *habeas corpus* proceedings brought by X in 1974 did not therefore secure him the enjoyment of the right guaranteed by A 5(4). The Government's other suggestions of a recommendation from the responsible medical officer that the patient be discharged, the intervention of a Member of Parliament with the Home Secretary, a direct request by the patient to the Home Secretary asking for release did not bring into play any independent review procedure, whether judicial or administrative. With regard to the periodic review by Mental Health Review Tribunals, even if they satisfied the definition of a 'court' lacked the competence to decide the lawfulness of the detention and to order release if the detention was unlawful, as they had advisory functions only. Therefore, the inadequacy was not remedied for the purposes of A 5(4) of the *habeas corpus* proceedings. There had therefore been a breach of A 5(4).

The need for the applicant to be apprised of the reasons for his recall necessarily followed from A 5(4). The complaint under A 5(2) amounted to no more than one aspect of the complaint that the Court had already considered in relation to A 5(4). It was not necessary to rule on the merits of an issue which was part of and absorbed by a wider issue.

Costs (domestic costs GBP 324, agreement between the Government and applicant's estate concerning the Strasbourg costs).

Cited (merits): De Wilde, Ooms and Versyp v B (18.6.1971), Deweer v B (27.2.1980), Dudgeon v UK (22.10.1981), Guzzardi v I (6.11.1980), Ireland v UK (18.1.1978), Winterwerp v NL (24.10.1979).

Cited (A 50): Airey v IRL (6.2.1981), Deweer v B (27.2.1980), Marckx v B (13.6.1979), Neumeister v A (7.5.1974), Sunday Times v UK (6.11.1980).

X and Y v Netherlands (1986) 8 EHRR 235 85/4

[Application lodged 10.1.1980; Commission report 5.7.1983; Court Judgment 26.3.1985]

The applicants were father and daughter. The daughter, Y, was mentally handicapped, and lived in a privately run home for mentally handicapped children. In December 1977, Y was woken up by one B, who lived on the premises of the institution. B forced the girl to follow him to his room, to undress and to have sexual intercourse with him. This incident, which occurred on the day after Miss Y's 16th birthday, had traumatic consequences for her, causing her major mental disturbance. In December 1977, X went to the local police station to file a complaint and to ask for criminal proceedings to be instituted. The police officer said that since X considered his daughter unable to sign the complaint because of her mental condition, he could do so himself. The police officer drew up a report and it was signed by X. In May 1978, the public prosecutor's office provisionally decided not to open proceedings against B, provided that he did not commit a similar offence within the next two years. X appealed against the decision to the Arnhem Court of Appeal, requesting the court to direct that criminal proceedings be instituted. The Court of Appeal dismissed the appeal in July 1979, considering it doubtful whether a charge of rape could be proved. Certain provisions of Netherlands law would have been applicable in the instant case, but only if the victim herself had taken action. In the Court of Appeal's view, the father's complaint could not be regarded as a substitute for the complaint which the girl, being over the age of 16, should have lodged herself, although the police had regarded her as incapable of doing so; since in the instant case no one was legally empowered to file a complaint, there was on this point a gap in the law, but it could not be filled by means of a broad interpretation to the detriment of B. There

was no possibility of appealing on a point of law to the Supreme Court against this decision. X claimed that his daughter had been subjected to inhuman and degrading treatment, within the meaning of A 3, and that the right of both his daughter and himself to respect for their private life, guaranteed by A 8, had been infringed. He further maintained that the right to respect for family life meant that parents must be able to have recourse to remedies in the event of their children being the victims of sexual abuse, particularly if the children were minors and if the father was their legal representative. In addition, X claimed that he and his daughter had not had an effective remedy before a national authority as required by A 13, and that the situation complained of was discriminatory and contrary to A 14.

Comm found unanimously V 8 as regards Y, by a majority (15–1) NV 3 as regards Y, not necessary to examine the application either under 14 taken in conjunction with 8 or 3, or under 13, as regards X, no separate issue arose concerning his right to respect for family life.

Court held unanimously V 8 as regards Y, that not necessary to give a separate decision on her other complaints or the complaints of X.

Judges: Mr R Ryssdal, President, Mr G Wiarda, Mr B Walsh, Sir Vincent Evans, Mr C Russo, Mr R Bernhardt, Mr J Gersing.

There was no dispute as to the applicability of A 8: the facts underlying the application concerned a matter of private life, a concept which covered the physical and moral integrity of the person, including his or her sexual life. Although the object of A 8 was essentially that of protecting the individual against arbitrary interference by the public authorities, it did not merely compel the State to abstain from such interference: in addition to that primarily negative undertaking, there may be positive obligations inherent in an effective respect for private or family life. Those obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. The choice of the means calculated to secure compliance with A 8 in the sphere of the relations of individuals between themselves was in principle a matter that fell within the Contracting States' margin of appreciation. There were different ways of ensuring 'respect for private life', and the nature of the State's obligation would depend on the particular aspect of private life that was at issue. Recourse to the criminal law was not necessarily the only answer. The protection afforded by the civil law in the case of wrongdoing of the kind inflicted on Y was insufficient. This was a case where fundamental values and essential aspects of private life were at stake. Effective deterrence was indispensable in this area and it could be achieved only by criminal law provisions. The only gap was as regards persons in the situation of Y; in such cases, this system met a procedural obstacle which the Netherlands legislature had not foreseen. The relevant provisions of the Criminal Code required a complaint by the actual victim before criminal proceedings could be instituted against someone. The Arnhem Court of Appeal held that the legal representative could not act on the victim's behalf for this purpose. The Criminal Code did not provide Y with practical and effective protection. She was the victim of a violation of A 8.

A 14 had no independent existence, it constituted one particular element (non-discrimination) of each of the rights safeguarded by the Convention. The Articles enshrining those rights could be violated alone or in conjunction with A 14. An examination of the case under A 14 was not generally required when the Court found a violation of one of the former articles taken alone; it was not necessary to examine the case under A 14 as well.

Having found that A 8 was violated, the Court did not consider that it had also to examine the case under A 3, taken alone or in conjunction with A 14.

The Court had already considered, in the context of A 8, whether an adequate means of obtaining a remedy was available to Y: it did not have to examine the same issue under A 13.

Initially, X also alleged that Netherlands law had violated his own rights under A 8 and 13, he did not revert to this aspect of the case at the hearings. The Court saw no necessity to give a decision thereon.

Non-pecuniary damage (NLG 3,000).

Cited: Airey v IRL (9.10.1979), Handyside v UK (7.12.1976).

X, Y and Z v United Kingdom (1997) 24 EHRR 143 97/20

[Application lodged 6.5.1993, Commission report 27.6.1995; Court Judgment 22.4.1997]

Mr X, the first applicant, worked as a college lecturer and was a female-to-male transsexual. Since 1979 he had lived in a permanent and stable union with the second applicant Ms Y, a woman. The third applicant, Miss Z, was born in 1992 to the second applicant as a result of artificial insemination with sperm from an anonymous donor (AID). X and Y had applied together as a couple for the treatment which was conducted with the agreement of the hospital medical ethics committee. Following Z's birth, X was prevented from registering himself as the father since, under UK law, a person's legal gender was that at birth and could not be subsequently changed. However Z took X's surname and a joint residence order including parental responsibility was granted to both X and Y. They complained that the failure to legally recognise the relationship between X and Z was a breach of A 8 and that there was discrimination in their treatment under A 14.

Comm found by a majority V 8, not necessary to consider 14.

Court found unanimously A 8 applicable, by majority (14–6) NV 8, (17–3) not necessary to consider 14+8.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr Thór Vilhjálmsson (d), Mr F Matscher, Mr L-E Pettiti (c), Mr C Russo (pd), Mr A Spielmann, Mr J De Meyer (c), Mr N Valticos, Mr I Foighel (d), Sir John Freeland, Mr AB Baka, Mr MA Lopes Rocha, Mr J Makarczyk (pd), Mr D Gotchev (d), Mr K Jungwiert, Mr P Kûris, Mr U Lôhmus, Mr E Levits, Mr J Casadevall (pd).

There was 'family life' within the meaning of the Convention. X had lived with Y for many years apparently as her male partner and the couple had jointly applied for and been accepted for artificial insemination. X had been involved in the process throughout and had acted as Z's father since the birth. Thus *de facto* family ties existed. The notion of 'family life' in A 8 was not confined solely to families based on marriage and could encompass other *de facto* relationships. When deciding whether a relationship could be said to amount to 'family life', a number of factors may be relevant, including whether the couple lived together, the length of their relationship and whether they had demonstrated their commitment to each other by having children together or by any other means. The essential object of A 8 was to protect the individual against arbitrary interferences by the public authorities; there may, in addition, be positive obligations inherent in an effective respect for private or family life. The boundaries between the State's positive and negative obligations did not always lend themselves to precise definition; nonetheless, the applicable principles were similar. In both contexts, regard had to be had to the fair balance that had to be struck between the competing interests of the individual and of the community as a whole, and in both cases the State enjoyed a certain margin of appreciation. There was no common European standard with regard to the granting of parental rights to transsexuals or the rights of children born by artificial insemination to know their biological father. Since the issues in this case touched on areas where there was little common ground amongst the Member States of the Council of Europe and the law was in a transitional stage, the respondent State would be afforded a wide margin of appreciation. In relation to whether the correct balance had been struck by the UK in this case, the Court noted that the community had an interest in maintaining a coherent system of family law which placed the best interests of the child at the forefront. It had not been suggested that the amendment to the law sought by the applicants would be harmful to the interests of Z or of children conceived by AID in general; it was not clear that it would necessarily be to the advantage of such children. In these circumstances, the State would justifiably be cautious in changing the law, since it was possible that the amendment sought might have undesirable or unforeseen ramifications. Against these general interests, the Court had to weigh the disadvantages suffered by the applicants as a result of the refusal to recognise X in law as Z's 'father'. While Z would not inherit from X if he died intestate, this problem could be solved by X writing a will. Since Z was a British citizen by birth and could trace connection through her mother in immigration and nationality matters, she would not be disadvantaged in this respect by the lack

of a legal relationship with X. Z was unlikely to be caused emotional distress by the lack of X's name on the birth certificate, especially since in the UK a birth certificate was not in common use for administrative or identification purposes and there were few occasions when it is necessary to produce a full length certificate. X was not prevented in any way from acting as Z's father in a social sense, financially and emotionally supporting her and could have full parental authority in English law. Given that transsexuality raised complex scientific, legal, moral and social issues, in respect of which there was no generally shared approach among the Contracting States, the Court was of the opinion that A 8 could not, in this context, be taken to imply an obligation for the respondent State formally to recognise as the father of a child a person who was not the biological father. It followed that there has been no violation of A 8 in this case.

The complaint under A 14 was tantamount to a restatement of the complaint under A 8 and raised no separate issue. In view of the finding in respect of A 8, there was no need to examine the issue again in the context of A 14.

Cited: B v F (25.3.1992), Cossey v UK (27.9.1990), Johnston and Others v IRL (18.12.1986), Keegan v IRL (26.5.1994); Kroon and Others v NL (27.10.1994), Marckx v B (13.6.1979), Rees v UK (17.10.1986); X and Y v UK (26.3.1985).

Y

Y v United Kingdom (1994) 17 EHRR 238 92/68

[Application lodged 2.9.1986; Commission report 8.10.1991; Court Judgment 29.10.1992]

In 1983, Y, then aged 15, was a day pupil at an independent school in England. In September, following an incident with another pupil, he was sent for punishment to the headmaster who caned him four times on his bottom through his trousers. He was taken to the doctor and found to have four wheals across both buttocks, each wheal approximately 15 cm in length and 1.23 cm in width. There was heavy bruising and swelling of both buttocks. The police decided not to prosecute the headmaster. The parents then initiated civil proceedings in the County Court claiming, *inter alia*, damages for assault. On 28 July 1986 the County Court judge rejected the claims. Y complained that his corporal punishment constituted a breach of A 3, that it violated his right to respect for his private and family life under A 8, and that he had no effective domestic remedies for those Convention complaints.

Comm found by majority (11–2) V 3 and 13, no separate issue under 8.

Court noted friendly settlement and unanimously struck case out of the list.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr F Matscher, Mr R Macdonald, Mr F Bigi, Sir John Freeland, Mr L Wildhaber.

The Court took formal note of the friendly settlement reached by the Government and the applicant and discerned no reason of public policy why the case should not be struck out of the list.

FS (payment of GBP 8,000 to the applicant and payment of his costs).

Yagci and Sargin v Turkey (1995) 20 EHRR 505 95/17

[Application lodged 6.2.1990; Commission report 30.11.1993; Court Judgment 8.6.1995]

Mr Nabi Yagci, a journalist, and Mr Nihat Sargin, a doctor, were the general secretaries of the Turkish Workers' Party and the Turkish Communist Party respectively. At a press conference in Brussels in October 1987, they announced their intention of returning to Turkey to found the Turkish United Communist Party (TBKP) and develop its organisation and political action while staying within the law. On arrival at Ankara on 16 November 1987, they were arrested as they alighted from the plane and taken into police custody. On 5 December they were charged with leading an organisation whose aim was to establish the domination of a particular social class and disseminating propaganda to that end and with the intention of abolishing the rights guaranteed in the Constitution; inciting public hostility and hatred; and harming the reputation of the Republic of Turkey, its President and its Government. Their applications for release were rejected. The trial opened on 8 June 1988. On 9 October 1991 the Ankara National Security Court acquitted the applicants of some of the charges brought against them. On 9 July 1992 the Ankara Second Assize Court acquitted the applicants of the remaining matters. The applicants complained of the length of their detention pending trial and of the length of the criminal proceedings brought against them.

Comm found unanimously V 5(3) and 6(1).

Court unanimously dismissed the Government's preliminary objections, found by majority (8–1) V 5(3), V 6(1).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr Thór Vilhjálmsson, Mr F Gölcüklü (d), Mr L-E Pettiti, Mr R Macdonald, Mr J De Meyer, Mr I Foighel, Mr B Repik.

Having regard to the wording of Turkey's declaration under A 46, the Court considered that it could not entertain complaints about events which occurred before 22 January 1990 and that its jurisdiction only covered the period after that date. However, when examining the complaints relating to A 5(3) and 6(1), account would be taken of the state of the proceedings at the time when the declaration was deposited. The Government's argument that even facts subsequent to 22

January 1990 were excluded from its jurisdiction where they were merely extensions of an already existing situation could not be accepted. From the critical date onwards all the State's acts and omissions not only had to conform to the Convention but were also undoubtedly subject to review by the Convention institutions. Objection of lack of jurisdiction was therefore dismissed. With regard to non-exhaustion of domestic remedies, the remedy indicated by the Government had to be sufficiently certain, in practice as well as in theory. The Government did not cite any case-law to show that the Code of Criminal Procedure applied to orders prolonging detention. The provision of the Constitution was largely modelled on A 5, which the applicants had relied upon before the courts. Law No 466 was not applicable as it referred to compensation, which was not the applicants' complaint. The objection of loss of victim status was not raised before the Commission, and the Government were therefore estopped from raising it; that objection was therefore also dismissed.

A 5(3): the Court could only consider the period of three months and 12 days which elapsed between 22 January 1990, when the declaration whereby Turkey recognised the Court's compulsory jurisdiction was deposited, and 4 May 1990, when the applicants were provisionally released. However, when determining whether the applicants' continued detention after 22 January 1990 was justified under A 5(3), account had to be taken of the fact that by that date the applicants, having been placed in detention on 16 November 1987, had already been in custody for two years and two months. The persistence of reasonable suspicion that the person arrested had committed an offence was a condition *sine qua non* for the validity of the continued detention, but, after a certain lapse of time, it no longer sufficed. The Court had to establish whether the other grounds cited by the judicial authorities continued to justify the deprivation of liberty. As grounds for refusing to release the applicants, the National Security Court cited the nature of the offences, 'the state of the evidence' and the date of arrest, namely 16 November 1987. The Court danger of an accused's absconding could not be gauged solely on the basis of the severity of the sentence risked. It had to be assessed with reference to a number of other relevant factors which might either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial. The applicants had returned to Turkey of their own accord and with the specific aim of founding the Turkish United Communist Party and they could not be unaware that they would be prosecuted for this. The National Security Court's orders confirming detention nearly always used an identical, stereotyped, form of words, without in any way explaining why there was a danger of absconding. The expression 'the state of the evidence' could be understood to mean the existence and persistence of serious indications of guilt. Although in general those could be relevant factors, in the present case they could not on their own justify the continuation of the detention complained about. The third reason put forward by the National Security Court, namely the date of the applicants' arrest, did not stand up to scrutiny as no total period of detention was justified in itself, without there being relevant grounds under the Convention. Therefore the applicants' continued detention during the period in question contravened A 5(3).

A 6(1): The proceedings began on 16 November 1987, when the applicants were arrested and taken into police custody, and ended not as the Government argued on 9 October 1991, when the applicants were acquitted of offences under Articles 141–43, 311 and 312 of the Criminal Code, but on 16 July 1992, when the Ankara Second Assize Court's judgment of 9 July in which the applicants were acquitted on the remaining charges became final. However, the Court could only consider the period of two years, five months and 24 days that elapsed between 22 January 1990, the date on which the declaration whereby Turkey recognised the Court's compulsory jurisdiction was deposited, and 16 July 1992. Nevertheless, it had to take into account the fact that by the critical date the proceedings had already lasted more than two years. The reasonableness of the length of proceedings was to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the parties. From 22 January 1990 the National Security Court held 20 hearings, 16 of which were devoted almost entirely to reading out evidence. That process, even allowing for the quantity of documents, could not be regarded as complex. A 6 did not require a

person charged with a criminal offence to co-operate actively with the judicial authorities. The conduct of the applicants and their counsel at the hearings did not seem to have displayed any determination to be obstructive. At all events, the applicants could not be blamed for having taken full advantage of the resources afforded by national law in their defence. The Court did not in this instance have to speculate as to the motives of the prosecution at the National Security Court. It noted that between 22 January 1990 and 9 July 1992 that court held only 20 hearings in the case at regular intervals (less than 30 days), only one of which lasted for longer than half a day. Moreover, after the Antiterrorist Act of 12 April 1991, repealing Articles 141–43 of the Criminal Code, had come into force, the National Security Court waited nearly six months before acquitting the applicants on the charges based on those provisions. In conclusion, therefore, the length of the criminal proceedings in question contravened A 6(1).

Non-pecuniary damage (by majority (8–1) FF 30,000 to each of the applicants), costs and expenses (FF 38,000 to applicants jointly), lawyers' fees (FF 30,000 to applicants jointly).

Cited: B v A (28.3.1990), Baggetta v I (25.6.1987), Demicoli v M (27.8.1991), Dobbertin v F (25 .2.1993), Kemmache (Nos 1 and 2) v F (27.11.1991), Letellier v F (26.6.1991), Matznetter v A (10.11.1969), Navarra v F (23.11.1993), Neumeister v A (27.6.1968), Ringeisen v A (16.7.1971), Wemhoff v D (27.6.1968), Zanghì v I (19.2.1991).

Yagiz v Turkey (1996) 22 EHRR 573 96/27

[Application lodged 8.10.1991; Commission report 16.5.1995; Court Judgment 7.8.1996]

Mrs Yüksel Yagiz, a nursing auxiliary on the maternity ward, was questioned on 14 December 1989 and arrested on 15 December 1989 on suspicion of involvement in the abduction of a new-born baby at the hospital where she worked. She was kept in custody and on her release on 16 December 1989 she had to be admitted to hospital on account of the psychological shock she had suffered. A medical report, of 21 December 1989, prepared on her behalf concluded that she was suffering from 'acute post-traumatic stress' and bore marks on the soles of her feet. Three police officers were prosecuted and following trial acquitted of ill-treating her. As a result of the police investigation into the child's abduction, the real offenders were arrested and prosecuted. The proceedings against Mrs Yagiz and her four co-defendants were discontinued on 28 December 1989. She complained of the ill-treatment she had suffered while in police custody.

Comm found unanimously V 3.

Court found unanimously it could not deal with the merits.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü, Mr N Valticos, Mr R Pekkanen, Mr AB Baka, Mr G Mifsud Bonnici, Mr D Gotchev, Mr P Jambrek.

The Court could not deal with the merits of the case, as the detention in police custody during which Mrs Yagiz allegedly suffered ill-treatment took place on 15 and 16 December 1989, more than a month before Turkey's recognition of the Court's compulsory jurisdiction on 22 January 1990. The Government's preliminary objection of lack of jurisdiction *ratione temporis* was therefore accepted.

Cited: Loizidou v TR (preliminary objections 23.3.1995), Mansur v TR (8.6.1995), Mitap and Müftüoglu v TR (25.3.1996), Yagci and Sargin v TR (8.6.1995).

Yasa v Turkey (1999) 28 EHRR 408 98/71

[Application lodged 12.7.1993; Commission report 8.4.1997; Court Judgment 2.9.1998]

The applicant and his uncle had sold the newspaper *Özgür Gündem*. The applicant was shot at and seriously injured in an attack by two men on 15 January 1993. His uncle was shot and killed by a gunman on 14 June 1993. The Commission found that there was no evidence before it that proved beyond reasonable doubt that agents of the security forces or police were involved in the shooting of either the applicant or his uncle. It also found that the applicant's complaints concerning police obstruction at the hospital and ill-treatment in custody following his uncle's funeral had not been

substantiated. However, having regard to appeals made for protection and protests made by the owner of the *Özgür Gündem*, the Commission found that the Government had or ought to have been aware that those involved in its publication and distribution feared that they were falling victim to a concerted campaign tolerated, if not approved, by State agents. The applicant lodged an application with the Commission on his own behalf and on behalf of his deceased uncle. He complained of ill treatment, lack of access to a court and no effective remedy.

Comm found by majority (30–2) V 2, unanimously NV 3, (31–1) no separate issue under 6(1) and NV 10, (30–2) no separate issue under 13, unanimously NV 14 or 18.

Court dismissed by majority (8–1) Government's preliminary objections, found unanimously NV 2 in regard to the attack on applicant and killing of uncle, V 2 in regard to an adequate and effective investigation, V 13, unanimously not necessary to examine 10, 14 or 18.

Judges: Mr R Bernhardt, President, Mr Thór Vilhjálmsson, Mr F Gölcüklü (d), Mr R Pekkanen, Mr L Wildhaber, Mr D Gotchev, Mr J Casadevall, Mr M Voicu, Mr V Butkevych.

Regarding the scope of the case, the complaints under A 3 and 6 were not pursued before the Court, which saw no reason to consider them of its own motion.

The Government had not raised the objection as to whether the applicant was a victim before the Commission and were estopped from denying it before the Court. In the light of the principles established in its case-law and of the particular facts of the case, the applicant, as the deceased's nephew, could legitimately claim to be a victim of the murder of his uncle. With respect to the objection of failure to exhaust domestic remedies regarding a civil action for damage, those responsible for the acts complained of had not been identified. The applicant was not required to bring the civil and administrative proceedings in question. Consequently the preliminary objection of non-exhaustion was rejected in respect of those remedies. The criminal law remedies were closely linked to the complaints on the merits.

The establishment and verification of the facts were primarily a matter for the Commission. Only in exceptional circumstances would the Court exercise its own powers in this area. The Court did not consider that it should depart from the Commission's conclusions regarding this complaint and was not therefore able to conclude beyond all reasonable doubt that the applicant and his uncle were respectively attacked and killed by the security forces. It followed that there has been no violation of A 2 on that account.

The obligation to protect the right to life under A 2 required by implication that there should be some form of effective official investigation when individuals had been killed as a result of the use of force. That was not confined to cases where it had been established that the killing was caused by an agent of the State. Nor was the issue of whether members of the deceased's family or others had lodged a formal complaint about the killing with the competent investigatory authorities decisive. The mere fact that the authorities were informed of the murder of the applicant's uncle gave rise *ipso facto* to an obligation under A 2 to carry out an effective investigation. The same applied to the attack on the applicant. The Court took into account the fact that the prevailing climate at the time in that region of Turkey, marked by violent action by the PKK and measures taken in reaction thereto by the authorities, may have impeded the search for conclusive evidence in the domestic criminal proceedings. Nonetheless, circumstances of that nature could not relieve the authorities of their obligations under A 2 to carry out an investigation. As the investigations carried out in the instant case did not allow of the possibility that given the circumstances of the case, the security forces might have been implicated in the attacks and because more than five years after the events, no concrete and credible progress had been made, the investigations could not be considered to have been effective as required by A 2. Therefore the applicant had satisfied the obligation to exhaust domestic remedies and the criminal proceedings limb of the Government's preliminary objection had to be dismissed; there had been a violation of A 2.

Although no violation was found in respect of the attacks on the applicant and his uncle, that did not necessarily mean that the complaint under A 2 was not arguable. The Court's conclusion as to the merits did not relieve the State of the obligation to carry out an effective investigation into the substance of the complaint. The nature of the right alleged to have been infringed had implications

on the extent of the obligations under A 13. Given the fundamental importance of the right to protection of life, A 13 imposed, without prejudice to any other remedy available under the domestic system including the payment of compensation where appropriate, an obligation on States to carry out a thorough and effective investigation capable of leading to the identification and punishment of those responsible and in which the complainant had effective access to the investigatory procedure. The respondent State could not be considered to have conducted an effective criminal investigation as required by A 13, the requirements of which were stricter than the investigatory obligation under A 2. Consequently, there had been a violation of A 13.

The evidence before the Court was not sufficient to enable it to determine whether the authorities had adopted a practice of violating A 2 and 13.

The complaints under A 10, 14 and 18 arose out of the same facts as those considered under A 2 and 13. In the light of the conclusions with respect to those articles, it was not necessary to examine the former complaints separately.

Non-pecuniary damage (by majority (8–1) GBP 6,000), costs and expenses ((8–1) GBP 12,000 less FF 8,045).

Cited: Akdivar and Others v TR (16.9.1996), Aksoy v TR (18.12.1996), Aydin v TR (25.9.1997), Boyle and Rice v UK (27.4.1988), Cruz Varas and Others v S (20.3.1991), Ergi v TR (28.7.1998), Ireland v UK (18.1.1978), Kaya v TR (19.2.1998), Kurt v TR (25.5.1998), Loizidou v TR (preliminary objections 23.3.1995), McCann and Others v UK (27.9.1995), Sakik and Others v TR (26.11.1997), United Communist Party of Turkey and Others v TR (30.1.1998), Yagci and Sargin v TR (8.6.1995).

Young, James and Webster v UK (1982) 4 EHRR 38, (1983) 5 EHRR 201 81/3

[Applications lodged 26.7.1976 and 18.2.1977; Commission report 14.12.1979; Court Judgment 13.8.1981 (merits), 18.10.1982 (A 50)]

Mr Ian McLean Young, Mr Noel Henry James and Mr Ronald Roger Webster were former employees of the British Railways Board (BRB) before it became a condition of employment, with the only exemption being for objection on religious grounds, upon certain categories of staff, including the applicants, to become members of one of three trade unions. The condition was introduced pursuant to a closed shop agreement between three trade unions (National Union of Railwaymen ('NUR'), the Transport Salaried Staffs' Association ('TSSA') and the Associated Society of Locomotive Engineers and Firemen ('ASLEF')) and BRB. The applicants were faced with the choice either of joining NUR (in the case of Mr James) or TSSA or NUR (in the cases of Mr Young and Mr Webster) or of losing jobs for which union membership had not been a requirement when they were first engaged and which two of them had held for several years. Each applicant regarded the membership condition introduced by that agreement as an interference with the freedom of association to which he considered that he was entitled; in addition, Mr Young and Mr Webster had objections to trade union policies and activities coupled, in the case of Mr Young, with objections to the political affiliations of the specified unions. The applicants refused to join the unions and received notices terminating their employment. Under legislation in force at the time, their dismissal was fair and therefore they could not found a claim for compensation let alone reinstatement or re-engagement. The applicants complained that the domestic legislation which allowed their dismissal when they had objected on reasonable (albeit non-religious) grounds to joining one of the three trade unions interfered with their freedom of thought, conscience, expression and association with others and that no adequate remedies were available to them.

Comm found by majority (14–3) V 11, not necessary to deal separately with 9 and 10, (8–2 with two abstentions) no additional breach 13.

Court found by majority (18–3) V 11, unanimously not necessary to consider 9, 10 or 13.

Judges (merits): Mr G Wiarda, President, Mr R Ryssdal, Mr M Zekia, Mr J Cremona, Mr Thór Vilhjálmsson (d), Mr W Ganshof van der Meersch (c), Mrs Bindschedler-Robert (c), Mr D Evrigenis (c), Mr G Lagergren (d), Mr L Liesch (c), Mr F Gölcüklü (c), Mr F Matscher (c), Mr J Pinheiro Farinha (c), Mr E Garcia de Enterria, Mr L-E Pettiti (c), Mr B Walsh, Mr M Sørensen (d), Sir Vincent Evans, Mr R Macdonald, Mr C Russo, Mr R Bernhardt.

Judges (A 50): Mr G Wiarda, President, Mr R Ryssdal, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Sir Vincent Evans.

State responsibility was engaged as a result of the enactment of legislation relating to unfair dismissal. The negative aspect of a person's freedom of association was not completely outside A 11's ambit despite the deliberate omission from the Convention of a rule preventing compulsion to belong to an association. The threat of dismissal involving loss of livelihood was a most serious form of compulsion and when directed against persons in the position of the applicants, engaged by BRB before the introduction of any obligation to join a trade-union, constituted interference with A 11. Furthermore, where the freedom of action or choice was so reduced so as to be of no practical significance and someone was compelled to join an association contrary to their personal convictions, interference with the freedom guaranteed in A 11 was established. Although the Government conceded that were an interference established, it would be unnecessary in a democratic society, the Court went on to find that the interference had not been proportionate to the aim of the unions of protecting their members' best interests, as this could be achieved without compelling non-union employees, having objections like the applicants, to join a specific union. Accordingly there has been a violation of A 11. In view of that finding it was not necessary to consider A 9, 10 or 13.

Pecuniary and non-pecuniary loss (GBP 18,626 to Mr Young, GBP 46,215 to Mr James, GBP 10,076 to Mr Webster), legal costs and expenses (GBP 65,000 less FF 35,764).

Cited: Airey v UK (9.10.1979), 'Belgian Linguistic' case (23.7.1968), Golder v UK (21.2.1975), Guzzardi v I (6.11.1980), Handyside v UK (7.12.1976), Kjeldsen, Busk Madsen and Pedersen v DK (7.12.1976), National Union of Belgian Police v B (27.10.1975), Sunday Times v UK (26.4.1979), Winterwerp v NL (24.10.1979).

Z

Z v Finland (1998) 25 EHRR 371 97/10

[Application lodged 21.5.1993; Commission report 2.12.1995; Court Judgment 25.2.1997]

The applicant, a Finnish national, was married to X, who was not Finnish. They divorced on 22 September 1995. They are both infected with HIV. On 19 March 1992 X was informed of the results of a blood test performed on 6 March 1992, indicating that he was HIV-positive. In 1992 X was charged and investigated for a number of offences of sexual assault, rape and attempted manslaughter by deliberately subjecting the complainants to a risk of HIV infection. The applicant refused to give evidence to police against her husband. At a hearing before the City Court on 22 April 1992 in public, X refused to reply to a question put by one of the complainant's counsel as to whether the applicant was also an HIV carrier. The City Court summoned the applicant to appear before it as a witness on 20 May 1992, but she relied on her right not to give evidence in a case concerning her husband. On 12 August 1992, despite his objections, the City Court ordered a senior doctor to give evidence. He disclosed to the court medical data concerning the applicant. Other doctors were also required to give evidence despite their objections. On 8 and 9 March 1993 the police carried out a search at the hospital where the applicant and X had occasionally been treated. The police seized all the records concerning the applicant and appended copies of these to the record of the investigation concerning the charges against X of attempted manslaughter. These measures had been ordered by the prosecution. After photocopying the records the police returned them to the hospital. On 10 March 1993 the City Court decided to include the copies of the seized records in its case file. On 19 May 1993 X was convicted on three counts of attempted manslaughter and rape and sentenced to imprisonment. The City Court published the operative part of the judgment, an abridged version of its reasoning and an indication of the law which it had applied in the case. It ordered that the full reasoning and the documents in the case be kept confidential for 10 years. Both the complainants as well as X had requested a longer period of confidentiality. On 10 December 1993, the Court of Appeal, *inter alia*, upheld the conviction of X, in addition, convicted him on two further such counts, increased his total sentence of imprisonment and upheld the City Court's decision that the case documents should remain confidential for a period of 10 years. The Supreme Court refused to grant X leave to appeal. On 19 May 1995 the applicant applied to the Supreme Court for an order quashing the Court of Appeal's judgment in so far as it permitted the information and material about her to become available to the public as from 2002, alternatively an order reversing the Court of Appeal's judgment as being incompatible with A 8. On 1 September 1995 the Supreme Court dismissed the applicant's application for an order quashing or reversing the Court of Appeal's on the grounds that the first application had been lodged out of time and she did not have *locus standi* to make the second. The applicant complained of violations of her right to respect for private and family life as guaranteed by A 8.

Comm found unanimously V 8, not necessary to examine 13.

Court found by majority (8–1) NV 8 with respect to the orders requiring the applicant's medical advisers to give evidence, NV 8 with respect to the seizure of the applicant's medical records and their inclusion in the investigation file, unanimously V 8 with respect to the order to make the transcripts of the evidence given by her medical advisers and her medical records accessible to the public in 2002 if implemented, V 8 with regard to the disclosure of the applicant's identity and medical condition by the Helsinki Court of Appeal, not necessary to examine 13.

Judges: Mr R Ryssdal, President, Mr F Gölcüklü, Mr L-E Pettiti, Mr C Russo, Mr J De Meyer (pd), Mr R Pekkanen, Mr G Mifsud Bonnici, Mr J Makarczyk, Mr B Repik.

Regarding the scope of the issues before the Court, it had not been established that there had been a leak of confidential medical data concerning the applicant for which the respondent State could be held responsible under A 8. The applicant's allegation that she was subjected to discriminatory treatment did not appear to be an elaboration of her complaints declared admissible by the Commission, but rather a separate and new complaint which was not covered by the Commission's decision on admissibility. The Court therefore had no jurisdiction to entertain it.

The various measures complained of constituted interferences with the applicant's right to respect for her private and family life. There was no evidence to suggest that the measures did not comply with domestic law or that the effects of the relevant law were not sufficiently foreseeable for the purposes of the quality requirement which was implied by the expression 'in accordance with the law'. With regard to the legitimate aim, the question was whether, at the time when the contested measures were taken, the relevant authorities sought to achieve a legitimate aim. At the material time, the investigative measures in issue were aimed at the prevention of crime and the protection of the rights and freedoms of others. As regards the 10-year limitation on the confidentiality order, there was a public interest in ensuring the transparency of court proceedings and thereby the maintenance of the public's confidence in the courts. The limitation in question would, under Finnish law, enable any member of the public to exercise his or her right to have access to the case material after the expiry of the confidentiality order and could therefore be said to have been aimed at protecting the rights and freedoms of others. The protection of personal data, not least medical data, was of fundamental importance to a person's enjoyment of his or her right to respect for private and family life. Domestic law had to afford appropriate safeguards to prevent any communication or disclosure of personal health data as might be inconsistent with the guarantees in A 8. In view of the highly intimate and sensitive nature of information concerning a person's HIV status, any State measures compelling communication or disclosure of such information without the consent of the patient called for the most careful scrutiny on the part of the Court, as did the safeguards designed to secure an effective protection. However, the interests of a patient and the community as a whole in protecting the confidentiality of medical data could be outweighed by the interest in investigation and prosecution of crime and in the publicity of court proceedings where such interests were shown to be of even greater importance. Regarding access by the public to personal data, a margin of appreciation was left to the competent national authorities in striking a fair balance between the interest of publicity of court proceedings, on the one hand, and the interests of a party or a third person in maintaining the confidentiality of such data, on the other hand. The scope of that margin would depend on such factors as the nature and seriousness of the interests at stake and the gravity of the interference. Although the applicant was not heard directly by the competent authorities before they took the measures, they had been made aware of her views and interests in these matters. Her medical advisers had objected to the various orders to testify and had thus actively sought to protect her interests in maintaining the confidentiality of her medical data. In addition, the Court of Appeal had been informed by X's lawyer of the applicant's wish that the period of confidentiality be extended. In those circumstances, the decision-making process leading to the measures in question was such as to take her views sufficiently into account for the purposes of A 8 and therefore the procedure followed did not give rise to any breach of that article.

The orders requiring the applicant's doctors and psychiatrist to give evidence were subject to important limitations and accompanied by effective and adequate safeguards against abuse. The proceedings against X were confidential and of an exceptional character. The various orders were supported by relevant and sufficient reasons which corresponded to an overriding requirement in the interest of the legitimate aims pursued. There was a reasonable relationship of proportionality between those measures and aims. Accordingly, there had been no violation of A 8 on that point.

The seizure of the applicant's medical records and their inclusion in the investigation file were complementary to the orders compelling the medical advisers to give evidence and also taken in the context of the applicant refusing to give evidence against her husband. They were based on the same weighty public interests and were subject to similar limitations and safeguards against abuse. Although the seizure had not been authorised by a court but had been ordered by the prosecution, the legal conditions for the seizure were essentially the same as those for the orders on the doctors to give evidence. In addition the applicant had the possibility of challenging the seizure before the City Court. Therefore, the fact that the seizure was ordered by the prosecution and not by a court could not of itself give rise to any misgivings under A 8. The expediency of the adducing and admission of evidence by national authorities in domestic proceedings was primarily a matter to

be assessed by them and in this case the Court saw no reason to doubt the assessment by the national authorities. The seizure and inclusion orders were supported by relevant and sufficient reasons, the weight of which was such as to override the applicant's interest in the information in question not being communicated. The measures were proportionate to the legitimate aims pursued and accordingly there was no violation of A 8 on this point.

Regarding the duration of the order to maintain the medical data confidential, the 10-year limitation on the confidentiality order did not correspond to the wishes or interests of the litigants in the proceedings, all of whom had requested a longer period of confidentiality. As a result of the information in issue having been produced in the proceedings without her consent, the applicant had already been subjected to a serious interference with her right to respect for her private and family life. The further interference which she would suffer if the medical information were to be made accessible to the public after 10 years was not supported by reasons which could be considered sufficient to override her interest in the data remaining confidential for a longer period. The order to make the material so accessible as early as 2002 would, if implemented, amount to a disproportionate interference with her right to respect for her private and family life, in violation of A 8.

The disclosure of the applicant's identity and HIV infection in the text of the Court of Appeal's judgment made available to the press was not supported by any cogent reasons. Accordingly, the publication of the information concerned gave rise to a violation of the applicant's right to respect for her private and family life as guaranteed by A 8.

The complaints raised had been taken into account in relation to A 8 and it was not necessary therefore to examine them under A 13.

Non-pecuniary damage (FIM 100,000), legal costs and expenses (FIM 160,000 less FF 10,835).

Cited: Dudgeon v UK (22.10.1981), Johansen v N (7.8.1996), Klass and Others v D (6.9.1978), Leander v S (26.3.1987), Manoussakis and Others v GR (26.9.1996), Marckx v B (13.6.1979), Olsson v S (No 2) (27.11.1992), Schuler-Zgraggen v CH (24.6.1993), Tolstoy Miloslavsky v UK (13.7.1995, A 50), W v UK (8.7.1987).

Zana v Turkey (1999) 27 EHRR 667 97/88

[Application lodged 30.9.1991; Commission report 10.4.1996; Court Judgment 25.11.1997]

Mr Mehdi Zana was a former mayor of Diyarbakir. In August 1987, while serving several sentences in Diyarbakir military prison, the applicant in an interview with journalists stated that he supported the PKK but was not in favour of massacres and that the PKK killed women and children by mistake. His statement was published in the national daily newspaper Cumhuriyet on 30 August 1987. On 30 August 1987 the 'press offences' department of the Istanbul public prosecutor's office began a preliminary investigation on the ground that the applicant had 'defended an act punishable by law as a serious crime'. The Istanbul and the Diyarbakir public prosecutor's offices and the Diyarbakir National Security Court ruled they had no jurisdiction to deal with the applicant's case. By an indictment dated 19 November 1987, the Diyarbakir military prosecutor's office instituted proceedings in the Diyarbakir Military Court against the applicant charging him with supporting the activities of an armed organisation, the PKK, whose aim was to break up Turkey's national territory. The proceedings were transferred to the Diyarbakir National Security and on 26 March 1991 that court sentenced him to twelve months' imprisonment for having 'defended an act punishable by law as a serious crime' and 'endangering public safety'. He appealed and on 18 July 1991, the Court of Cassation upheld the National Security Court's judgment. He complained, *inter alia*, of the length of the criminal proceedings, of an infringement of his right to a fair trial in that he had not been able to appear before the court which convicted him and of an interference with his freedom of thought and expression.

Comm found by majority (14–15 with the President's casting vote) NV 10, unanimously V 6(1) and 3(c) as the applicant had not been present at his trial, by majority (23–5) V 6(1) in that the case had not been heard within a reasonable time.

Court dismissed by majority (18–2) the preliminary objection to jurisdiction *ratione temporis* as regards the complaint under 10, dismissed unanimously the objection of failure to exhaust domestic remedies as regards the complaint under 10, found by majority (12–8) NV 10, dismissed unanimously the objection of failure to exhaust domestic remedies as regards the complaints under 6, found by majority (17–3) V 6(1) and 3(c) on account of the applicant's absence from his trial, (19-1) V 6(1) on account of the length of the criminal proceedings.

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr Thór Vilhjálmsson (d) F Gölcüklü (pd/d), Mr F Matscher (pd) A Spielmann, Mrs E Palm (pd), Mr AN Loizou (pd), Sir John Freeland, Mr A B Baka, Mr M A Lopes Rocha (pd), Mr L Wildhaber, Mr G Mifsud Bonnici (pd), Mr D Gotchev, Mr P Jambrek, Mr K Jungwiert, Mr P Kûris (pd), Mr E Levits (pd), Mr J Casadevall, Mr P Van Dijk (pd).

Regarding the objection of lack of jurisdiction, *ratione temporis*, Turkey accepted the Court's jurisdiction only in respect of facts and events subsequent to 22 January 1990, when it deposited its declaration. In the instant case, however, the principal fact lay not in the applicant's statement to the journalists but in the Diyarbakir National Security Court's judgment of 26 March 1991, whereby the applicant was sentenced to 12 months' imprisonment for having 'defended an act punishable by law as a serious crime' under Turkish legislation, a judgment that was upheld by the Court of Cassation on 26 June 1991. It was that conviction and sentence, subsequent to Turkey's recognition of the Court's compulsory jurisdiction, which constituted the 'interference' within the meaning of A 10 of the Convention and whose justification under that Article the Court had to determine. This preliminary objection was accordingly dismissed. The objection of failure to exhaust domestic remedies was not raised when the admissibility of the application was being considered and there was therefore an estoppel.

The applicant's conviction and sentence by the Turkish courts for remarks made to journalists amounted to an interference with his exercise of his freedom of expression. His conviction and sentence were based on Articles 168 and 312 of the Turkish Criminal Code and accordingly the impugned interference was prescribed by law. At a time when serious disturbances were raging in south-east Turkey the applicant's statement, coming from a political figure well known in the region, could have an impact such as to justify the national authorities' taking a measure designed to maintain national security and public safety. The interference complained of therefore pursued legitimate aims under A 10(2). The applicant's statement as published in the national daily newspaper was both contradictory and ambiguous: It would seem difficult simultaneously to support the PKK, a terrorist organisation which resorted to violence to achieve its ends, and to declare oneself opposed to massacres; ambiguous because whilst the applicant disapproved of the massacres of women and children, he at the same time described them as 'mistakes' that anybody could make. The statement could not, however, be looked at in isolation. It had a special significance in the circumstances of the case, as the applicant must have realised. The interview coincided with murderous attacks carried out by the PKK on civilians in south-east Turkey, where there was extreme tension at the material time. In those circumstances the support given to the PKK by the former mayor of Diyarbakir, the most important city in south-east Turkey, in an interview published in a major national daily newspaper, had to be regarded as likely to exacerbate an already explosive situation in that region. Accordingly that penalty imposed on the applicant could reasonably be regarded as answering a pressing social need and the reasons adduced by the national authorities were relevant and sufficient. Having regard to all those factors and to the margin of appreciation which national authorities had in such a case, the interference in issue was proportionate to the legitimate aims pursued. There had consequently been no breach of A 10.

The object and purpose of A 6 taken as a whole showed that a person charged with a criminal offence was entitled to take part in the hearing. Moreover, paras 3(c) and 3(d) guaranteed to everyone charged with a criminal offence the right to defend himself in person and to examine or have examined witnesses, and those rights could not be exercised without the person concerned being present. The applicant was not requested to attend the hearing before the Diyarbakir National Security Court, which sentenced him to a 12-month prison term. In accordance with the Code of Criminal Procedure, the Aydin Assize Court had been asked to take evidence from him in

his defence, under powers delegated by the National Security Court. The fact that the applicant raised procedural objections or wished to address the court in Kurdish, as he did at the hearing in the Aydin Assize Court, in no way signified that he implicitly waived his right to defend himself and to appear before the Diyarbakir National Security Court. Waiver of the exercise of a right guaranteed by the Convention had to be established in an unequivocal manner. In view of what was at stake for the applicant, the National Security Court could not, if the trial was to be fair, give judgment without a direct assessment of the applicant's evidence given in person. If the applicant had been present at the hearing, he would have had an opportunity, in particular, to say what his intentions had been when he had made his statement and in what circumstances the interview had taken place, to summon journalists as witnesses or to seek production of the recording. Neither the 'indirect' hearing by the Aydin Assize Court nor the presence of the applicant's lawyers at the hearing before the Diyarbakir National Security Court could compensate for the absence of the accused. Such an interference with the rights of the defence could not be justified, regard being had to the prominent place held in a democratic society by the right to a fair trial within the meaning of the Convention. There had consequently been a breach of A 6(1) and 3(c).

The proceedings began on 30 August 1987 when the preliminary investigation in respect of the applicant was begun and ended on 18 July 1991, when the Court of Cassation's judgment was served. They therefore lasted for almost three years and 11 months. However, the Court could take cognisance of the complaint relating to the length of the criminal proceedings only from 22 January 1990, when the declaration whereby Turkey recognised the Court's compulsory jurisdiction was deposited. Nevertheless account had to be taken of the state of the proceedings at the time when the aforementioned declaration was deposited. On the critical date the proceedings had already lasted two years and five months. The reasonableness of the length of proceedings was to be assessed in the light of the circumstances of the case, regard being had to the criteria laid down in the Court's case-law. The proceedings were not particularly complex, the facts of the case being straightforward, notwithstanding the issues of jurisdiction that could arise. A 6 did not require a person charged with a criminal offence to cooperate actively with the judicial authorities. The applicant's conduct, even if it may to some extent have slowed down the proceedings, could not, on its own, explain such a length of time. Between 22 January 1990 (Turkey's declaration of recognition), and 18 July 1991, when the Court of Cassation's judgment was served, one year and six months elapsed. In that period the Diyarbakir National Security Court did not deliver its judgment until 26 March 1991, that it is to say nine months after the hearing of 20 June 1990 at the Aydin Assize Court, during which the applicant had refused to speak Turkish. There was a period of inactivity attributable to the judicial authorities between the hearing before the Diyarbakir Military Court on 15 December 1987 and the Military Court's decision of 18 April 1989. A 6(1) guaranteed to everyone against whom criminal proceedings were brought the right to a final decision within a reasonable time on the charge against him. It was for the Contracting States to organise their legal systems in such a way that their courts could meet that requirement. What was at stake in the case was important to the applicant as he was already in custody when he made his statement to the journalists and was sentenced to a further term of imprisonment by the Diyarbakir National Security Court. The length of the proceedings could not be regarded as reasonable. There had consequently been a violation of A 6(1).

Non-pecuniary damage (by majority (18-2) FF 40,000), costs and lawyers' fees (by majority (19–1) FF 30,000 less FF 20,980).

Cited: Barfod v DK (22.2.1989), Botten v N (19.2.1996), Colozza v I (12.2.1985), Handyside v UK (7.12.1976), Jersild v DK (23.9.1994), Lingens v A (8.7.1986), Mansur v TR (8.6.1995), Mitap and Müftüoglü v TR (25.3.1996), Monnell and Morris v UK (2.3.1987), Philis (No 2) v GR (27.6.1997), Yagci and Sargin v TR (8.6.1995).

Zanatta v France 00/101

[Application lodged 30.7.1997; Court Judgment 28.3.2000]

Aldo and Jean-Baptiste Zanatta complained about the length of compulsory purchase proceedings of their property. Following a decision by the local authority, the applicants applied to the Administrative Court on 1 March 1991. On 16 April 1992 the Administrative Court dismissed the application. The applicants appealed to the Conseil d'Etat which dismissed their appeal on 5 March 1997. They complained of the length of proceedings.

Court found unanimously V 6(1).

Judges: Sir Nicolas Bratza, President, Mr J-P Costa, Mr L Loucaides, Mrs F Tulkens, Mr W Fuhrmann, Mr K Jungwiert, Mr K Traja.

While proceedings challenging the lawfulness of the expropriation order related to the assessment of the public interest, it was the stage prior to the transfer of ownership itself and therefore the outcome had a direct impact on the applicant's right of property, a civil right within the meaning of the Convention. A 6 was applicable.

The proceedings had commenced on 1 March 1991 and ended on 5 March 1997; a period of 6 years. The reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case, taking into account the complexity of the case, conduct of the applicant and of the competent authorities. The period of inactivity in the Conseil d'Etat could not be justified by the conduct of the applicants. There had been a violation of A 6(1).

Non-pecuniary damage (FF 15,000 to each of the applicants), costs and expenses (FF 5,000).

Cited: Doustaly v F (23.4.1998), Guillemin v F (21.2.1997), Allan Jacobsson v S (25.10.1989).

Zander v Sweden (1994) 18 EHRR 175 93/54

[Application lodged 12.9.1988; Commission report 14.10.1992; Court Judgment 25.11.1993]

Mr Lennhart and Mrs Gunny Zander, husband and wife, owned a property adjacent to land on which a company, VAFAB, took delivery of and treated household and industrial waste, amongst other things. Analyses effected in October 1983 showed excessive levels of cyanide in wells in the area. In July 1986, VAFAB asked the Licensing Board to renew its permit and to allow it to expand its activities on the dump. The applicants, together with other landowners, objected. By decision of 13 March 1987, the Licensing Board granted VAFAB's request and dismissed the applicants' and the other owners' claim. It granted a permit with conditions. The applicants appealed to the Government, challenging the conditions set for the permit. The Government, as the final instance of appeal, upheld these and dismissed the appeal on 17 March 1988. The applicants complained that it was not possible for them to have the decision authorising VAFAB to increase its activities on the dump reviewed by a court.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr B Walsh, Mr A Spielmann, Mrs E Palm, Mr I Foighel, Mr AN Loizou, Mr MA Lopes Rocha, Mr D Gotchev.

With regard to the applicability of A 6(1), the applicants could arguably maintain that they were entitled under Swedish law to protection against the water in their well being polluted as a result of VAFAB's activities on the dump. There was a serious disagreement between the applicants and the authorities, the outcome of the dispute was directly decisive for the applicants' entitlement to protection against pollution of their well by VAFAB. Their appeal lodged with the Government involved a determination of one of their rights for the purposes of A 6. The applicants' claim was directly concerned with their ability to use the water in their well for drinking purposes, that ability was one facet of their right as owners of the land on which it was situated. The right of property was clearly a civil right within the meaning of A 6(1). A 6(1) therefore applied to the case.

The Government admitted that under Swedish law it was not possible at the material time for the applicants to have the Government's decision of 17 March 1988, upholding the Licensing Board's decision of 13 March 1987, reviewed by a court. Accordingly, there has been a violation of A 6(1).

Non-pecuniary damage (SEK 30,000 to the applicants jointly), costs and expenses (SEK 145,860 less FF 16,626).

Cited: Kraska v CH (19.4.1993) Oerlemans v NL (27.11.1991), Skärby v S (28.6.1990), Tre Traktörer AB v S (7.7.1989).

Zanghì v Italy 91/6

[Application lodged 16.4.1985; Commission report 11.12.1989; Court Judgment 19.2.1991 (merits), 10.2.1993 (A 50)]

Mr Claudio Zanghì, a university professor, complained that he had suffered damage from works his neighbour had carried out on a property adjoining his own. On 3 April 1982 he brought proceedings in the District Court. Judgment was delivered and filed on 9 May 1988 in favour of the applicant. On 27 September 1988 his neighbour appealed; the judgment of the Court of Appeal was still outstanding at the date of the European Court's judgment. In a judgment of 31 May 1990, which was filed in its registry on 25 June 1990 and became final on 26 September 1991, the Court of Appeal found against the neighbour and awarded the applicant, compensation in the amount of 298,000 lire, representing the value of a parcel of land that had been unlawfully occupied by Mrs D. He complained of length of proceedings and deprivation of peaceful enjoyment of his possessions.

Comm found unanimously V 6(1), NV P1A1.

Court unanimously found V 6(1), not necessary to examine P1A1.

Judges (merits): Mr R Ryssdal, President, Mr J Cremona, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert, Mr F Gölcüklü, Mr C Russo, Mr N Valticos, Mr SK Martens, Mr JM Morenilla.

Judges (A 50): Mr J Cremona, President, Mr Thór Vilhjálmsson, Mrs D Bindschedler-Robert (d), Mr F Gölcüklü, Sir Vincent Evans, Mr C Russo, Mr N Valticos, Mr SK Martens, Mr JM Morenilla.

Under A 6(1) everyone had the right to a final decision, within a reasonable time, on disputes over his civil rights and obligations. The Contracting States had the obligation to organise their legal systems so as to allow the courts to comply with that requirement. The reasonableness of the length of the proceedings had to be assessed in the light of the particular circumstances of the case. The case was not complex and a lapse of nine years could not be regarded as reasonable. Accordingly V 6(1).

In view of that conclusion it was unnecessary to examine P1A1.

Dismissed by majority (8–1) claim for just satisfaction, in view of the Court of Appeal's judgment.

Cited: Obermeier v A (28.6.1990), Union Alimentaria Sanders SA v E (7.7.1989).

Zappia v Italy 96/39

[Application lodged 15.5.1993; Commission report 6.7.1995; Court Judgment 26.9.1996]

Mr Giuseppe Zappia and his wife Giuseppa brought proceedings on 27 July 1963 against Mr B in the Reggio di Calabria District Court seeking damages for breach of a contract of sale relating to a flat under construction. By a judgment of 5 July 1968, deposited in the registry on 21 September 1968, the District Court assessed damages and confirmed the charging order which the applicants had been granted on 19 June 1964. The judgment was upheld by the Court of Appeal on 7 June 1969 and by the Court of Cassation in 1973. On 28 November 1969 the applicants served Mr B with a notice to comply. It produced no result and a second notice, served on 21 July 1977, was no more successful. On 5 December 1977, they applied to the judge responsible for enforcement proceedings to have the property sold so that they could be paid the sum due together with

interest and costs. The applicants complained of the length of proceedings which had still not concluded on the day of the European Court's judgment.

Comm found by majority (26–3) V 6.

Court dismissed by majority (8–1) the Government's preliminary objection of out of time application, found V 6(1).

Judges: Mr R Bernhardt, President, Mr F Matscher, Mr C Russo, Mr AN Loizou, Mr JM Morenilla (d), Mr MA Lopes Rocha, Mr L Wildhaber, Mr U Lôhmus, Mr E Levits.

The Court had to decide whether, and if so when, the right asserted by the applicants on 27 July 1963 actually became effective. It was that moment which constituted determination of a civil right, and therefore a final decision within the meaning of A 26. On 12 March 1973, the Court of Cassation upheld the decision of the lower courts in the applicants' favour. On 21 July 1977 the applicants served Mr B with a notice to comply. The enforcement proceedings had to be regarded as the second stage of the proceedings which began on 27 July 1963 – which in this case were not covered by the Italian declaration recognising the right of individual petition. The proceedings had not yet concluded. Accordingly, the government's preliminary objection regarding the application being out of time of the six-month period was dismissed.

The period to be taken into consideration did not begin on 27 July 1963, when proceedings were brought against Mr B in the Reggio di Calabria District Court, but only on 1 August 1973 when the Italian declaration under A 25 took effect. However, in order to determine the reasonableness of the length of time which had elapsed since that date, regard had to be had to the state of the case at the time. The relevant period had not yet ended, as the enforcement proceedings were still pending. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. There had been delays on the part of the applicants; however, their conduct alone did not explain the length of the proceedings. Thirteen hearings were adjourned, sometimes on account of a judge's transfer, sometimes by the court of its own motion and sometimes because the registry was not functioning correctly. In addition, the expert's supplementary report, which was ordered on 31 December 1992, had still not been filed at the registry. An expert worked in the context of judicial proceedings supervised by a judge, who remained responsible for the preparation and the speedy conduct of the trial. A period of more than 23 years for proceedings which were still pending and were of no particular complexity could not be regarded as reasonable.

Damage, costs and expenses (by majority (8–1) ITL 24,000,000).

Cited: Ausiello v I (21.5.1996), Billi v I (26.2.1993), Scopelliti v I (23.2.1993), Silva Pontes v P (23.3.1994).

Zeoli and 34 others v Italy 00/62

[Applications lodged between 31.1.1998 and 25.3.1998; Court Judgment 8.2.2000]

Mr Maurizio Zeoli and 34 others, all employed by the same company, complained about the length of administrative proceedings

Court found unanimously V 6(1).

Judges: Mrs E Palm, President, Mr B Conforti, Mr L Ferrari Bravo, Mr Gaukur Jörundsson, Mr B Zupancic, Mr T Pantiru, Mr R Maruste.

The period to be taken into consideration began between 23 October 1993 and 15 September 1994 and was still pending on 7 January 2000. Periods of more than five years, three months and six years and two months at one level of jurisdiction and still pending could not be considered reasonable in the circumstances of the case.

Non-pecuniary damage (ITL 12,000,000 for the first applicant), costs and expenses (ITL 3,000,000).

Cited: Bottazzi v I (28.7.1999).

Zielinski and Pradal and Gonzalez and Others v France 99/71

[Application lodged 5.7.1994, 19.8.1996 and 9.9.1996; Commission reports 9.9.1997 and 21.10.1998; Court Judgment 28.10.1999]

Mr Benoît Zielinski, Mr Patrick Pradal, Ms Jeanine Gonzalez, Ms Martine Mary, Ms Anita Delaquerrière, Mr Guy Schreiber, Ms Monique Kern, Mr Pascal Gontier, Ms Nicole Schreiber, Ms Josiane Memeteau and Mr Claude Cossuta worked for social-security bodies in Alsace-Moselle. On 28 March 1953 the representatives of the social-security offices of the Strasbourg region signed an agreement with the regional representatives of the trade unions under which a 'special difficulties allowance' was introduced for the staff of social-security bodies on the ground that applying the local law of the départements of Haut-Rhin, Bas-Rhin and Moselle was a particularly complicated task. Legal proceedings were brought by some staff members of the social-security offices with regard to the allowance and the applicants brought proceedings in the industrial tribunals. The applications of the applicants were allowed by the courts. By means of an amendment to the legislation, s 85, Law 94-43 of 18 January 1994, Parliament endorsed the amount of the allowance argued for by the State's representative and the health-insurance offices and did so with retrospective effect. The Constitutional Council ruled in a decision of 13 January 1994 that the provision was constitutional. Applying the new Act, the Court of Cassation quashed the judgments given in Mr Zielinski and Mr Pradal's favour by the Metz Court of Appeal and the Colmar Court of Appeal similarly reversed the judgments that had been given in favour of the other applicants. The applicants complained that the intervention of the State by means of retrospective legislation infringed the fair trial guarantee and except for Mr Zielinski and Mr Pradal they also complained, *inter alia*, of the length of the proceedings.

Comm found unanimously V 6(1) as regards the fairness of the proceedings, not necessary to consider 13, V 6(1) as regards length of proceedings in respect of Ms Gonzalez, Ms Mary, Ms Delaquerrière, Mr Schreiber, Ms Kern, Mr Gontier, Ms Schreiber, Ms Memeteau and Mr Cossuta.

Court unanimously found V 6(1) as regards the fairness of the proceedings, V 6(1) as regards the length of the proceedings in respect of Ms Gonzalez, Ms Mary, Ms Delaquerrière, Mr Schreiber, Ms Kern, Mr Gontier, Ms Schreiber, Ms Memeteau and Mr Cossuta, not necessary to examine 13.

Judges: Mr L Wildhaber, President, Mr L Ferrari Bravo, Mr L Caflisch, Mr J Makarczyk, Mr W Fuhrmann, Mr K Jungwiert, Mr M Fischbach, Mr B Zupancic, Mrs N Vajic, Mr J Hedigan, Mrs W Thomassen, Mrs M Tsatsa-Nikolovska, Mr T Pantiru, Mr E Levits, Mr K Traja, Mrs S Botoucharova, Mr A Bacquet (c), ad hoc judge.

While in principle the legislature was not precluded in civil matters from adopting new retrospective provisions to regulate rights arising under existing laws, the principle of the rule of law and the notion of fair trial enshrined in A 6 precluded any interference by the legislature, other than on compelling grounds of the general interest, with the administration of justice designed to influence the judicial determination of a dispute. The Court could not overlook the effect of the content of s 85 of the Act of 18 January 1994 (Law No 94-43), taken together with the method and timing of its adoption. The new legislation settled the terms of the dispute before the ordinary courts and did so retrospectively The relevant section was part of an Act on 'public health and social welfare'. It was only in the course of the parliamentary debates and shortly after the delivery of a court judgment that an amendment on the allowance was tabled. The section endorsed the position taken up by the State in pending proceedings. The majority of earlier decisions by the tribunals of fact had been favourable to the applicants. The financial risk adverted to by the Government could not in itself warrant the legislature's substituting itself both for the parties to the collective agreement and for the courts in order to settle the dispute. The adoption of s 85 in reality determined the substance of the dispute. The application of it by the domestic courts, in particular the Court of Cassation in its judgments of 2 March 1995, made it pointless to continue the proceedings. The social-security bodies performed a public-service mission and came under the supervision both of the minister responsible for social security and the Minister for Economic Affairs and Finances. The State was a party to the proceedings and the intervention of the

legislature had taken place at a time when legal proceedings to which the State was a party were pending. There had therefore been a violation of A 6(1) in respect of the right to a fair trial.

Ms Gonzalez, Ms Mary, Ms Delaquerrière, Mr Schreiber, Ms Kern, Mr Gontier, Ms Schreiber, Ms Memeteau and Mr Cossuta maintained that the proceedings did not take place within a reasonable time. The periods to be taken into consideration began on 17 and 28 August 1990, the dates of the applications to the Colmar industrial tribunal and ended with the Court of Cassation's judgment of 18 June 1996. The proceedings therefore lasted for almost five years and 10 months. The reasonableness of the length of proceedings had to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. The subject matter of the case before the domestic courts was complex. The applicants were not responsible for prolonging the proceedings. There had been delay before the Court of Appeal for which no persuasive explanation was put forward. Having regard to all the evidence, the reasonable time requirement in A 6(1) had been exceeded.

Having regard to the finding in respect of the fair trial, it was not necessary to rule on the complaint under A 13.

Damages, costs and expenses (FF 47,000 each to Mr Zielinski and Mr Pradal for pecuniary damage, FF 80,000 to Ms Gonzalez, Ms Mary, Ms Delaquerrière, Mr Schreiber, Ms Kern, Mr Gontier, Ms Schreiber, Ms Memeteau and Mr Cossuta for pecuniary and non-pecuniary damage, and FF 30,000 each to Mr Zielinski and Mr Pradal and FF 4,000 to each of the other nine applicants for costs and expenses).

Cited: Colozza v I (12.2.1985), National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v UK (23.10.1997), Papageorgiou v GR (22.10.1997), Stran Greek Refineries and Stratis Andreadis v GR (9.12.1994), Vernillo v F (20.2.1991).

Zilaghe v Italy 97/55

[Application lodged 11.10.1993; Commission report 28.11.1995; Court Judgment 2.9.1997]

Mr Augusto Zilaghe was a surveyor. On 12 February 1985 he applied to the Sardinia Regional Administrative Court for judicial review of a decision by his employer assigning him to a staff category lower than the one to which he considered himself to be entitled on the basis of the duties he actually performed. On 2 April 1996 the Administrative Court decided to join the application to another the applicant had lodged in 1990 before dismissing them both as being ill-founded. The judgment was deposited with the registry on 11 May 1996. The applicant complained of the length of proceedings.

Comm found by majority (23–6) V 6.

Court found by majority (8–1) A 6(1) not applicable.

Judges: Mr R Bernhardt, President, Mr C Russo, Mr N Valticos, Mr R Pekkanen (d), Mr AB Baka, Mr MA Lopes Rocha, Mr G Mifsud Bonnici, Mr P Kûris, Mr E Levits.

Disputes relating to the recruitment, careers and termination of service of civil servants were as a general rule outside the scope of A 6(1). In the present case the applicant sought only judicial review of his employer's decision to assign him to a staff category lower than the one to which he considered himself to be entitled. The dispute raised by him thus clearly related to his career and did not concern a 'civil' right within the meaning of A 6(1). Accordingly, A 6(1) was not applicable in the case.

Cited: Francesco Lombardo v I (26.11.1992), Massa v I (24.8.1993), Neigel v F (17.3.1997), Scollo v I (28.9.1995).

Zimmermann and Steiner v Switzerland (1984) 6 EHRR 17 83/5

[Application lodged 30.8.1979; Commission report 9.3.1982; Court Judgment 13.7.1983]

Mr Werner Zimmermann was a fitter and Mr Johann Steiner was retired. They were tenants in flats close to Zürich-Kloten airport. In 1974, they sought compensation from the Canton of Zürich for

the damage caused by the noise and air pollution resulting from the operation of the airport. The case was referred to the Federal Assessment Commission which rejected the applicants' claims by a decision of 6 October 1976, which was served on them on 7 March 1977. On 18 April 1977, the applicants lodged an administrative law appeal with the Federal Court. The Federal Court dismissed the appeal on 15 October 1980. The applicants complained of the length of the proceedings.

Comm found unanimously V 6(1).

Court found unanimously V 6(1).

Judges: Mr G Wiarda, President, Mrs D Bindschedler-Robert, Mr D Evrigenis, Mr F Matscher, Mr J Pinheiro Farinha, Mr L-E Pettiti, Mr R Macdonald.

The rights claimed were personal or property rights, they were private, and therefore civil within the meaning of A 6(1). The period to be taken into consideration began on 18 April 1977, when the applicants lodged their appeal, to 15 October 1980, when the Federal Court gave judgment, a period of nearly three and a half years. For a case dealt with at a single jurisdictional level, such a lapse of time was considerable and called for close scrutiny under A 6(1). The reasonableness of the length of proceedings had to be assessed according to the particular circumstances of the case. Regard had to be had, *inter alia*, to the complexity of the factual or legal issues raised by the case, to the conduct of the applicants and the competent authorities and to what was at stake for the former; in addition, only delays attributable to the State could justify a finding of a failure to comply with the reasonable time requirement. The case was not complex. The delays complained of could not be attributed to the applicants. The principal cause of the length of the proceedings was the manner in which the Federal Court carried out its task. The Convention placed a duty on the Contracting States to organise their legal systems so as to allow the courts to comply with the requirements of A 6(1) including that of trial within a reasonable time. Nonetheless, a temporary backlog of business did not involve liability on the part of the Contracting States provided that they took, with the requisite promptness, remedial action to deal with an exceptional situation of that kind. However, during most of the three and a half year period the applicants' case remained stationary. Having regard to all the circumstances of the case, the lapse of time was excessive; the difficulties undeniably encountered by the Federal Court could by then no longer be considered to be temporary, nor could they deprive the applicants of their right to a hearing within a reasonable time. There had therefore been a violation of A 6(1).

Costs and expenses (SF 2,460).

Cited: Buchholz v D (6.5.1981), Corigliano v I (10.12.1982), Foti and Others v I (10.12.1982), König v D (28.6.1978), Minelli v CH (25.3.1983).

Zonetti v Italy 91/66

[Application lodged 26.6.1987; Commission report 5.3.1991; Court Judgment 3.12.1991]

Mr Remo Zonetti took proceedings on 21 May 1985 before the Rome magistrates' court against the Istituto Nazionale della Previdenza Sociale in order to establish his entitlement to a disability pension. The investigation opened at the hearing of 25 September 1985, when the magistrates' court ordered a medical opinion. Following the hearing of 29 January 1986 the applicant's claim by the magistrates' court was dismissed. On 14 October 1986 the applicant instituted an appeal. At the end of a hearing held on 23 November 1989, the court dismissed the appeal. The text of the judgment was lodged with the registry on 20 July 1990. The applicant complained of the length of the proceedings.

Comm found by majority (10–1) V 6(1).

Court unanimously struck case out of the list.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr F Matscher, Mr L-E Pettiti, Mr B Walsh, Mr C Russo, Mr A Spielmann, Mr N Valticos, Mr SK Martens.

Notwithstanding several reminders from the registry, the applicant showed no interest in the proceedings before the Court. There had therefore been in this case an implied withdrawal which constituted a fact of a kind to provide a solution of the matter. There was no reason of public policy for continuing the proceedings. The Court noted previous cases in which it had reviewed the reasonableness of the length of civil proceedings in various Contracting States and a large number raising similar questions were still pending before the Court.

Cited: Brigandì v I (19.2.1991), Caleffi v I (24.5.1991), Capuano v I (25.6.1987), Owners' Services Ltd v I (28.6.1991), Pretto and Others v I (8.12.198), Pugliese (No 2) v I (24.5.1991), Santilli v I (19.2.1991), Vocaturo v I (24.5.1991), Zanghì v I (19.2.1991).

Zubani v Italy 96/30

[Application lodged 26.1.1988; Commission report 11.2.1995; Court Judgment 7.8.1996 (merits), 16.6.1999 (A 41)]

Mrs Maddalena, Mrs Letizia, Mrs Angela and Mr Aldo Zubani, sisters and brother, owned a farmhouse and adjoining land, which they used for agricultural purposes. On 21 August 1979, as part of the implementation of the general development plan, the Municipality of Brescia issued an order, under an expedited procedure, for the possession of the applicants' land, which was located in a zone intended for the construction of low-cost and social housing. On 16 July 1980 the Municipality took physical possession of the land, aided by the police, and an expropriation order was issued in October 1980. The applicants challenged the lawfulness of the measures taken by the authorities bringing several actions in the administrative courts and in the ordinary civil courts. In 1988 a new law gave legislative force to a principle laid down by the Court of Cassation that property on which public work had been carried out making it impossible to restore it to its owner was to be the subject of compulsory transfer to the public authorities and the person concerned was entitled to full compensation. On 26 April 1995 the District Court awarded the applicants compensation costs and expenses. Further proceedings ensued in 1996 to enforce judgment. The applicants complained, *inter alia*, of violation of their right to the peaceful enjoyment of their possessions.

Comm found unanimously V P1A1.

Court unanimously dismissed the Government's preliminary objections, found V P1A1.

Judges: Mr R Bernhardt, President, Mr F Matscher, Mr R Macdonald, Mr C Russo, Mr A Spielmann, Mr N Valticos, Sir John Freeland, Mr AB Baka, Mr U Lôhmus.

The applicants' application to the Commission was lodged before the entry into force of the 1988 Law. The case-law cited by the Government referred solely to expropriation and not to the expedited procedure for taking possession. In addition, it could not be regarded as constituting binding precedent. The preliminary objection of lateness was therefore dismissed as unfounded. On 28 November 1991, in the proceedings brought by the co-operatives against the applicants, the latter obtained a ruling ordering the Municipality to pay compensation for the damage sustained. Subsequently, they applied to the District Court and on 26 April 1995 the District Court fixed the sum to which they were entitled by way of compensation. Therefore, the applicants had exhausted their domestic remedies and that objection also had to be dismissed.

The interference in issue was a deprivation of property within the meaning of the second sentence of A 1, was provided for in s 3 of the 1988 Law and pursued a public-interest aim, namely the construction of housing for a category of disadvantaged persons. The legislature might reasonably choose to give preference to the interests of the community in cases of unlawful expropriation or occupation of land. Full compensation for the damage sustained by the proprietors concerned constituted sufficient reparation as the authorities were required to pay an additional sum corresponding to monetary depreciation since the day of the unlawful action. Nevertheless, the Law in question did not enter into force until 1988, when the litigation concerning the applicants' property had already lasted eight years and although the Municipality had initially, on 29

September 1995, agreed to pay to the persons concerned the sums awarded by the Brescia District Court, it later appeared reluctant to pay the whole amount. The size of the sum awarded by the Brescia District Court could not be decisive in this case in view of the length of the proceedings instituted by the applicants. Although the sum of ITL 1,015,255,000 might appear enormous in relation to the surface area actually occupied by the buildings, an additional factor to be borne in mind was that a new road was laid through the applicant's property which rendered access to the plots returned to them difficult. Having regard to all those considerations, a fair balance between protecting the right of property and the demands of the general interest had not been struck. Accordingly, there had been a violation of P1A1.

Compensation (ITL 1,000,000,000 overall to applicants).

Cited: Sporrong and Lönnroth v S (23.9.1982).

Zumtobel v Austria (1993) 17 EHRR 116 93/37

[Application lodged 10.6.1986; Commission report 30.6.1992; Court Judgment 24.8.1993]

FM Zumtobel, a commercial partnership, and its manager, Mr Martin Zumtobel, were the applicants whose property would have been divided into two parcels by the construction of a highway. The Highway authority issued expropriation proceedings which the partnership claimed, amongst other things, had violated its right of access to a court with full jurisdiction, guaranteed by A 6(1) the Convention.

Comm by different majorities on the various points found NV 6(1).

Court unanimously found NV 6 (1).

Judges: Mr R Ryssdal, President, Mr R Bernhardt, Mr F Matscher, Mr A Spielmann, Mr N Valticos, Mr R Pekkanen, Mr F Bigi, Mr MA Lopes Rocha, Mr J Makarczyk.

The decisions of the Office of the Government could give rise to appeals to the Constitutional Court and the Administrative Court, but the proceedings for the consideration of such appeals would be consistent with A 6(1) only if conducted before judicial bodies that had full jurisdiction. The Constitutional Court did not satisfy that requirement. In this case it could inquire into the contested proceedings only from the point of view of their conformity with the Constitution, which, did not make it possible for it to examine all the relevant facts. The submissions relied upon before the Administrative Court concerned solely the proceedings before the Government Office. The Administrative Court considered the submissions on their merits, point by point, without ever having to decline jurisdiction in replying to them or in ascertaining various facts. The review by the Administrative Court fulfilled the requirements of A 6(1). There was therefore access to a court with full jurisdiction.

The practice of the Austrian Administrative Court was not to hear the parties unless one of them expressly requested it to do so. As no such request was made by the applicant partnership, it had to be deemed to have waived unequivocally its right to a hearing. In addition the dispute did not give rise to questions of public interest making such a hearing necessary. Accordingly, there had been no breach of the requirements of A 6(1) concerning the public character of court hearings.

The other complaints raised by the applicants (the lack of independence of the experts and the failure to communicate several documents from the file) were examined and rejected by the Administrative Court under a procedure which was in conformity with A 6(1).

Cited: Albert and Le Compte v B (10.2.1983), Belilos v CH (29.4.1988), Le Compte, Van Leuven and De Meyere v B (23.6.1981), Obermeier v A (28.6.1990); Schuler-Zgraggen v CH (24.6.1993).

SECTION II

CHRONOLOGICAL ORDER

Case No	Case Name	Country	Date of Judgment
61/1	Lawless	IRL	14.11.1960, 7.4.1961, 1.7.1961
62/1	De Becker	B	27.3.1962
68/1	Belgian Linguistics	B	9.2.1967, 23.7.1968
68/2	Wemhoff	D	27.6.1968
68/3	Neumeister	A	27.6.1968, 7.5.1974
69/1	Stögmüller	A	10.11.1969
69/2	Matznetter	A	10.11.1969
70/1	Delcourt	B	17.1.1970
71/1	De Wilde, Ooms & Versyp	B	18.11.1970, 18.6.1971, 10.3.1972
71/2	Ringeisen	A	16.7.1971, 22.6.1972, 23.6.1973
75/1	Golder	UK	21.2.1975
75/2	National Union of Belgian Police	B	27.10.1975
76/1	Swedish Engine Drivers' Union	S	6.2.1976
76/2	Schmidt & Dahlström	S	6.2.1976
76/3	Engel and Others	NL	8.6.1976, 23.11.1976
76/4	Kjeldsen, Busk Madsen & Pedersen	DK	7.12.1976
76/5	Handyside	UK	7.12.1976
78/1	Ireland	UK	18.1.1978
78/2	Tyrer	UK	25.4.1978
78/3	König	D	28.6.1978, 10.3.1980
78/4	Klass and Others	D	6.9.1978
78/5	Luedicke, Belkacem & Koç	D	28.11.1978, 10.3.1980
79/1	Sunday Times	UK	26.4.1979, 6.11.1980
79/2	Marckx	B	13.6.1979
79/3	Airey	IRL	9.10.1979, 6.2.1981
79/4	Winterwerp	NL	24.10.1979, 27.11.1981
79/5	Schiesser	CH	4.12.1979
80/1	Deweer	B	27.2.1980
80/2	Artico	I	13.5.1980
80/3	Guzzardi	I	6.11.1980
80/4	Van Oosterwijck	B	6.11.1980
81/1	Buchholz	D	6.5.1981
81/2	Le Compte, Van Leuven & De Meyere	B	23.6.1981, 18.10.1982

Case No	Case Name	Country	Date of Judgment
81/3	Young, James & Webster	UK	13.8.1981, 18.10.1982
81/4	Dudgeon	UK	22.10.1981, 24.2.1983
81/5	X	UK	5.11.1981, 18.10.1982
82/1	Campbell & Cosans	UK	25.2.1982, 22.3.1983
82/2	Adolf	A	26.3.1982
82/3	Van Droogenbroeck	B	24.6.1982, 25.4.1983
82/4	Eckle	D	15.7.1982, 21.6.1983
82/5	Sporrong & Lönroth	S	23.9.1982, 18.12.1984
82/6	Piersack	B	1.10.1982, 26.10.1984
82/7	Foti and Others	I	10.12.1982, 21.11.1983
82/8	Corigliano	I	10.12.1982
83/1	Albert & Le Compte	B	10.2.1983, 24.10.1983
83/2	Silver and Others	UK	25.3.1983, 24.10.1983
83/3	Minelli	CH	25.3.1983
83/4	Pakelli	D	25.4.1983
83/5	Zimmermann & Steiner	CH	13.7.1983
83/6	Van der Mussele	B	23.11.1983
83/7	Pretto and Others	I	8.12.1983
83/8	Axen	D	8.12.1983
84/1	Öztürk	D	21.2.1984, 23.10.1984
84/2	Sutter	CH	22.2.1984
84/3	Luberti	I	23.2.1984
84/4	Goddi	I	9.4.1984
84/5	De Jong, Baljet & Van den Brink	NL	22.5.1984
84/6	Van der Sluijs, Zuiderveld & Klappe	NL	22.5.1984
84/7	Duinhof & Duijf	NL	22.5.1984
84/8	Campbell & Fell	UK	28.6.1984
84/9	Guincho	P	10.7.1984
84/10	Malone	UK	2.8.1984, 26.4.1985
84/11	Skoogström	S	2.10.1984
84/12	Sramek	A	2.10.1984
84/13	De Cubber	B	26.10.1984, 14.9.1987
84/14	McGoff	S	26.10.1984
84/15	Rasmussen	DK	28.11.1984
85/1	Colozza	I	12.2.1985
85/2	Rubinat	I	12.2.1985

Case No	Case Name	Country	Date of Judgment
85/3	Barthold	D	25.3.1985, 31.1.1986
85/4	X & Y	NL	26.3.1985
85/5	Bönisch	A	6.5.1985, 2.6.1986
85/6	Ashingdane	UK	28.5.1985
85/7	Abdulaziz, Cabales, & Balkandali	UK	28.5.1985
85/8	Vallon	I	3.6.1985
85/9	Can	A	30.9.1985
85/10	Benthem	NL	23.10.1985
86/1	James and Others	UK	21.2.1986
86/2	Feldbrugge	NLG	29.5.1986, 27.7.1987
86/3	Deumeland	D	29.5.1986
86/4	Van Marle and Others	NL	26.6.1986
86/5	Lithgow and Others	UK	8.7.1986
86/6	Lingens	A	8.7.1986
86/7	Glasenapp	D	28.8.1986
86/8	Kosiek	D	28.8.1986
86/9	Rees	UK	17.10.1986
86/10	Sanchez-Reisse	CH	21.10.1986
86/11	AGOSI	UK	24.10.1986
86/12	Gillow	UK	24.11.1986, 14.9.1987
86/13	Unterpertinger	A	24.11.1986
86/14	Bozano	F	18.12.1986. 2.12.1987
86/15	Johnston and Others	IRL	18.12.1986
87/1	Mathieu-Mohin & Clerfayt	B	2.3.1987
87/2	Weeks	UK	2.3.1987, 5.10.1988
87/3	Monnell & Morris	UK	2.3.1987
87/4	Leander	S	26.3.1987
87/5	Ettl and Others	A	23.4.1987
87/6	Erkner & Hofauer	A	23.4.1987, 29.9.1987
87/7	Poiss	A	23.4.1987, 29.9.1987
87/8	Lechner & Hess	A	23.4.1987
87/9	Capuano	I	25.6.1987
87/10	Baggetta	I	25.6.1987
87/11	Milasi	I	25.6.1987
87/12	O	UK	8.7.1987, 9.6.1988
87/13	H	UK	8.7.1987, 9.6.1988
87/14	W	UK	8.7.1987, 9.6.1988

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87/15	B	UK	8.7.1987, 9.6.1988
87/16	R	UK	8.7.1987, 9.6.1988
87/17	Baraona	P	8.7.1987
87/18	Lutz	D	25.8.1987
87/19	Englert	D	25.8.1987
87/20	Nölkenbockhoff	D	25.8.1987
87/21	Pudas	S	27.10.1987
87/22	Bodén	S	27.10.1987
87/23	Inze	A	28.10.1987
87/24	Ben Yaacoub	B	27.11.1987
87/25	H	B	30.11.1987
87/26	F	CH	18.12.1987
88/1	Bouamar	B	29.2.1988, 27.6.1988
88/2	Olsson	S	24.3.1988
88/3	Boyle & Rice	UK	27.4.1988
88/4	Belilos	CH	29.4.1988
88/5	Müller and Others	CH	24.5.1988
88/6	Ekbatani	S	26.5.1988
88/7	Pauwels	B	26.5.1988
88/8	Schönenberger & Durmaz	CH	20.6.1988
88/9	Berrehab	NL	21.6.1988
88/10	Plattform Ärtze für das Leben	A	21.6.1988
88/11	Schenk	CH	12.7.1988
88/12	Salabiaku	F	7.10.1988
88/13	Woukam Moudefo	F	11.10.1988
88/14	Norris	IRL	26.10.1988
88/15	Martins Moreira	P	26.10.1988
88/16	Nielsen	DK	28.11.1988
88/17	Brogan and Others	UK	29.11.1988, 30.5.1989
88/18	Barberà, Messegué & Jabardo	E	6.12.1988, 13.6.1989
88/19	Colak	D	6.12.1988
89/1	Ciulla	I	22.2.1989
89/2	Barfod	DK	22.2.1989
89/3	Bock	D	29.3.1989
89/4	Lamy	B	30.3.1989
89/5	Chappell	UK	30.3.1989
89/6	Neves e Silva	P	27.4.1989
89/7	Hauschildt	DK	24.5.1989
89/8	Oliveira Neves	P	25.5.1989
89/9	Langborger	S	22.6.1989
89/10	Eriksson	S	22.6.1989
89/11	Uniòn Alimentaria Sanders SA	E	7.7.1989
89/12	Bricmont	B	7.7.1989
89/13	Tre Traktörer AB	S	7.7.1989
89/14	Gaskin	UK	7.7.1989

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89/15	Soering	UK	7.7.1989
89/16	H	F	24.10.1989
89/17	Jacobsson, Allan	S	25.10.1989
89/18	Bezicheri	I	25.10.1989
89/19	Markt Intern Verlag GmbH & Klaus Beermann	D	20.11.1989
89/20	Kostovski	NL	20.11.1989, 29.3.1990
89/21	Chichlian & Ekindjian	F	29.11.1989
89/22	Brozicek	I	19.12.1989
89/23	Kamasinski	A	19.12.1989
89/24	Mellacher and Others	A	19.12.1989
90/1	Van der Leer	NL	21.2.1990
90/2	Håkansson & Sturesson	S	21.2.1990
90/3	Powell & Rayner	UK	21.2.1990
90/4	Kristinsson, Jón	ISL	1.3.1990
90/5	Groppera Radio AG and Others	CH	28.3.1990
90/6	Granger	UK	28.3.1990
90/7	B	A	28.3.1990
90/8	Kruslin	F	24.4.1990
90/9	Huvig	F	24.4.1990
90/10	Clerc	F	26.4.1990
90/11	Weber	CH	22.5.1990
90/12	Autronic AG	CH	22.5.1990
90/13	Obermeier	A	28.6.1990
90/14	Jacobsson, Mats	S	28.6.1990
90/15	Skärby	S	28.6.1990
90/16	E	N	29.8.1990
90/17	Fox, Campbell & Hartley	UK	30.8.1990, 27.3.1991
90/18	McCallum	UK	30.8.1990
90/19	Nyberg	S	31.8.1990
90/20	Cossey	UK	27.9.1990
90/21	Wassink	NL	27.9.1990
90/22	Windisch	A	27.9.1990, 28.6.1993
90/23	Darby	S	23.10.1990
90/24	Huber	CH	23.10.1990
90/25	Moreira de Azevedo	P	25.10.1990, 28.8.1991
90/26	Thynne, Wilson & Gunnell	UK	25.10.1990
90/27	Koendjbiharie	NL	25.10.1990
90/28	Keus	NL	25.10.1990
90/29	Delta	F	19.12.1990
91/1	Djeroud	F	23.1.1991
91/2	Fredin	S	18.2.1991
91/3	Moustaquim	B	18.2.1991
91/4	Isgrò	I	19.2.1991
91/5	Brigandì	I	19.2.1991

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91/6	Zanghì	I	19.2.1991, 10.2.1993
91/7	Santilli	I	19.2.1991
91/8	Motta	I	19.2.1991
91/9	Manzoni	I	19.2.1991
91/10	Pugliese	I	19.2.1991
91/11	Alimena	I	19.2.1991
91/12	Frau	I	19.2.1991
91/13	Ficara	I	19.2.1991
91/14	Viezzer	I	19.2.1991
91/15	Angelucci	I	19.2.1991
91/16	Maj	I	19.2.1991
91/17	Girolami	I	19.2.1991
91/18	Ferraro	I	19.2.1991
91/19	Triggiani	I	19.2.1991
91/20	Mori	I	19.2.1991
91/21	Colacioppo	I	19.2.1991
91/22	Adiletta and Others	I	19.2.1991
91/23	Vernillo	F	20.2.1991
91/24	Stocké	D	19.3.1991
91/25	Cardot	F	19.3.1991
91/26	Cruz Varas and Others	S	20.3.1991
91/27	Ezelin	F	26.4.1991
91/28	Asch	A	26.4.1991
91/29	Oberschlick	A	23.5.1991
91/30	Quaranta	CH	24.5.1991
91/31	Pugliese (No 2)	I	24.5.1991
91/32	Caleffi	I	24.5.1991
91/33	Vocaturo	I	24.5.1991
91/34	Letellier	F	26.6.1991
91/35	Owners' Services Ltd	I	28.6.1991
91/36	Philis	GR	27.8.1991
91/37	Demicoli	M	27.8.1991
91/38	Brandstetter	A	28.8.1991
91/39	FCB	I	28.8.1991
91/40	Muyldermans	B	23.10.1991
91/41	Helmers	S	29.10.1991
91/42	Andersson, Jan-Åke	S	29.10.1991
91/43	Fejde	S	29.10.1991
91/44	Wiesinger	A	30.10.1991
91/45	Borgers	B	30.10.1991
91/46	Vilvarajah and Others	UK	30.10.1991
91/47	Observer & Guardian	UK	26.11.1991
91/48	Sunday Times (No 2)	UK	26.11.1991
91/49	Kemmache	F	27.11.1991, 2.11.1993
91/50	Oerlemans	NL	27.11.1991
91/51	S	CH	28.11.1991
91/52	Koster	NL	28.11.1991

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91/53	Pine Valley Developments Ltd and Others	IRL	29.11.1991 9.2.1993
91/54	Vermeire	B	29.11.1991, 4.10.1993
91/55	Macaluso	I	3.12.1991
91/56	Manunza	I	3.12.1991
91/57	Gilberti	I	3.12.1991
91/58	Nonnis	I	3.12.1991
91/59	Trotto	I	3.12.1991
91/60	Cattivera	I	3.12.1991
91/61	Seri	I	3.12.1991
91/62	Gori	I	3.12.1991
91/63	Casadio	I	3.12.1991
91/64	Testa	I	3.12.1991
91/65	Covitti	I	3.12.1991
91/66	Zonetti	I	3.12.1991
91/67	Simonetti	I	3.12.1991
91/68	Dal Sasso	I	3.12.1991
91/69	Toth	A	12.12.1991
91/70	Clooth	B	12.12.1991, 5.3.1998
92/1	Andersson, Margareta & Roger	S	25.2.1992
92/2	Pfeifer & Plankl	A	25.2.1992
92/3	Nibbio	I	26.2.1992
92/4	Borgese	I	26.2.1992
92/5	Biondi	I	26.2.1992
92/6	Monaco	I	26.2.1992
92/7	Lestini	I	26.2.1992
92/8	G	I	26.2.1992
92/9	Andreucci	I	27.2.1992
92/10	Arena	I	27.2.1992
92/11	Cormio	I	27.2.1992
92/12	Diana	I	27.2.1992
92/13	Ridi	I	27.2.1992
92/14	Casciaroli	I	27.2.1992
92/15	Manieri	I	27.2.1992
92/16	Mastrantonio	I	27.2.1992
92/17	Idrocalee Srl	I	27.2.1992
92/18	Cardarelli	I	27.2.1992
92/19	Golino	I	27.2.1992
92/20	Taiuti	I	27.2.1992
92/21	Maciariello	I	27.2.1992
92/22	Manifattura FL	I	27.2.1992
92/23	Steffano	I	27.2.1992
92/24	Ruotolo	I	27.2.1992
92/25	Vorasi	I	27.2.1992
92/26	Cappello	I	27.2.1992
92/27	Caffè Roversi Spa	I	27.2.1992
92/28	Gana	I	27.2.1992

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92/29	Barbagallo	I	27.2.1992
92/30	Cifola	I	27.2.1992
92/31	Pandolfelli & Palumbo	I	27.2.1992
92/32	Pierazzini	I	27.2.1992
92/33	Tusa	I	27.2.1992
92/34	Cooperativa Parco Cuma	I	27.2.1992
92/35	Serrentino	I	27.2.1992
92/36	Lorenzi, Bernardini & Gritti	I	27.2.1992
92/37	Tumminelli	I	27.2.1992
92/38	Société Stenuit	F	27.2.1992
92/39	Birou	F	27.2.1992
92/40	B	F	25.3.1992
92/41	Campbell	UK	25.3.1992
92/42	Beldjoudi	F	26.3.1992
92/43	Editions Périscope	F	26.3.1992
92/44	Farmakopoulos	B	27.3.1992
92/45	X	F	31.3.1992
92/46	Rieme	S	22.4.1992
92/47	Vidal	B	22.4.1992
92/48	Castells	E	23.4.1992
92/49	Megyeri	D	12.5.1992
92/50	Lüdi	CH	15.6.1992
92/51	Thorgeir Thorgeirson	ISL	25.6.1992
92/52	Drozd & Janousek	F & E	26.6.1992
92/53	Tomasi	F	27.8.1992
92/54	Vijayanathan & Pusparajah	F	27.8.1992
92/55	Artner	A	28.8.1992
92/56	Schwabe	A	28.8.1992
92/57	FM	I	23.9.1992
92/58	Herczegfalvy	A	24.9.1992
92/59	Kolompar	B	24.9.1992
92/60	Croissant	D	25.9.1992
92/61	Pham Hoang	F	25.9.1992
92/62	Boddaert	B	12.10.1992
92/63	T	I	12.10.1992
92/64	Cesarini	I	12.10.1992
92/65	Salerno	I	12.10.1992
92/66	Mlynek	A	27.10.1992
92/67	Open Door & Dublin Well Woman	IRL	29.10.1992
92/68	Y	UK	29.10.1992
92/69	Abdoella	NL	25.11.1992
92/70	Brincat	I	26.11.1992
92/71	Lombardo, Francesco	I	26.11.1992
92/72	Lombardo, Giancarlo	I	26.11.1992
92/73	Olsson (No 2)	S	27.11.1992
92/74	MR	I	27.11.1992
92/75	Hennings	D	16.12.1992
92/76	Niemietz	D	16.12.1992
92/77	Hadjianastassiou	GR	16.12.1992
92/78	Sainte-Marie	F	16.12.1992

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92/79	De Geouffre de la Pradelle	F	16.12.1992
92/80	Edwards	UK	16.12.1992
93/1	W	CH	26.1.1993
93/2	Fey	A	24.2.1993
93/3	Funke	F	25.2.1993
93/4	Crémieux	F	25.2.1993
93/5	Miailhe	F	25.2.1993
93/6	Dobbertin	F	25.2.1993
93/7	Padovani	I	26.2.1993
93/8	Pizzetti	I	26.2.1993
93/9	De Micheli	I	26.2.1993
93/10	Salesi	I	26.2.1993
93/11	Trevisan	I	26.2.1993
93/12	Billi	I	26.2.1993
93/13	Messina	I	26.2.1993
93/14	Costello-Roberts	UK	25.3.1993
93/15	Kraska	CH	19.4.1993
93/16	Sibson	UK	20.4.1993
93/17	Modinos	CY	22.4.1993
93/18	Kokkinakis	GR	25.5.1993
93/19	Brannigan & McBride	UK	26.5.1993
93/20	Bunkate	NL	26.5.1993
93/21	K	A	2.6.1993
93/22	Melin	F	22.6.1993
93/23	Ruiz-Mateos	E	23.6.1993
93/24	Hoffmann	A	23.6.1993
93/25	Schuler-Zgraggen	CH	24.6.1993
93/26	Papamichalopoulos and Others	GR	24.6.1993
93/27	Lamguindaz	UK	23.6.1993
93/28	Colman	UK	28.6.1993
93/29	Sigurjónsson, Sigurdur	ISL	30.6.1993
93/30	Scuderi	I	24.8.1993
93/31	Massa	I	24.8.1993
93/32	Nortier	NL	24.8.1993
93/33	Sekanina	A	25.8.1993
93/34	Chorherr	A	25.8.1993
93/35	Pardo	F	20.9.1993, 10.7.1996, 29.4.1997
93/36	Saïdi	F	20.9.1993
93/37	Zumtobel	A	21.9.1993
93/38	Kremzow	A	21.9.1993
93/39	Klaas	D	22.9.1993
93/40	Istituto di Vigilanza	I	22.9.1993
93/41	Figus Milone	I	22.9.1993
93/42	Goisis	I	22.9.1993
93/43	Stamoulakatos	GR	26.10.1993
93/44	Darnell	UK	26.10.1993
93/45	Monnet	F	27.10.1993

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93/46	Dombo Beheer BV	NL	27.10.1993
93/47	Navarra	F	23.11.1993
93/48	Poitrimol	F	23.11.1993
93/49	A	F	23.11.1993
93/50	Scopelliti	I	23.11.1993
93/51	Imbrioscia	CH	24.11.1993
93/52	Informationsverein Lentia and Others	A	24.11.1993
93/53	Holm	S	25.11.1993
93/54	Zander	S	25.11.1993
94/1	Hurtado	CH	28.1.1994
94/2	Burghartz	CH	22.2.1994
94/3	Raimondo	I	22.2.1994
94/4	Tripodi	I	22.2.1994
94/5	Stanford	UK	23.2.1994
94/6	Fredin (No 2)	S	23.2.1994
94/7	Bendenoun	F	24.2.1994
94/8	Casado Coca	E	24.2.1994
94/9	Boyle	UK	28.2.1994
94/10	Ravnsborg	S	23.3.1994
94/11	Silva Pontes	P	23.3.1994
94/12	Muti	I	23.3.1994
94/13	Scherer	CH	25.3.1994
94/14	Van de Hurk	NL	19.4.1994
94/15	Saraiva de Carvalho	P	22.4.1994
94/16	Vallée	F	26.4.1994
94/17	Díaz Ruano	E	26.4.1994
94/18	Keegan	IRL	26.5.1994
94/19	Jacubowski	D	23.6.1994
94/20	De Moor	B	23.6.1994
94/21	Karlheinz Schmidt	D	18.7.1994
94/22	Vendittelli	I	18.7.1994
94/23	Wynne	UK	18.7.1994
94/24	Karakaya	F	26.8.1994
94/25	Otto-Preminger Institut	A	20.9.1994
94/26	Fayed	UK	21.9.1994
94/27	Debled	B	22.9.1994
94/28	Hentrich	F	22.9.1994, 3.7.1995, 3.7.1997
94/29	Lala	NL	22.9.1994
94/30	Pelladoah	NL	22.9.1994
94/31	Jersild	DK	23.9.1994
94/32	Hokkanen	SF	23.9.1994
94/33	Katte Klitsche de la Grange	I	27.10.1994
94/34	Kroon and Others	NL	27.10.1994
94/35	Murray	UK	28.10.1994
94/36	Boner	UK	28.10.1994
94/37	Maxwell	UK	28.10.1994
94/38	Demai	F	28.10.1994
94/39	Beaumartin	F	24.11.1994

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94/40	Kemmache (No 3)	F	24.11.1994
94/41	Ortenberg	A	25.11.1994
94/42	Stjerna	SF	25.11.1994
94/43	The Holy Monasteries	GR	9.12.1994, 1.9.1997
94/44	Greek Refineries Stran & Stratis Andreadis	GR	9.12.1994
94/45	Ruiz Torija	E	9.12.1994
94/46	Hiro Balani	E	9.12.1994
94/47	López Ostra	E	9.12.1994
94/48	Schouten & Meldrum	NL	9.12.1994
94/49	Vereinigung demokratischer Soldaten Österreichs & Gubi	A	19.12.1994
95/1	Friedl	A	31.1.1995
95/2	Vereniging Weekblad Bluf!	NL	9.2.1995
95/3	Welch	UK	9.2.1995
95/4	Allenet de Ribemont	F	10.2.1995 7.8.1996
95/5	Gea Catalán	E	10.2.1995
95/6	Gasus Dosier-und Fördertechnik GmbH	NL	23.2.1995
95/7	McMichael	UK	24.2.1995
95/8	Quinn	F	22.3.1995
95/9	Loizidou	TR	23.3.1995, 18.12.1996, 28.7.1998
95/10	Fischer	A	26.4.1995
95/11	Prager & Oberschlick	A	26.4.1995
95/12	Piermont	F	27.4.1995
95/13	Paccione	I	27.4.1995
95/14	Air Canada	UK	5.5.1995
95/15	Marlhens	F	24.5.1995
95/16	Kefalas and Others	GR	8.6.1995
95/17	Yagci & Sargin	TR	8.6.1995
95/18	Jamil	F	8.6.1995
95/19	Mansur	TR	8.6.1995
95/20	Tolstoy Miloslavsky	UK	13.7.1995
95/21	Nasri	F	13.7.1995
95/22	Morganti	F	13.7.1995
95/23	Kampanis	GR	13.7.1995
95/24	Van der Tang	E	13.7.1995
95/25	Kerojärvi	SF	19.7.1995
95/26	Vogt	D	26.9.1995
95/27	Diennet	F	26.9.1995
95/28	McCann and Others	UK	27.9.1995
95/29	G	F	27.9.1995
95/30	Spadea & Scalabrino	I	28.9.1995
95/31	Scollo	I	28.9.1995
95/32	Procola	L	28.9.1995
95/33	Masson & Van Zon	NL	28.9.1995
95/34	Schmautzer	A	23.10.1995

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95/35	Umlauft	A	23.10.1995
95/36	Gradinger	A	23.10.1995
95/37	Pramstaller	A	23.10.1995
95/38	Palaoro	A	23.10.1995
95/39	Pfarrmeier	A	23.10.1995
95/40	Agrotexim and Others	GR	24.10.1995
95/41	Iribarne Pérez	F	24.10.1995
95/42	Baegen	NL	27.10.1995
95/43	British-American Tobacco Co Ltd	NL	20.11.1995
95/44	Pressos Compania Naviera SA and Others	B	20.11.1995
95/45	Acquaviva	F	21.11.1995
95/46	Velosa Barreto	P	21.11.1995
95/47	Bryan	UK	22.11.1995
95/48	SW	UK	22.11.1995
95/49	CR	UK	22.11.1995
95/50	Ribitsch	A	4.12.1995
95/51	Ciricosta et Viola	I	4.12.1995
95/52	Terranova	I	4.12.1995
95/53	Bellet	F	4.12.1995
96/1	Fouquet	F	31.1.1996
96/2	Murray, John	UK	8.2.1996
96/3	A and Others	DK	8.2.1996
96/4	Botten	N	19.2.1996
96/5	Gül	CH	19.2.1996
96/6	Lobo Machado	P	20.2.1996
96/7	Vermeulen	B	20.2.1996
96/8	Hussain	UK	21.2.1996
96/9	Singh	UK	21.2.1996
96/10	Putz	A	22.2.1996
96/11	Bulut	A	22.2.1996
96/12	Mitap & Müftüoglu	TR	25.3.1996
96/13	Leutscher	NL	26.3.1996
96/14	Doorson	NL	26.3.1996
96/15	Goodwin	UK	27.3.1996
96/16	Phocas	F	23.4.1996
96/17	Remli	F	23.4.1996
96/18	Boughanemi	F	24.4.1996
96/19	Gustafsson	S	25.4.1996, 13.10.1997, 30.7.1998
96/20	Ausiello	I	21.5.1996
96/21	Benham	UK	10.6.1996
96/22	Pullar	UK	10.6.1996
96/23	Thomann	CH	10.6.1996
96/24	Amuur	F	23.6.1996
96/25	C	B	7.8.1996
96/26	Ferrantelli & Santangelo	I	I7.8.1996
96/27	Yagiz	TR	7.8.1996
96/28	Johansen	N	7.8.1996
96/29	Hamer	F	7.8.1996

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96/30	Zubani	I	7.8.1996
96/31	Matos e Silva, Lda and Others	P	16.9.1996
96/32	Gaygusuz	A	16.9.1996
96/33	Süßmann	D	16.6.1996
96/34	Akdivar and Others	TR	16.9.1996 1.4.1998
96/35	Buckley	UK	25.9.1996
96/36	Miailhe (No 2)	F	26.9.1996
96/37	Manoussakis and Others	GR	26.9.1996
96/38	Di Pede	I	26.9.1996
96/39	Zappia	I	26.9.1996
96/40	Stubbings and Others	UK	22.10.1996
96/41	Levages Prestations Services	F	23.10.1996
96/42	Ankerl	CH	23.10.1996
96/43	De Salvador Torres	E	24.10.1996
96/44	Guillot	F	24.10.1996
96/45	Cantoni	F	15.11.1996
96/46	Ahmet Sadik	GR	15.11.1996
96/47	Katikaridis and Others	GR	15.11.1996, 31.3.1998
96/48	Tsomtsos and Others	GR	15.11.1996, 31.3.1998
96/49	Bizzotto	GR	15.11.1996
96/50	Ceteroni	I	15.11.1996
96/51	Calogero Diana	I	15.11.1996
96/52	Domenichini	I	15.11.1996
96/53	Prötsch	A	15.11.1996
96/54	Chahal	UK	15.11.1996
96/55	Silva Rocha	P	15.11.1996
96/56	Wingrove	UK	25.11.1996
96/57	Nsona	NL	28.11.1996
96/58	Ahmut	NL	28.11.1996
96/59	Saunders	UK	17.12.1996
96/60	Terra Woningen BV	NL	17.12.1996
96/61	Vacher	F	17.12.1996
96/62	Duclos	F	17.12.1996
96/63	Ahmed	A	17.12.1996
96/64	Aksoy	TR	18.12.1996
96/65	Valsamis	GR	18.12.1996
96/66	Efstratiou	GR	18.12.1996
96/67	Scott	E	18.12.1996
97/1	Bouchelkia	F	29.1.1997
97/2	Mauer	A	18.2.1997
97/3	Nideröst-Huber	CH	18.2.1997
97/4	Laskey, Jaggard & Brown	UK	19.2.1997
97/5	Guillemin	F	21.2.1997, 2.9.1998
97/6	Van Raalte	NL	21.2.1997
97/7	De Haes & Gijsels	B	24.2.1997

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97/9	Gregory	UK	25.2.1997
97/10	Z	SF	25.2.1997
97/11	Muller	F	17.3.1997
97/12	Neigel	F	17.3.1997
97/13	Mantovanelli	F	18.3.1997
97/14	Foucher	F	18.3.1997
97/15	Paskhalidis and Others	GR	19.3.1997
97/16	Hornsby	GR	19.3.1997, 1.4.1998
97/17	Lukanov	BG	20.3.1997
97/18	Beïs	GR	20.3.1997
97/19	PL	F	2.4.1997
97/20	X, Y & Z	UK	22.4.1997
97/21	Stallinger & Kuso	A	23.4.1997
97/22	Van Mechelen and Others	NL	23.4.1997, 30.10.1997
97/23	HLR	F	29.4.1997
97/24	D	UK	2.5.1997
97/25	Eriksen	N	27.5.1997
97/26	Pauger	A	28.5.1997
97/27	Tsirlis & Kouloumpas	GR	29.5.1997
97/28	Georgiadis	GR	29.5.1997
97/29	Telesystem Tirol Kabeltelevision	A	9.6.1997
97/30	Pentidis and Others	GR	9.6.1997
97/31	Halford	UK	25.6.1997
97/32	Van Orshoven	B	25.6.1997
97/33	Philis (No 2)	GR	27.6.1997
97/34	Pammel	D	1.7.1997
97/35	Probstmeier	D	1.7.1997
97/36	Gustafson, Rolf	S	1.7.1997
97/37	Torri	I	1.7.1997
97/38	Manzoni, Giulia	I	1.7.1997
97/39	Kalaç	TR	1.7.1997
97/40	Gitonas and Others	GR	1.7.1997
97/41	Oberschlick (No 2)	A	1.7.1997
97/42	Akkus	TR	9.7.1997
97/43	Balmer-Schafroth	CH	26.8.1997
97/44	De Haan	NL	26.8.1997
97/45	Andersson, Anne-Marie	S	27.8.1997
97/46	MS	S	27.8.1997
97/47	AP, MP & TP	CH	29.8.1997
97/48	EL, RL & JO-L	CH	29.8.1997
97/49	Worm	A	29.8.1997
97/50	Spurio	I	2.9.1997
97/51	De Santa	I	2.9.1997
97/52	Gallo	I	2.9.1997
97/53	Lapalorcia	I	2.9.1997
97/54	Abenavoli	I	2.9.1997
97/55	Zilaghe	I	2.9.1997

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97/57	Viero	I	2.9.1997
97/58	Orlandini	I	2.9.1997
97/59	Ryllo	I	2.9.1997
97/60	Soldani	I	2.9.1997
97/61	Fusco	I	2.9.1997
97/62	Di Luca & Saluzzi	I	2.9.1997
97/63	Nicodemo	I	2.9.1997
97/64	Pizzi	I	2.9.1997
97/65	Scarfò	I	2.9.1997
97/66	Argento	I	2.9.1997
97/67	Trombetta	I	2.9.1997
97/68	Robins	UK	23.9.1997
97/69	Garyfallou AEBE	GR	24.9.1997
97/70	Coyne	UK	24.9.1997
97/71	Aydin	TR	25.9.1997
97/72	Mehemi	F	26.9.1997
97/73	El Boujaïdi	F	26.9.1997
97/74	RMD	CH	26.9.1997
97/75	Sur	TR	3.10.1997
97/76	Andronicou & Constantinou	CY	9.10.1997
97/77	Serves	F	20.10.1997
97/78	Radio ABC	A	20.10.1997
97/79	Pierre-Bloch	F	21.10.1997
97/80	Boujlifa	F	21.10.1997
97/81	Papageorgiou	GR	22.10.1997
97/82	Erdagöz	TR	22.10.1997
97/83	National & Provincial Building Society and Others	UK	23.10.1997
97/84	Johnson	UK	24.10.1997
97/85	Paez	S	30.10.1997
97/86	Szücs	A	24.11.1997
97/87	Werner	A	24.11.1997
97/88	Zana	TR	25.11.1997
97/89	Grigoriades	GR	25.11.1997
97/90	Sakik and Others	TR	26.11.1997
97/91	Stamoulakatos (No 2)	GR	26.11.1997
97/92	K-F	D	27.11.1997
97/93	Menteş and Others	TR	28.11.1997, 24.7.1998
97/94	Proszak	PL	16.12.1997
97/95	Trejedor García	E	16.12.1997
97/96	Raninen	SF	16.12.1997
97/97	Canea Catholic Church	GR	16.12.1997
97/98	Camenzind	CH	16.12.1997
97/99	Helle	SF	19.12.1997
97/100	Brualla Gómez de la Torre	E	19.12.1997
98/1	United Communist Party of Turkey and Others	TR	30.1.1998
98/2	Higgins and Others	F	19.2.1998
98/3	Dalia	F	19.2.1998

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98/4	Huber	F	19.2.1998
98/5	Paulsen-Medalen & Svensson	S	19.2.1998
98/6	Jacobsson, Allan (No 2)	S	19.2.1998
98/7	Bowman	UK	19.2.1998
98/8	Guerra and Others	I	19.2.1998
98/9	Bahaddar	NL	19.2.1998
98/10	Edificaciones March Gallego SA	E	19.2.1998
98/11	Kaya	TR	19.2.1998
98/12	Larissis and Others	GR	24.2.1998
98/13	Botta	I	24.2.1998
98/14	Pafitis and Others	GR	26.2.1998
98/15	Marte & Achberger	A	5.3.1998
98/16	Kopp	CH	25.3.1998
98/17	Belziuk	PL	25.3.1998
98/18	Petrovic	A	27.3.1998
98/19	JJ	NL	27.3.1998
98/20	KDB	NL	27.3.1998
98/21	Reinhardt & Slimane	F	31.3.1998
98/22	Daud	P	21.4.1998
98/23	Estima Jorge	P	21.4.1998
98/24	Pailot	F	22.4.1998
98/25	Richard	F	22.4.1998
98/26	SR	I	23.4.1998
98/27	Fisanotti	I	23.4.1998
98/28	Doustaly	F	23.4.1998
98/29	Bernard	F	23.4.1998
98/30	Selçuk & Asker	TR	24.4.1998
98/31	Mavronichis	CY	24.4.1998
98/32	Henra	F	29.4.1998
98/33	Leterme	F	29.4.1998
98/34	Gautrin and Others	F	20.5.1998
98/35	Schöpfer	CH	20.5.1998
98/36	Vasilescu	RO	22.5.1998
98/37	Hozee	NL	22.5.1998
98/38	Gündem	TR	25.5.1998
98/39	Kurt	TR	25.5.1998
98/40	Socialist Party and Others	TR	25.5.1998
98/41	Maillard	F	9.6.1998
98/42	Cazenave de la Roche	F	9.6.1998
98/43	McGinley & Egan	UK	9.6.1998, 28.1.2000
98/44	LCB	UK	9.6.1998
98/45	Twalib	GR	9.6.1998
98/46	Teixeira de Castro	P	9.6.1998
98/47	Bronda	I	9.6.1998
98/48	Tekin	TR	9.6.1998
98/49	Incal	TR	9.6.1998
98/50	Sidiropoulos and Others	GR	10.7.1998
98/51	Tinnelly & Sons Ltd & McElduff and Others	UK	10.7.1998
98/52	Güleç	TR	27.7.1998

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98/53	Ergi	TR	28.7.1998
98/54	Omar	F	29.7.1998
98/55	Guerin	F	29.7.1998
98/56	Le Calvez	F	29.7.1998
98/57	Valenzuela Contreras	E	30.7.1998
98/58	Aerts	B	30.7.1998
98/59	Oliveira	CH	30.7.1998
98/60	Sheffield & Horsham	UK	30.7.1998
98/61	Avis Entreprises	GR	30.7.1998
98/62	Clube de Futebol União de Coimbra	P	30.7.1998
98/63	Ali	CH	5.8.1998
98/64	Contrada	I	24.8.1998
98/65	Soumare	F	24.8.1998
98/66	Lambert	F	24.8.1998
98/67	Couez	F	24.8.1998
98/68	Benkessiouer	F	24.8.1998
98/69	Hertel	CH	25.8.1998
98/70	Ahmed and Others	UK	2.9.1998
98/71	Yasa	TR	2.9.1998
98/72	Erkalo	NL	2.9.1998
98/73	Lauko	SK	2.9.1998
98/74	Kadubec	SK	2.9.1998
98/75	BB	F	7.9.1998
98/76	Portington	GR	23.9.1998
98/77	Demir and Others	TR	23.9.1998
98/78	Aka	TR	23.9.1998
98/79	Aytekin	TR	23.9.1998
98/80	A	UK	23.9.1998
98/81	Steel and Others	UK	23.9.1998
98/82	McLeod	UK	23.9.1998
98/83	Petra	RO	23.9.1998
98/84	Lehideux & Isorni	F	23.9.1998
98/85	Malige	F	23.9.1998
98/86	IA	F	23.9.1998
98/87	Hatami	S	23.9.1998
98/88	Assenov and Others	B	28.10.1998
98/89	Pérez de Rada Cavanilles	E	28.10.1998
98/90	Aït-Mouhoub	F	28.10.1998
98/91	Osman	UK	28.10.1998
98/92	Castillo Algar	E	28.10.1998
98/93	Söderbäck	S	28.10.1998
98/94	Çiraklar	TR	28.10.1998
98/95	Podbielski	PL	30.10.1998
98/96	Styranowski	PL	30.10.1998
98/97	FE	F	30.10.1998
99/1	Fressoz & Roire	F	21.1.1999
99/2	Garcia Ruiz	E	21.1.1999
99/3	Janowski	PL	21.1.1999
99/4	Van Geyseghem	B	21.1.1999

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99/5	Beer & Regan	D	18.2.1999
99/6	Waite & Kennedy	D	18.2.1999
99/7	Matthews	UK	18.2.1999
99/8	Buscarini and Others	RSM	18.2.1999
99/9	Larkos	CY	18.2.1999
99/10	Hood	UK	18.2.1999
99/11	Cable and Others	UK	18.2.1999
99/12	Laino	I	18.2.1999
99/13	Papachelas	GR	25.3.1999, 4.4.2000
99/14	Nikolova	BG	25.3.1999
99/15	Iatridis	GR	25.3.1999
99/16	Pélissier & Sassi	F	25.3.1999
99/17	Musial	PL	25.3.1999
99/18	Chassagnou and Others	F	29.4.1999
99/19	TW	M	29.4.1999
99/20	Aquilinia	M	29.4.1999
99/21	Ledonne (Nos 1 & 2)	I	12.5.1999
99/22	Saccomanno	I	12.5.1999
99/23	Tromsø & Stensaas	N	20.5.1999
99/24	Rekvényi	H	20.5.1999
99/25	Ogur	TR	20.5.1999
99/26	Caillot	F	4.6.1999
99/27	Nunes Violante	P	8.6.1999
99/28	Matter	SK	5.7.1999
99/29	Ceylan	TR	8.7.1999
99/30	Arslan	TR	8.7.1999
99/31	Gerger	TR	8.7.1999
99/32	Polat	TR	8.7.1999
99/33	Karats	TR	8.7.1999
99/34	Erdoğdu & Ince	TR	8.7.1999
99/35	Baskaya & Okçuoğlu	TR	8.7.1999
99/36	Okçuoğlu	TR	8.7.1999
99/37	Sürek & Özdemir	TR	8.7.1999
99/38	Sürek (Nos 1, 2, 3 & 4)	TR	8.7.1999
99/39	Tanrikulu	TR	8.7.1999
99/40	Çakici	TR	8.7.1999
99/41	Scarth	UK	22.7.1999
99/42	Santos	P	22.7.1999
99/43	Bottazzi	I	28.7.1999
99/44	AP	I	28.7.1999
99/45	Ferrari	I	28.7.1999
99/46	Di Mauro	I	28.7.1999
99/47	Immobiliare Saffi	I	28.7.1999
99/48	Selmouni	F	28.7.1999
99/49	Douiyeb	NL	4.8.1999
99/50	Bosio & Moretti	I	6.9.1999
99/51	Buscemi	I	16.9.1999
99/52	Smith & Grady	UK	27.9.1999, 25.7.2000

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99/53	Lustig-Prean & Beckett	UK	27.9.1999, 25.7.2000
99/54	Dalban	RO	28.9.1999
99/55	Öztürk	TR	28.9.1999
99/56	Moore & Gordon	UK	29.9.1999
99/57	Smith & Ford	UK	29.9.1999
99/58	Serre	F	29.9.1999
99/59	Djaid	F	29.9.1999
99/60	Donsimoni	F	5.10.1999
99/61	Conceição Gavina	P	5.10.1999
99/62	Perks and Others	UK	12.10.1999
99/63	Riera Blume and Others	E	14.10.1999
99/64	Humen	PL	15.10.1999
99/65	Gelli	I	19.10.1999
99/66	Maini	F	26.10.1999
99/67	Ceriello	I	26.10.1999
99/68	Scalvini	I	26.10.1999
99/69	Calor Sud	I	26.10.1999
99/70	Varipati	GR	26.10.1999
99/71	Zielinski & Pradal & Gonzalez and Others	F	28.10.1999
99/72	Brumarescu	RO	28.10.1999
99/73	Wille	FL	28.10.1999
99/74	Escoubet	B	28.10.1999
99/75	GMN	I	2.11.1999
99/76	Vitale and Others	I	2.11.1999
99/77	LG	I	2.11.1999
99/78	Ghilino	I	2.11.1999
99/79	Špaček sro	CZ	9.11.1999
99/80	Aprile de Puoti	I	9.11.1999
99/81	Debboub alias Husseini Ali	F	9.11.1999
99/82	Arnò	I	9.11.1999
99/83	Bargagli	I	9.11.1999
99/84	MC	I	9.11.1999
99/85	Gozalvo	F	9.11.1999
99/86	EP	I	16.11.1999
99/87	Marques Gomes Galo	P	23.11.1999
99/88	Galinho Carvalho Matos	P	23.11.1999
99/89	Arvois	F	23.11.1999
99/90	Hashman & Harrup	UK	25.11.1999
99/91	Nilsen & Johnsen	N	25.11.1999
99/92	Lughofer, Ernst & Anna	A	30.11.1999
99/93	Baghli	F	30.11.1999
99/94	Bouilly	F	7.12.1999
99/95	Pellegrin	F	8.12.1999
99/96	Freedom & Democracy Party (ÖZDEP)	TR	8.12.1999
99/97	De Blasiis	I	14.12.1999
99/98	Khalfaoui	F	14.12.1999
99/99	Ferreira De Sousa & Costa Araújo	P	14.12.1999
99/100	AM	I	14.12.1999

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99/104	Ediltes SNC	I	14.12.1999
99/105	Cittadini & Ruffini	I	14.12.1999
99/106	I	I	14.12.1999
99/107	Cantacessi	I	14.12.1999
99/108	Cassetta	I	14.12.1999
99/109	Castelli	I	14.12.1999
99/110	Aiello	I	14.12.1999
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99/112	P	I	14.12.1999
99/113	Privitera	I	14.12.1999
99/114	Muso	I	14.12.1999
99/115	Di Rosa	I	14.12.1999
99/116	F	I	14.12.1999
99/117	Masi	I	14.12.1999
99/118	Iadanza	I	14.12.1999
99/119	Ercolino & Ambrosino	I	14.12.1999
99/120	GBZ, LZ & SZ	I	14.12.1999
99/121	T	UK	16.12.1999
99/122	V	UK	16.12.1999
99/123	GS	A	21.12.1999
99/124	WR	A	21.12.1999
99/125	Salgueiro Da Silva Mouta	P	21.12.1999
99/126	Demirtepe	F	21.12.1999
99/127	Freitas Lopes	P	21.12.1999
00/1	Beyeler	I	5.1.2000
00/2	Quadrelli	I	11.1.2000
00/3	Almeida Garrett, Mascarenhas Falcao and Others	P	11.1.2000
00/4	Seidel	F	11.1.2000
00/5	News Verlags GmbH & CoKG	A	11.1.2000
00/6	Rodrigues Carolino	P	11.1.2000
00/7	Palmigiano	I	11.1.2000
00/8	Agga	GR	25.1.2000
00/9	Miragall Escolano and Others	E	25.1.2000
00/10	Blaisot	F	25.1.2000
00/11	Slimane-Kaid	F	25.1.2000
00/12	Ignaccolo-Zenide	RO	25.1.2000
00/13	Cappellaro	I	25.1.2000
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00/15	Nardone	I	25.1.2000
00/16	Ronzulli	I	25.1.2000
00/17	Abbate	I	25.1.2000
00/18	Tripodi	I	25.1.2000
00/19	Siega & Seven others	I	25.1.2000
00/20	Adamo	I	25.1.2000
00/21	Salvatori & Gardin	I	25.1.2000
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00/23	Glebe Visconti	I	25.1.2000

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00/28	Vinci	I	25.1.2000
00/29	S	I	25.1.2000
00/30	Tarsia and Others	I	25.1.2000
00/31	Morese	I	25.1.2000
00/32	M (Case no 40940)	I	25.1.2000
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00/34	Scarano	I	25.1.2000
00/35	Battistelli	I	25.1.2000
00/36	R	I	25.1.2000
00/37	F	I	25.1.2000
00/38	D'Onofrio	I	25.1.2000
00/39	LSrl	I	25.1.2000
00/40	Petix	I	25.1.2000
00/41	Paderni	I	25.1.2000
00/42	Mazurek	F	1.2.2000
00/43	Thery	F	1.2.2000
00/44	Majaric	SLO	8.2.2000
00/45	Trotta	I	8.2.2000
00/46	Chierici	I	8.2.2000
00/47	Quinci	I	8.2.2000
00/48	Caliri	I	8.2.2000
00/49	Paradiso	I	8.2.2000
00/50	Pio	I	8.2.2000
00/51	Raglione	I	8.2.2000
00/52	Campomizzi	I	8.2.2000
00/53	Berrettari	I	8.2.2000
00/54	Ghezzi	I	8.2.2000
00/55	Parisse	I	8.2.2000
00/56	Scuderi	I	8.2.2000
00/57	Delicata	I	8.2.2000
00/58	Stefanelli	RSM	8.2.2000
00/59	Mosca	I	8.2.2000
00/60	AB	I	8.2.2000
00/61	Monti	I	8.2.2000
00/62	Zeoli and 34 Others	I	8.2.2000
00/63	Pupillo	I	8.2.2000
00/64	Capoccia	I	8.2.2000
00/65	Voisine	F	8.2.2000
00/66	McGonnell	UK	8.2.2000
00/67	Cooke, Michael Edward	A	8.2.2000
00/68	Prinz, Josef	A	8.2.2000
00/69	Caballero	UK	8.2.2000
00/70	Kurt Nielsen	DK	15.2.2000
00/71	Garcia Manibardo	E	15.2.2000
00/72	Roselli	I	15.2.2000

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00/77	Padalino	I	15.2.2000
00/78	Italiano	I	15.2.2000
00/79	Guagenti	I	15.2.2000
00/80	Rando	I	15.2.2000
00/81	Amann	CH	16.2.2000
00/82	Fitt	UK	16.2.2000
00/83	Rowe & Davis	UK	16.2.2000
00/84	Jasper	UK	16.2.2000
00/85	Gast & Popp	D	25.2.2000
00/86	Fernandes Magro	P	29.2.2000
00/87	Fuentes Bobo	E	29.2.2000
00/88	Krèmáø and Others	CZ	3.3.2000
00/89	Caliendo	I	14.3.2000
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Criminal charge: Article 6

Court Judgments

Delcourt v B 70/1 (Cassation proceedings); Adolf v A 82/2 (nature of criminal charge); Albert & Le Compte v B 83/1 (medical disciplinary proceedings); Öztürk v D 84/1 (regulatory road traffic offence); Lutz v D 87/18 (regulatory road traffic offence); Tre Traktörer v S 89/13 (revocation of alcohol licence); Weber v CH 90/11 (breach of confidentiality proceedings); Raimondo v I 94/3 (preventive measure applied to Mafia suspect); Bendenoun v F 94/7 (tax offence); Ravnsborg v S 94/10 (fines proceedings); Air Canada v UK 95/14 (customs offence); Schmautzer v A 95/34 (road traffic offence); Umlauft v A 95/35 (road traffic offence); Gradinger v A 95/36 (road traffic offence); Pramstaller v A 95/37 (planning application); Palaoro v A 95/38 (road traffic offence); Pfarrmeier v A 95/39 (road traffic offence); Putz v A 96/10 (bankruptcy proceedings); Benham v UK 96/21 (community tax proceedings); AP, MP, TP v CH 97/47 (tax proceedings); EL, RL & JO-L v CH 97/48 (tax proceedings); Garyfallou AEBE v GR 97/69 (violation of import/export rules); Serves v F 97/77 (investigation of army captain); Piere-Bloch v F 97/79 (election dispute); Szücs v A 97/86 (compensation for detention pending trial); JJ v NL 98/19 (fiscal dispute); Hozee v NL 98/37 (fiscal penalty); Aerts v B 98/58 (psychiatric detention); Lauko v SK 98/73 (commission of 'minor offence'); Kadubec v SK 98/74 (commission of minor public order offence); Steel and Others v UK 98/81 (breach of the peace proceedings); Malige v F 98/85 (deduction of penalty points from driving licence); Moore & Gordon v UK 99/56 (court martial); Escoubet v B 99/74 (review of temporary driving licence).

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Defamation: Articles 6, 8, 10

(see also Expression, freedom of)

Court Judgments

Minelli v CH 83/3 (private prosecution and costs order); Lingens v A 86/6 (journalist commenting on character and work of elected official); Oberschlick v A 91/29 (journalist publishing draft criminal charges against Secretary General of Austrian Liberal Party); Helmers v S 91/41 (appeal proceedings); Thorgeir Thorgeirson v ISL 92/51 (writer's allegations of police brutality); Castells v E 92/48 (conviction of MP for insulting government); Schwabe v A 92/56 (reproach of a person with a criminal offence); Holm v S 93/53 (composition of jury); Prager and Oberschlick v A 95/11 (defamation of judges); Tolstoy Miloslavsky v UK 95/20 (security for costs condition of appeal); De Haes and Gijsels v B 97/7 (journalist strongly criticising judges); Oberschlick (No 2) v A 97/41 (journalist insulting politician); Bladet Tromso and Stensaas v N 99/23 (publication of non public official document); Nilsen & Johnsen 99/91 (statements made against book struck out as null and void); Bergens Tiende and Others v N 00/144 (newspaper reporting cosmetic surgery complaints); Constantinescu v RO 00/168 (statements made during dispute with teachers' union leaders).

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Detention and liberty: Article 5

Court Judgments

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Sakik and Others v TR 97/90 (lawfulness of detention, promptness); K-F v D 97/92 (detention for leaving flat with outstanding bills); Raninen v SF 97/96 (detention of conscript for refusing service); Kurt v TR 98/39 (detention and disappearance); Aerts v B 98/58 (psychiatric detention); Contrada v I 98/64 (length of detention); Soumare v F 98/65 (review of lawfulness of detention); Erkalo v NL 98/72 (psychiatric detention); Demir and Others v TR 98/77 (length of detention, promptness before judge); Steel and Others v UK 98/81 (detention for breach of the peace); IA v F 98/86 (length of detention); Assenov and Others v BG 98/88 (length of detention, challenge); Hood v UK 99/10 (military detention); Nikolova v BG 99/14 (promptness before court); Musial v PL 99/17 (psychiatric detention); TW v M 99/19 (lawfulness of detention); Acquilina v M 99/20 (lawfulness of detention); Gerger v TR 99/31 (parole provisions); Çakici v TR 99/40 (detention and disappearance); Douiyeb v NL 99/49 (lawfulness of detention); Perks and Others v UK 99/62 (detention for non-payment of community charge); Riera Blume and Others v E 99/63 (detention of sect members for de-programming); Debboub alias Husseini Ali v F 99/81 (length of detention on remand); T v UK 99/121 (detention of juvenile); V v UK 99/122 (detention of juvenile); Caballero v UK 00/69 (automatic refusal of bail); Stephen Jordan v UK 00/90 (detention of soldier); Curley v UK 00/106 (review of detention); Baranowski v PL 00/108 (lawfulness of detention); Witwold Litwa v PL 00/114 (detention of pensioner at sobering up centre); Labita v I 00/125 (promptness before court); Punzelt v CZ 00/129 (length of detention pending extradition); Cesky v CZ 00/158 (length of detention on remand); Timurtas v TR 00/161 (detention and disappearance); Sabeur Ben Ali v M 00/172 (review of lawfulness of detention); Niedbala v PL 00/173 (promptness before court); Dikme v TR 00/175 (length of detention); Trzaska v PL 00/178 (length of detention on remand); Barfuss v CZ 00/199 (length of detention on remand); Jecius v LT 00/200 (length and lawfulness of detention).

Commission Decisions and Reports

East African Asians v UK (14.12.1973) 78A/5 (restrictions on admission to UK of Asian UK citizens and commonwealth residents); Kamma v NL (Rep 14.7.1974) 1/4 (lawfulness of detention on remand); X v N (19.12.1974) 2/52 (compensation for detention); X v B (13.3.1975) 2/108 (detained on decision of Judges' Council Chamber); X v D (9.7.1975) 3/86 (length of detention, promptness before judge); X v NL (26.5.1975) 3/90 (removal at disposal of Government); X v D (10.12.1975) 3/92 (psychiatric detention for observation); X v B (2.10.1975) 3/139 (continued detention in public protection institution); X v NL (30.9.1975) 5/35 (temporary admission to home for mentally ill following request by wife); S v D (10.12.1975) 5/80 (compensation for detention); X v A (8.3.1976) 5/69 (length of detention on remand); X v UK (21.5.1976) 5/53 (detention with view to extradition to Germany); Huber v A (5.7.1976) 6/65 (compensation for detention); X v D (12.7.1976) 6/182 (detention in mental hospital); Lynas v CH (6.10.1976) 6/141 (detention pending extradition to US); X v D (12.7.1976) 6/182 (detention in mental hospital); X v UK (14.5.1977) 8/106 (psychiatric detention); X v B (10.12.1976) 8/161 (lawfulness of detention with view to extradition); Haase v D (Rep 12.7.1977) 11/78 (length of detention of law graduate reserve captain detained for espionage); Krzycki v D (Rep 9.3.1978) 13/57 (lawfulness of detention); Krause v CH (3.10.1978) 13/73 (detention in solitary confinement); Arrowsmith v UK (Rep 12.10.1978) 19/5 (conviction and sentence for leafleting Northern Ireland soldiers to leave duty); Christinet v CH (Rep 1.3.1979) 17/35 (length of detention following revocation of conditional release); Peyer v CH (Rep 8.3.1979) 15/105 (placing adult under guardianship in institution); Schertenleib v CH (12.7.1979) 17/180 (length and reasons for detention); Bonnechaux v CH (Rep 5.12.1979) 18/100 (detention on remand of elderly person); X v A (13.12.1979) 18/154 (forced blood test in paternity proceedings); X v CH (12.3.1980) 21/241 (detention of extradited accused); X v UK (13.3.1980) 19/223 (detention following warrant for contempt of court); Caprino v I (Rep 17.7.1980) 22/5 (detention pending consideration of deportation); Freda v I (7.10.1980) 21/250 (detention for breach of compulsory residence order); Schertenleib v CH (Rep 11.12.1980) 23/137 (reasons for and length of detention on remand); Ventura v I (Rep 15.12.1980) 23/5 (detention of journalist in respect of bombings); Crociani, Palmiotti, Tanassi, Lefebvre D'Ovidio (18.12.1980)

73/201 (search of house and detention in respect of terrorism legislation); Reyntjens v B (9.9.1992) 73/136 (detention to establish identify); M v DK (14.10.1992) 73/193 (detention and prosecution of East German wishing to leave for the West who had sought refuge in Danish Embassy); SM & MT v A (5.4.1993) 74/179 (conditions of asylum seekers in transit at Vienna airport, expulsion to Lebanon); Ward v UK (Rep 5.7.1993) 75/217 (review of lawfulness of continued detention sentence tariff having expired); Chrysostomos, Papachrysostomou, Loizidou v TR (Rep 8.7.1993) 86A/4 (Turkish invasion of Northern Cyprus); Borrelli v CH (2.9.1993) 75/139 (disciplinary proceedings before Military Court); SF v CH (2.3.1994) 76B13 (Italian prohibited from entry to Swiss territory); Grice v UK (14.4.1994) 77A/90 (refusal of authorities to grant early release on compassionate grounds to prisoner suffering from AIDS); RM v UK (14.4.1994) 77A/98 (sentencing policy and treatment as an AIDS sufferer); Sampson v CY (9.5.1994) 77A/69 (continued detention following expiry of sentence); AB v CH (22.2.1995) 80B/66 (obligation to provide urine samples to be tested for drugs); Guenat v CH (10.4.1995) 81B/130 (applicant with nervous condition held at police station while particulars checked); ALH, ESH, DCL, BML & ME v H (20.5.1996) 85A/88 (children given up for adoption placed under state custody and confined to children's home); Sánchez Ramirez v F (24.6.1996) 86B/155 (arrest of applicant 'Carlos' in Sudan and handing over to France); Kuche v D (24.6.1996) 86A/163 (detention for espionage despite unification of German Democratic Republic and Federal Republic of Germany); Kareem v S (25.10.1996) 87A/173 (detention pending expulsion to Iraq and separation from wife); Tepe v TR (25.11.1996) 87A/90 (detention, torture and killing of journalist); Ullah v UK (25.11.1996) 87A/118 (detention with view to deportation of Bangladesh national); O'Reilly v IRL (Rep 3.12.1996) 87A/58 (committal to psychiatric hospital without examination); Civet v F (7.4.1997) 89B/127 (length of detention on remand); Moussa v F (21.5.1997) 89B/92 (length of detention); AQF v F (10.9.1997) 90B/98 (detention of Mauritian pending expulsion); MK v F (18 & 19.9.1997) 90B/128 (length of detention pending extradition to Mali); Isiyok v TR (Rep 31.10.1997) 91A/5 (bombing of village by security forces); KW v CH (3.12.1997) 91A/23 (compensation for detention); Boffa & 13 others v RSM (15.1.1998) 92B/27 (law requiring compulsory vaccination of children against hepatitis B); Varnava and Others v TR (14.4.1998) 93A/5 (applicants taken into custody by Turkish army following invasion of Cyprus); BH v UK (Rep 30.6.1998) 94A/82 (automatic exclusion from bail of applicant charged with serious offence who has previous serious offence).

Discrimination/difference in treatment: Article 14

Court Judgments

Belgian Linguistics 68/1 (discrimination concerning language education in schools); National Union of Belgian Police v B 75/2 (union participation in consultation with public authorities); Swedish Engine Drivers' Union v S 76/1 (union participation in collective bargaining); Schmidt & Dahlström v S 76/2 (denial of benefit to striking union members); Engel and Others v NL 76/3 (action against soldiers publishing and distributing leaflet); Kjeldsen, Busk Madsen & Pedersen v DK 76/4 (parents right to determine children's education); Handyside v UK 76/5 (criminal prosecution under Obscene Publication Act); Ireland v UK 78/1 (ill-treatment in detention against Northern Ireland prisoners); Luedicke, Belkacem & Koç v D 78/5 (interpretation costs against criminal defendants); Sunday Times v UK 79/1 (censorship of newspaper articles); Marckx v B 79/2 (legal status of unmarried mothers and illegitimate children); Airey v IRL 79/3 (lack of legal aid in divorce proceedings); Van der Mussele v B 83/6 (pupil obliged to do *pro bono* work); De Jong, Baljet & Van den Brink v NL 84/5(detention of conscript servicemen for military offence); Rasmussen v DK 84/15 (father's right to contest paternity); James and Others v UK 86/1 (acquisition of freehold by long leaseholders); Lithgow and Others v UK 86/5 (nationalisation of industries); Gillow v UK 86/12 (licence requirement to occupy house); Johnston and Others v IRL 86/15 (consequence of divorce law); Mathieu-Mohin & Clerfayt v B 87/1 (appointment of representatives on Flemish council); Monnell & Morris v UK 87/3 (time in custody pending leave to appeal); Inze v A 87/23 (difference in inheritance provisions between

(disparity of votes given in different constituencies); X & Association S v CH (4.10.1982) 31/194 (communication of court judgment to ATS press agency); JW & EW v UK (3.10.1983) 34/153 (no index linking of pension of couple emigrating to Australia); Cyprus v TR (Rep 4.10.1983) 72/5 (Turkish invasion of Cyprus); B v UK (12.10.1983) 34/68 (prohibition on homosexual conduct on soldier); N v S (11.10.1984) 40/203 (military service exemption for conscientious objectors belonging to religious community); Family K & W v NL (1.7.1985) 43/216 (expulsion to Hong Kong, close family in NL); Harman v UK (Rep 15.5.1986) 46/57 (contempt of court by solicitor in use of official documents); S v UK (14.5.1986) 47/274 (relationship of homosexual couple); Johnson v UK (17.7.1986) 47/72 (homosexual party raided by police); Min, Min & Min Min Pak v UK (Rep 7.10.1986) 48/58 refusal to allow husband and son of Burmese doctor to remain in UK with her); Nelson v UK (13.10.1986) 49/170 (no remission for child convicts in Scotland); De Mot and Others v B (Rep 8.10.1987) 53/38 (status of children born out of wedlock); Stoutt v IRL (Rep 17.12.1987) 54/43 (position of illegitimate child); Joliet & Lebrun v B (Rep 8.10.1987) 53/65 (status of child of adulterous relationship); Scotts' of Greenock (Est'd 1711) Ltd & Lithgow Ltd v UK (Rep 17.12.1987) 58/5 (nationalisation proceedings); Z v A (13.4.1988) 56/13 (lawyer's lack of access to authorities' computerised legal information system on social security); K v UK (Rep 15.4.1988) 56/138 (restriction in access to father for child in care of social authorities); Wasa Liv Ömsesidigt, Försäkringsbolaget Valands Pensionsstiftelse & a group of approximately 15,000 individuals v S (14.12.1988) 58/163 (once and for all property tax); Banér v S (9.3.1989) 60/128 (new law granting licence free fishing and limited compensation); Hauzmann v A (16.3.1989) 60/194 (differences in taxation); Association of General Practitioners v DK (12.7.1989) 62/226 (legislation limiting increase in fees); Van Breedam v B (4.10.1989) 612/109 (payment of social contributions of self-employed artists); H, W, P and K v A (12.10.1989) 62/216 (lawfulness of National Socialism Prohibition Act); Simpson v UK (4.12.1989) 64/188 (special educational needs of dyslexic child); B v UK (10.2.1990) 64/278 (deportation of Cypriot in homosexual relationship); Krafft & Rougeot v F (5.3.1990) 65/51 (conditions of acquisition of retirement pension for judges); Auguste v F (Rep 7.6.1990) 69/104 (defendant appearing in glass cage); Abbott v UK (10.12.1990) 67/290 (detention of juvenile); P v UK (12.12.1990) 67/264 (eviction of gypsies from municipal site); Autio v SF (6.12.1991) 72/245 (conscientious objector complaint that substitute service longer than ordinary military service); A and A v NL (6.2.1992) 72/118 (polygamous marriage of Moroccan national); H v N (19.5.1992) 73/155 (abortion without consent of potential father); Hazar, Hazar & Acik v TR (Rep 10.12.1992) 73/111 (imprisonment for membership of Turkish Communist Party); M v NL (8.2.1993) 74/120 (no family life between sperm donor and subsequent child); Baumgartner v A (Rep 16.2.1993) 74/40 (illegitimate child unable to claim intestacy succession); Bernard and Others v L (8.9.1993) 75/57 (authorities' rejection of request for exemption from moral and social education lessons for children of applicants); X SA v NL (11.1.1994) 76A/129 (prohibition on transmission of programmes); Durini v I (12.1.1994) 76B/76 (proceedings concerning will restricting right of succession to male line only); Iskcon and Others v UK (8.3.1994) 76A/90 (enforcement proceedings in respect of Manor occupied by International Society for Krishna Consciousness Ltd); MB v UK (6.4.1994) 77A/108 (paternal responsibility and contact proceedings); Grice v UK (14.4.1994) 77A/90 (refusal of authorities to grant early release on compassionate grounds to prisoner suffering from AIDS); RM v UK (14.4.1994) 77A/98 (sentencing policy and treatment as an AIDS sufferer); Asensio Serqueda v E (9.5.1994) 77B/122 (requirement of signatures before being able to stand for election); GF v D (29.6.1994) 78A/111 (maintenance proceedings by child against father's Benedictine order); Bruckner v A (18.10.1994) 79A/47 (presumption in employment proceedings); SC v F (20.2.1995) 80B/78 (dispossession of French citizens land in Algeria); Van Den Dungen v NL (22.2.1995) 80A/147 (prohibition of leaflets and photographs regarding abortion); Loersch & Nouvelle Association du Courrier v CH (24.2.1995) 80B/162 (refusal to grant accreditation to journalist); Tora Tolmos v E (17.5.1995) 81B/82 (fine for refusing to give authorities name and address of driver on day car detected speeding); Huggett v UK (28.6.1995) 82A/98 (independent candidate for European Parliament election denied chance to make party political broadcast); Verein Gemeinsam Lernen v A (6.9.1995)

82A/41 (allocation of State subsidies for private education); JR v D (18.10.1995) 83A/14 (tax law proceedings); ES v D (29.11.1995) 84A/58 (suspension of high ranking soldier for making critical remarks about Government Ministers); Klöpper v CH (18.1.1996) 84A/101 (provisions for married couple's contributions to Social Insurance); Mayer and Others v D (4.3.1996) 85A/5 (expropriation of land); Brezny v SK (4.3.1996) 85B/65 (no restitution of property for applicants resident abroad); Hins & Hugenholtz v NL (8.3.1996) 84A/135 (refusal to grant licence for installation and operation of television transmitter); Magnago & Südtiroler Volkespartei v I (15.4.1996) 85A/112 (allocation of parliamentary seats by proportional representation); Spöttl v A (15.5.1996) 85A/58 (obligation on conscientious objector to perform civilian service, no obligation on women); Röösli v D (15.5.1996) 85A/149 (homosexual partner refused succession to tenancy of late partner's apartment); Kuche v D (24.6.1996) 86A/163 (detention for espionage despite unification of German Democratic Republic and Federal Republic of Germany); Slepcik v NL (2.9.1996) 86A/176 (expulsion to Czech Republic of Roma gypsies); Tepe v TR (25.11.1996) 87A/90 (detention, torture and killing of journalist); Konttinen v SF (3.12.1996) 87A/68 (dismissal from State Railway of Seventh Day Adventist unable to work on Sabbath, sunset Friday through Saturday); Scientology Kirche Deutschland eV v D (7.4.1997) 89A/163 (complaint of discrimination, intolerance, exclusion against association condoned by authorities); Stedman v UK (9.4.1997) 89A/104 (dismissal for refusing to work on Sundays); Stewart-Brady v UK (2.7.1997) 90A/45 (media stories of applicant detained in mental hospital); Salonen v SF (2.7.1997) 90A/60 (parents prevented from naming their child Ainut Vain Marjaana, The One and Only Marjaana); Association Andecha Astur v E (7.7.1997) 90B/172 (language restrictions on candidates for Parliamentary election); MM v BG (Rep 9.7.1997) 90A/56 (custody of child given to father and not to mother who was member of 'Warriors of Christ'); ELH and PBH v UK (22.10.1997) 91A/61 (denial to prisoner of conjugal visits for procreation); Isiyok v TR (Rep 31.10.1997) 91A/5 (bombing of village by security forces); Klip & Krüger v NL (3.12.1997) 91A/66 (investigation into motives for marriage of Dutch and German couple); Kaukonen v SF (8.12.1997) 91A/14 (private prosecution against judge and police); Quintana Zapata v E (4.3.1998) 92B/139 (refusal to grant widow's pension to applicant who had lived with partner for 65 years and had 5 children by him); Christian Association of Jehovah's Witnesses v BG (Rep 9.3.98) 92A/44 (refusal of authorisation for registration of religious association); Varnava and Others v TR (14.4.1998) 93A/5 (applicants taken into custody by Turkish army following invasion of Cyprus); Abraini Leschi and Others v F (22.4.1998) 93B/120 (French-Russian co-operation treaty); MacGregor v UK (Rep 1.7.1998) 94A/86 (refusal to grant tax exemption to married woman with child and disabled husband).

Education: Protocol 1, Article 2

Court Judgments

Belgian Linguistics 68/1 (use of languages in education); Kjeldsen Busk Madsen and Pedersen v DK 76/4 (compulsory sex education in State primary schools); Campbell and Cosans v UK 82/1 (corporal punishment in State schools); Olsson v S 88/2 (children taken into care); Eriksson v S 89/10 (child taken into care); Costello-Roberts v UK 93/14 (corporal punishment in independent school); Valsamis v GR 96/65 (suspension of child for refusal to take part in National Day celebrations); Efstratiou v GR 96/66 (suspension of child for refusal to take part in National Day celebrations); Hornsby v GR 97/16 (refusal to allow establishment of private foreign language school); Scozzari and Giunta v I 00/181 (children placed into care).

Commission Decisions and Reports

X v UK (13.3.1975) 2/50 (applicant unable to study technology in prison); X v B (29.9.1975) 3/162 (standard of diploma in 'simple weaponry'); X, Y, Z v UK (4.3.1976) 5/5 (seizure of Little Red Schoolbook deprived applicant and children right to education); X v DK (8.3.1976) 5/157 (religious education); X v DK (29.9.1976) 7/81 (failure of authorities to retrieve child from 'Children's Power'

organisation); 40 mothers v S (9.3.1977) 9/27 (subsidies for private education); X v UK (11.7.1977) 11/160 (mother no rights of particular education in respect of her child adopted by another); 15 Foreign Students v UK (19.5.1977) 9/185 (foreign students facing deportation claiming right to education); X v UK (2.5.1978) 14/179 (education subsidy); X v UK (1.3.1979) 16/101 (teacher forbidden to display his moral and religious beliefs); JB & 361 parents (8.7.1980) 20/230 (priest concerned with educating children of Italian immigrants); X v UK (9.12.1980) 23/228 (student failing exam not readmitted to University); Seven applicants v S (13.5.1982) 29/104 (Protestant traditional families complain of restrictions on corporal punishment of children); X, Y, Z v D (15.7.1982) 29/224 (parents requesting elementary school arithmetic instead of modern mathematics for their son); X, Y, Z v UK (13.10.1982) 31/50 (corporal punishment); X & Y v UK (7.12.1982) 31/210 (refusal of state to subsidise education in Rudolph Steiner school); W & DM, M & HI v UK (6.3.1984) 37/96 (choice of school for their children denied by local authority); Family H v UK (6.3.1984) 37/105 (education of dyslexic children at home); Mrs X & Miss X v UK (13.3.1984) 36/49 (corporal punishment on schoolgirl by headmaster); Glazewska v S (10.10.1985) 45/300 (professional status acquired overseas); W & KL v S (11.12.1985) 45/143 (subsidy of education); Warwick v UK (Rep 18.7.1986) 60/5 (refusal of school to assure parents corporal punishment would not be inflicted amounted to failure to respect philosophical conviction); Aminoff v S (Rep 10.10.1986) 48/82 (removal of child from mother, education not in accordance with mother's wishes); Angeleni v S (3.12.1986) 51/41 (atheist applicant complained not exempt from religious teaching in school); Townend Sr & Jr v UK (Rep 23.1.1987) 50/36 (suspension of son from school due to father's refusal to allow corporal punishment on son); Jordebo Foundation of Christian Schools v S (6.3.1987) 51/125 (State refusal to allow private school to run over-16 classes); Durairaj & Baker v UK (Rep 16.7.1987) 52/13 (suspension of son from school on account of parent's refusal to allow corporal punishment on him); Brant v UK (Rep 16.7.1987) 52/21 (suspension of son from school on account of mother's refusal to allow corporal punishment on him); Jarman v UK (11.5.1988) 56/181 (corporal punishment in schools); PD and LD v UK (2.10.1989) 62/292 (authorities refusal to place handicapped daughter in normal school); Simpson v UK (4.12.1989) 64/188 (special educational needs of dyslexic child); Graeme v UK (5.2.1990) 64/158 (special educational needs of disabled child); Yanasik v TR (6.1.1993) 74/14 (expulsion from Military Academy for participating in Muslim fundamentalist movement); Bernard and Others v L (8.9.1993) 75/57 (authorities' rejection of request for exemption from moral and social education lessons for children of applicants); Iskcon and Others v UK (8.3.1994) 76A/90 (enforcement proceedings in respect of Manor occupied by International Society for Krishna Consciousness Ltd); Klerks v NL (4.7.1995) 82A/129 (refusal of authorities to allow deaf child to attend regular school); Verein Gemeinsam Lernen v A (6.9.1995) 82A/41 (allocation of state subsidies for private education); Sulak v TR (17.1.1996) 84A/98 (disciplinary expulsion from University depriving applicant of right to education); Scientology Kirche Deutschland eV v D (7.4.1997) 89A/163 (complaint of discrimination, intolerance, exclusion against association condoned by authorities).

Electoral rights: Protocol 1, Article 3, Articles 10, 11

Court Judgments

Mathieu-Mohin and Clerfayt v B87/1 (method of appointment to Flemish assembly); Gitonas and Others v GR 97/40 (annulment of election of candidates to Parliament); Pierre-Bloch v F 97/79 (dispute over election issues); Bowman v UK 98/7 (prosecution for overspending to promote candidate); Ahmed and Others v UK 98/70 (restriction on political activity of civil servant); Matthews v UK 99/7 (exclusion of Gibraltar from European elections); Labita v I 00/125 (suspension of voting rights for mafia suspects); Rekvényi v H 99/24 (prohibition on police officers engaging in political activity).

Commission Decisions and Reports

X v NL (19.12.1974) 1/87 (applicant deprived of right to vote following conviction for uncitizenlike behaviour); W, X, Y, Z v B (30.5.1975) 2/110 (restrictions on electoral rights); S v D (10.7.1975) 3/98 (rights of Sudeten Germans); X v UK (3.10.1975) 3/165 (prisoner prohibited from voting in European referendum); X v UK (6.10.1975) 7/95 (electoral system); X, Y, Z v D (18.5.1976) 5/90 (subsidising of political party); X, Y, Z v D (18.5.1976) 5/90 (subsidies to parties); X v UK (12.7.1976) 6/13 (suspension of elections to local Government in Northern Ireland); X v A (12.7.1976) 6/120 (minimum support); X v UK (28.2.1979) 15/137 (right to vote in home country of person living abroad); Lindsay and Others v UK (8.3.1979) 15/247 (proportional representation system); Glimmerveen & Hagenbeek v NL (11.10.1979) 18/187 (members of political party convicted of racism and prevented from participation in elections); X v B (3.12.1979) 18/250 (right to vote following conviction for un-citizenlike conduct); The Liberal Party, Mrs R & Mr P v UK (18.12.1980) 21/211 (majority system over proportional representation system); X & Association Y v I (6.5.1981) 24/192 (voting rights of Italian residents abroad); X v Iceland (8.12.1981) 27/145 (disparity of votes given in different constituencies); X v UK (13.5.1982) 28/99 (exclusion of Jersey resident voting in UK parliamentary elections); X v UK (6.10.1982) 30/239 (conviction of householder for refusing to complete census form); X v NL (1.3.1983) 32/274 (election to professional corporation); H v NL (4.7.1983) 33/242 (right to vote of imprisoned convicted anti-militarist); M v UK (7.3.1984) 37/129 (electoral eligibility of deputy leader of Social Democratic Labour Party); Clerfayt, Legros and Others v B (17.5.1985) 42/212 (use of French in municipal assemblies); Booth-Clibborn and Others v UK (5.7.1985) 43/236 (cancellation of elections); Fryske Nasjonale Partij and Others v NL (12.12.1985) 45/240 (applicants prevented from taking part in election); Tete v F (9.12.1987) 54/52 (election of French representatives to Assembly of European Communities); Fournier v F (10.3.1988) 55/130 (provisions concerning election of French representatives to European parliament); Habsburg-Lothringen v A (14.12.1989) 64/210 (prohibition on son and grandson of last Emperor of Austria from running for Federal President); Desmeules v F (3.12.1990) 67/166 (lodging of deposits to stand in election); IZ v GR (28.2.1994) 76A/65 (electoral conditions including failure to provide ballots for independent candidates); Asensio Serqueda v E (9.5.1994) 77B/122 (requirement of signatures before being able to stand for election); Huggett v UK (28.6.1995) 82A/98 (independent candidate for European Parliament election denied chance to make party political broadcast); Timke v D (11.9.1995) 82A/158 (complaint that elections not provided for at regular intervals); Magnago & Südtiroler Volkespartei v I (15.4.1996) 85A/112 (allocation of parliamentary seats by proportional representation); Ganchev v BG (25.11.1996) 87A/130 (eligibility of electoral candidate, Bulgarian citizen with US naturalisation); Tapie v F (13.1.1997) 88B/176 (automatic disqualification from elected public office following court liquidation of assets); Scientology Kirche Deutschland eV v D (7.4.1997) 89A/163 (complaint of discrimination, intolerance, exclusion against association condoned by authorities); Luksch v I (21.5.1997) 89B/76 (German citizen living in Italy not permitted to vote in local Italian elections); Luksch v I (21.5.1997) 89B/175 (German citizen living in Italy not permitted to vote in German Federal Parliamentary elections); Association Andecha Astur v E (7.7.1997) 90B/172 (language restrictions on candidates for Parliamentary election); Polacco & Garofalo v I (15.9.1997) 90A/5 (residence requirement for voting in local election); Holland v IRL (14.4.1998) 93A/15 (inability to vote in prison); New Horizons and Others v CY (10.9.1998) 94A/158 (denial of State assistance to applicant political party).

Environment: Article 8, Protocol 1, Article 1

Court Judgments

Powell and Rayner v UK 90/3 (disturbance from aircraft noise); Zander v S 93/54 (challenge to refuse dumping permit); Lopez Ostra v E 94/47 (nuisance from tanneries); Balmer-Schafroth v CH 97/43 (licence granted to operate nuclear power station); Guerra and Others v I 98/8 (risk to health of chemical factory); Athanassoglou and Others v CH 00/124 (objection to nuclear power station).

Commission Decisions and Reports

X and Y v D (13.5.1976) 5/161 (environmentalists complaint of use of marshlands for military purposes); Arrondelle v UK (Rep 13.5.1983) 26/5 (nuisance from airport and motorway construction); Baggs v UK (Rep 8.7.1987) 52/29 (nuisance from air traffic at airport); Vearncombe, Herbst, Clemens & Spielhagen v UK and D (18.1.1989) 59/186 (nuisance caused by shooting range in West Berlin under British control); S v F (17.5.1990) 65/250 (nuisance of nuclear power station, reduction in value of property from nuisance); Tauira & 18 others v F (4.12.1995) 83B/112 (French Polynesians complaints of French President decision to resume nuclear tests on Mururoa and Fangataufa atolls in French Polynesia); HMA v E (9.4.1996) 85B/117 (conviction of plant manager for environmental negligence); Wöckel v D (16.4.1998) 93A/82 (complaint about exposure to smoking in public buildings).

Expression, freedom of: Article 10

Court Judgments

De Becker v B 62/1 (loss of rights for collaboration with enemy); Engel and Others v NL 76/3 (publication and distribution of leaflet by soldiers); Handyside v UK 76/5 (prosecution under Obscene Publications Act for 'The Little Red Schoolbook'); Sunday Times v UK 79/1 censorship of newspaper article regarding sub-judice matters); Barthold v D 85/3 (injunction against veterinary surgeon making public comment on practices); Lingens v A 86/6 (journalist convicted of defamation for commenting on character and work of elected official); Glasenapp v D 86/7 (revocation of teacher's appointment following refusal to dissociate from communist sympathies); Kosiek v D 86/8 (dismissal of lecturer on account of activities for National Democratic Party); Leander v S 87/4 (use of information on secret police register); Müller and Others v CH 88/5 (conviction for publication of obscene material); Barfod v DK 89/2 (journalists convicted of defaming character of lay judges); Gaskin v UK 89/14 (refusal to grant access to records); Markt Intern Verlag GmbH & Klaus Beermann v D 89/19 (prohibition on repeating statements relating to commercial activity); Groppera Radio AG and Others v CH 90/5 (prohibition on re-transmission of programmes); Weber v CH 90/11 (journalist convicted for breach of confidentiality of investigation); Autronic AG v CH 90/12 (refusal to permit reception of programmes from Soviet satellite); Oberschlick v A 91/29 (journalist convicted of defamation in publishing criminal charges against Secretary General of Liberal Party); Observer and Guardian v UK 91/47 (injunction against newspapers publishing details of unauthorised security service employee's memoirs); Sunday Times (No 2) v UK 91/48 (injunction against newspapers publishing details of unauthorised security service employee's memoirs); Castells v E 92/48 (conviction of MP for insulting government); Thorgeir Thorgeirson v ISL 92/51 (writer convicted of defamation regarding allegations of brutality against police); Schwabe v A 92/56 (conviction for defamation and reproaching person with having committed criminal offence); Herczegfalvy v A 92/58 (restrictions on correspondence of mental patient); Open Door and Dublin Well Woman v IRL 92/67 (injunction preventing provision of abortion information); Hadjianastassiou v GR 92/77 (prosecution for disclosing secret information from military); K v A 93/21 (conviction and imprisonment for refusing to give evidence); Colman v UK 93/28 (restrictions on advertising at private medical practice); Chorherr v A 93/34 (arrest for demonstration during military ceremony); Informationsverein Lentia and Others v A 93/52 (restrictions on private television and radio stations); Casado Coca v E 94/8 (penalty against Barrister for professional advertising); Scherer v CH 94/13 (conviction for showing pornographic film in shop); Jacubowski v D 94/19 (journalist restricted from distributing circular critical of former employee); Otto-Preminger Institut v A 94/25 (seizure of film alleged to offend religious feeling); Jersild v DK 94/31 (prosecution of journalist for disseminating racist material); Vereinigung Demokratischer Soldaten Österreichs & Gubi v A 94/49 (prohibition on armed forces distributing publication critical of military); Vereniging Weekblad Bluf! v NL 95/2 (seizure of publication of confidential security service report); Prager & Oberschlick v A 95/11 (seizure of

publication and prosecution for defaming judges); Piermont v F 95/12 (expulsion of MEP from island); Tolstoy Miloslavsky v UK 95/20 (order for security for costs as condition of appeal); Vogt v D 95/26 (disciplinary proceedings against civil servant for membership of communist party); Goodwin v UK 96/15 (journalist refusing to disclose source of information); Ahmet Sadik v GR 96/46 (sole candidate of party convicted of offence arising out of leaflet distribution); Wingrove v UK 96/56 (video classification refused for 'Visions of Ecstasy'); De Haes & Gijsels v B 97/7 (journalists prosecuted for publication strongly criticising judges); Oberschlick (No 2) v A 97/41 (conviction of journalist for insulting politician); Worm v A 97/49 (conviction for publication of article during trial of Minister suggesting guilt); Radio ABC v A 97/78 (restrictions on frequencies for private radio stations); Zana v TR 97/88 (prosecution for statements supporting PKK); Grigoriades v GR 97/89 (prosecution for desertion and insulting army); Bowman v UK 98/7 (prosecution Director of Society for Unborn Child for overspending to promote election candidate); Guerra and Others v I 98/8 (failure to provide information regarding risk to health of chemical factory); Schöpfer v CH 98/35 (disciplinary proceedings against barrister issuing press release); Tekin v TR 98/48 (treatment of journalists by security forces); Incal v TR 98/49 (conviction for leaflet sympathetic to Kurds); Hertel v CH 98/69 (prohibition from stating microwave cooking presented danger to health); Ahmed and Others v UK 98/70 (restriction on political activities of local government officers); Lehideux & Issorni v F 98/84 (conviction for seeking to justify acts of collaboration); Fressoz & Roire v F 99/1 (conviction of journalists for publishing extracts from tax assessment forms); Janowski v PL 99/3 (conviction for insulting municipal guards); Bladet Troms¿ & Stensaas v N 99/23 (proceedings against journalist and newspaper for defamation); Rekvényi v H 99/24 (police officers prohibited from engaging in political activities); Ceylan v TR 99/29 (conviction for incitement to hostility and hatred); Arslan v TR 99/30 (conviction for separatist propaganda); Gerger v TR 99/31 (conviction for separatist propaganda); Polat v TR 99/32 (conviction for separatist propaganda); Karats v TR 99/33 (conviction for separatist propaganda); Erdogdu & Ince v TR 99/34 (conviction for separatist propaganda); Baskaya & Okcuoglu v TR 99/35 (conviction for separatist propaganda); Okçuoglu v TR 99/36 (conviction for separatist propaganda); Sürek & Özdemir v TR 99/37 (conviction for separatist propaganda); Sürek (Nos 1–4) v TR 99/38 (conviction for separatist propaganda); Dalban v RO 99/54 (conviction for defamation); Öztürk v TR 99/55 (conviction for incitement to hostility and hatred); Willie v FL 99/73 (declaration by Prince not to appoint applicant to public office because latter's opinions); Hashman and Harrup v UK 99/90 (binding over to be of good behaviour); Nilsen and Johnsen v N 99/91 (statements made against book struck out as null and void); News Verlags GmbH v CoKG v A 00/5 (prohibition on newspaper publishing photograph of suspect in criminal proceedings); Fuentes Bobo v E 00/87 (dismissal of television presenter following criticism of management); Özgür Gündem v TR 00/91 (harassment against newspaper); Wabl v A 00/93 (injunction prohibiting reference to 'Nazi journalism'); Bergens Tiende and Others v N 00/144 (damages against newspaper following reporting of cosmetic surgery complaints); Erdogdu v TR 00/163 (conviction for separatist propaganda); Constantinescu v RO 00/168 (conviction for defamation); Sener v TR 00/184 (conviction for publication of article).

Commission Decisions and Reports

X v UK (20.12.1974) 1/41 (prisoner prohibited from sending out articles for publication in Buddhist magazine); X v NL (19.12.1974) 1/87 (deprivation of right to vote following conviction for uncitizenlike behaviour); X, Y and Z v UK (4.3.1975) 5/5 (complaint of seizure of Little Red Schoolbook); Times Newspaper Ltd, Sunday Times, Evans v UK (21.3.1975) 2/90 (injunction on press in respect of pending Thalidomide litigation); Baader, Meins, Meinhof, Brundmann v D (30.5.1975) (restrictive measures on Red Army Faction members); X v UK (1.10.1975) 3/62 (conviction under Incitement to Disaffection Act, possession of documents aimed against army); X v UK (3.10.1975) 3/165 prisoner prohibited from taking part in European referendum); Sacchi v I (12.3.1976) 5/43 (prohibition on operating cable TV due to State TV monopoly); X v I (21.5.1976) 5/83 (prosecution in respect of founding of fascist party); De Geillustreerde Pers NV v NL (Rep 6.7.1976) 8/5 (publisher prevented

from publishing complete radio and TV programme information); Agee v UK (17.12.1976) 7/164 (deportation of journalist); Bertrand Russell Peace Foundation Ltd v UK (2.5.1978) 14/117 (interference of correspondence by Soviet authorities); Arrowsmith v UK (Rep 12.10.1978) 19/5 (pacifist convicted and sentenced for leafleting Northern Ireland soldiers inciting them to disobedience); X v UK (4.12.1978) 16/190 (licensing of broadcasting, Radio Caroline); X v UK (1.3.1979) 16/101 (teacher forbidden to display his moral and religious beliefs); Geerk v CH (Rep 4.5.1979) 16/56 (prosecution for religious infringement); X and Church of Scientology v S (5.5.1979) 16/68 (injunction on advert for sale of E-meter); Glimmerveen & Hagenbeek v NL (11.10.1979) 18/187 (members of political party convicted of racism and prevented from participation in elections); X v UK (Rep 12.10.1979) 19/66 (homosexual conduct between men aged 18 to 21); Christians Against Racism and Fascism v UK (16.7.1980) 21/138 (prohibition on procession); X v N (17.12.1981) 27/228 (freedom of expression of Ministry of Foreign Affairs official); X Ltd & Y v UK (7.5.1982) 28/77 (publisher and editor prosecuted for poem depicting homosexual Christ); X & Y v B (13.5.1982) 28/112 (use of radio transceiver without authorisation); X & Association S v CH (4.10.1982) 31/194 (communication of court judgement to ATS press agency); X Co v UK (5.3.1983) 32/231 (seizure of obscene magazines); R v UK (4.7.1983) 33/270 (conviction for aiding and abetting suicide); G & E v N (3.10.1983) 35/30 (Norwegian Lapps demonstrating against hydro-electric project); H & K v UK (6.10.1983) 34/218 (street performers prohibited from performing in London); Z v CH (6.10.1983) 35/224 (journalist convicted for publishing confidential parliamentary document); T v UK (Rep 12.10.1983) 49/5 (correspondence restrictions on detainee); Bulus v S (19.1.1984) 35/57 (expulsion order on Syrian adolescent resulting in separation from rest of family); E v CH (7.5.1984) 38/124 (disciplinary sanction on judge for distributing political leaflet in private capacity); Leigh, Guardian Newspapers, The Observer, v UK (11.5.1984) 38/74 (access to documents produced in court); RS & Z v CH (1.10.1984) 40/214 (disciplinary measure on lawyer who made public statements on case in which he acted); M v F (13.12.1984) 41/103 (expulsion to Romania of computer scientist passing information to foreign agents); A v CH (5.3.1985) 41/141 (authorities refusal to allow erection of private aerial); Times Newspapers Ltd, Giles, Knightley & Potter (6.3.1985) 41/123 (contempt of court preventing reporting of case); Van Der Heijden v NL (8.3.1985) 41/264 (termination of employment contract on account of political activity); Hammerdahls Stormarknad AB v S (9.10.1985) 45/277 (refusal of newspaper distribution company to deliver to applicants wishing to sell below fixed price); B v UK (12.12.1985) 45/41 (civil servant prohibited from revealing information); Stevens v UK (3.3.1986) 46/245 (requirement of school uniform); Vereniging Rechtswinkels Utrecht v NL (13.3.1986) 46/200 (withdrawal of associations providing legal information access to prison); Prince v UK (13.3.1986) 46/222 (disciplinary suspension of barrister for attacking reputation of court official); Harman v UK (Rep 15.5.1986) 46/57 (contempt of court by solicitor in use of official documents): Conroy v UK (Rep 15.5.1986) 46/66 (expulsion from union): Winer v UK (10.7.1986) 48/154 (South African refugee journalist complaint of book 'Inside Boss'); Verein Alternatives Lokalradio Ben, Verein Radio Dreyeckland Basel v CH (16.10.1986) 49/126 (refusal to grant broadcasting concession); Hodgson, Woolf Productions Ltd, National Union of Journalist, Channel Four Television Co Ltd v UK (9.3.1987) 51/136 (applicants prevented from broadcasting court trial); Le Cour Grandmaison & Fritz v F (6.7.1987) 53/150 (pacifists inciting soldiers to disobey orders); Clavel v CH (15.10.1987) 54/153 (journalist prevented from consulting Land Register); Z v A (13.4.1988) 56/13 (lawyer's lack of access to authorities' computerised legal information system on social security); Morissens v B (3.5.1988) 56/127 (disciplinary sanction on school employee following statement during television broadcast); Kühnen v D (12.5.1988) 56/205 (conviction of journalist advocating reinstitution of prohibited National Socialist Party); Crook, National Union of Journalists v UK (15.7.1988) 56/148 (prohibition on publishing name of witness referred to in court); Karlsson v S (8.9.1988) 57/172 (applicant, opposed to ordination of woman, not accepted as candidate for post as vicar); Lowes v UK (9.12.1988) 59/244 (refusal of prison authorities to allow applicant to receive anti-Semitic magazine 'Gothic Ripples'); Andersson v S (13.12.1988) 59/165 (permit required and stamp duty to be paid for demonstration carried out by one man

Boffa & 13 others v RSM (15.1.1998) 92B/27 (law requiring compulsory vaccination of children against hepatitis B); Christian Association of Jehovah0s Witnesses v BG (Rep 9.3.98) 92A/44 (refusal of authorisation for registration of religious association); Varnava and Others v TR (14.4.1998) 93A/5 (applicants taken into custody by Turkish army following invasion of Cyprus); Holland v IRL (14.4.1998) 93A/15 (interference with correspondence of prisoner, inability to vote in prison); HN v I (27.10.1998) 94A/21 (editor convicted of defamation).

Extradition: Articles 3, 8, 13

Commission Decisions and Reports

Vallon v I 85/8 (length of detention on remand); Sanchez-Reisse v CH 86/10 (detention with view to extradition); Soering v UK 89/15 (extradition of US national to face murder charge); Chahal v UK 96/54 (deportation of Sikh militant).

Commission Decisions and Reports

X v D (8.10.1974) 1/77 (extradition of Syrian living with German wife); X v UK (21.5.1976) 5/53 (extradition to Germany); Huber v A (5.7.1976) 6/65 (extradition of Austrian to Switzerland); X v NL (6.7.1976) 6/184 (German national to Sweden); Lynas v CH (6.10.1976) 6/141 (extradition to US of Honolulu born Irish citizen A 3); X v B (10.12.1976) 8/161 (lawfulness of detention of French citizen pending extradition); X v CH (12.3.1980) 21/241 (detention of extradited accused); X v CH (9.12.1980) 24/205 (extradition of Indian to Dubai, applicant unwell unable to contact wife); Altun v D (Rep 7.3.1984) 36/236 (extradition to Turkey); Kirkwood v UK (12.3.1984) 37/158 (extradition of US citizen in respect of capital offences and uncertainty of appeal procedures, death row phenomenon); K v B (5.7.1984) 38/230 (information to be given in cases of arrest with view to extradition); B v F (22.1.1987) 51/165 (extradition of Moroccan); S v F (6.7.1988) 56/62 (length of detention in extradition proceedings); Whitehead v I (11.3.1989) 60/272 (detention pending extradition to US); Reinette v F (2.10.1989) 63/189 (cooperation between Saint Vincent and France in extradition of applicant); BH & L v A (5.12.1989) 64/264 (extradition to US); Kozlov v SF (28.5.1991) 69/321 (extradition to Soviet Union); Aylor-Davis v F (20.1.1994) 76B/164 (extradition to US and exposure to death row phenomenon); EGM v L (20.5.1994) 77B/144 (extradition of Colombian); Raidl v A (4.9.1995) 82A/134 (extradition to Russia); Venezia v I (21.10.1996) 87B/140 (extradition to Florida to face death penalty); MK v F (18 & 19.9.1997) 90B/128 (length of detention pending extradition to Mali).

Fair trial guarantees: Article 6

Court Judgments

Right of access to a court: Golder v UK 75/1 (detainees access); Airey v IRL 79/3 (lack of legal aid); Sporrong and Lönnroth v S 82/5 (lack of judicial review); Silver and Others v UK 83/2 (prisoners' access); Campbell and Fell v UK 84/8 (prisoners' access); Rasmussen v DK 84/15 (time limit); Ashingdane v UK 85/6 (access for psychiatric patient); Benthem v NL 85/10 (appeal opportunity); James and Others v UK 86/1 (compliance with leasehold reform legislation); Lithgow and Others v UK 86/5 (access to Arbitration Tribunal); O v UK 87/12 (care proceedings); W v UK 87/14 (care proceedings); B v UK 87/15 (care proceedings); Pudas v S 87/21 (lack of judicial review); Bodén v S 87/22 (lack of judicial review); Belilos v CH 88/4 (appeal opportunity); Eriksson v S 89/10 (family proceedings); Tre Traktörer AB v S 89/13 (lack of judicial review); Allan Jacobsson v S 89/17 (challenge to building prohibition); Håkansson and Sturesson v S 90/2 (lack of judicial review); Obermeier v A 90/13 (access to challenge contract); Mats Jacobsson v S 90/14 (access to challenge planning scheme); Skärby v S 90/15 (access to challenge to building permit refusal); Fredin v S 91/2 (lack of judicial review); Philis v GR 91/36 (access to recover expert's fee); Oerlemans v NL 91/50 (access in land dispute challenge); Société Stenuit v F 92/38 (access to challenge

Minister's fine); Olsson (No 2) v S 92/73 (care proceedings); Hennings v D 92/75 (short time limit); De Geouffre de la Pradelle v F 92/79 (access to challenge Ministerial decree); Zumtobel v A 93/37 (scope of review of court); Zander v S 93/54 (access to challenge permit); Keegan v IRL 94/18 (father's lack of standing in adoption proceedings); Fayed v UK 94/26 (access to challenge Government report on company take-over); Hentrich v F 94/28 (pre-emption on land sale); The Holy Monasteries v GR 94/43 (access to challenge property transfer); Fischer v A 95/10 (scope of review of administrative court); Air Canada v UK 95/14 (access to challenge seizure of aircraft); Kefalas and Others v GR 95/16 (access to challenge Ministerial replacement of board) ; Tolstoy Miloslavsky v UK 95/20 (high security costs); Schumatuzer v A 95/34 (scope of administrative court); Umlauft v A 95/35 (scope of administrative court); Gradinger v A 95/36 (scope of administrative court); Pramstaller v A 95/37 (scope of administrative court); Palaoro v A 95/38 (scope of administrative court); Pfarrmeier v A 95/39 (scope of administrative court); Bryan v UK 95/47 (access to challenge enforcement notice); Bellet v F 95/53 (compensation for HIV infection); Stubbings and Others v UK 96/40 (time limits on personal injury claims); Levages Prestations Services v F 96/41 (conditions of admissibility for appeal); Mauer v A 97/2 (scope of constitutional court); Beïs v GR 97/18 (access to recover expert fees); Gustafson v S 97/36 (access to challenge Compensation Board's award); Balmer-Schafroth and Others v CH 97/43 (access to challenge nuclear power station licence); Andronicou & Constantinou v CY 97/76 (*ex gratia* payment offer in rescue death case); National Provincial Building Society and Others v UK 97/83 (retrospective effect of tax orders); Canea Catholic Church v GR 97/97 (legal personality of church); Paulsen-Medalen & Svensson v S 98/5 (care proceedings); Edificaciones March Gallego SA v E 98/10 (time limit in bill of exchange litigation); Vasilescu v RO 98/36 (recovery of property proceedings); McGinley & Egan v UK 98/43 (nuclear weapon tests on Christmas Island); Tinnelly & Sons Ltd & McElduff and Others v UK 98/51 (refusal to award public works award); Omar v F 98/54 (failure to surrender to warrant preventing appeal); Guérin v F 98/55 (failure to surrender to warrant preventing appeal); Lauko v SK 98/73 (lack of remedy against administrative fine); Kadubec v SK 98/74 (lack of remedy against administrative fine); Malige v F 98/85 (automatic point deduction from driving licence); Pérez de Rada Cavanilles v E 98/89 (time limits on appeal); Aït-Mouhoub v F 98/90 (refusal to grant legal aid); Osman v UK 98/91 (no action against police); FE v F 98/97 (compensation for HIV infection); Beer and Regan v D 99/5 (immunity of international organisation); Waite and Kennedy v D 99/6 (immunity of international organisation); Immobiliare Saffi v I 99/47 (enforcement of possession order); Brumarescu v RO 99/72 (nationalised property); Khalfaoui v F 99/98 (failure to surrender); Miragall Escolano and Others v E 00/9 (time limits); Georgiadis v GR 00/104 (authorities' failure to comply with judgment); Athanassoglou and Others v CH 00/124 (access to challenge nuclear power station permit); Van Pelt v F 00/151 (failure to surrender to custody).

Commission Decisions and Reports

X v NL (16.3.1975) 1/66 (authorities refusal of permission for applicant to live in his own home); X v CH (10.12.1975) 3/155 (denial of legal aid); Webb v UK (11.5.1983) 33/133 (refusal of civil legal aid); Dyer v UK (9.10.1984) 39/246 (soldier's inability to bring civil action for damages for road accident); Waltén v S (16.5.1985) 43/184 (restriction on mentally ill access to court); H v UK (2.12.1985) 45/281 (vexatious litigant); W v D (4.12.1985) 45/291 (legal aid for divorce from foreigner); Wallace-Jones v UK (12.5.1986) 47/157 (solicitor unable to sue British Telecom for omission of firm's name from telephone directory); Van Hal International Piershil BV v NL (Rep 9.3.1987) 51/104 (access to court to claim compensatory damages for interference with property rights); P v F (14.7.1987) 52/128 (fines on persistent litigant); Munro v UK (14.7.1987) 52/158 (no legal aid for defamation proceedings); Spaans v NL (12.12.1988) 58/119 (Dutch applicant complaint of lack of access to court regarding termination of contract with Iran-US Claims Tribunal); Grace v UK (Rep 15.12.1988) 62/22 (interference with prisoner's correspondence); Vearncombe, Herbst,

Clemens & Spielhagen v UK and D (18.1.1989) 59/186 (nuisance caused by shooting range in West Berlin under British control); Banér v S (9.3.1989) 60/128 (new law granting licence free fishing and limited compensation); Karlsson v S (Rep 12.4.1989) 66/129 (refusal to grant permit to acquire agricultural property); Surmont & De Meurechy and Others v B (6.7.1989) 62/284 (third party objection to opening of chemist); Martinez v E (4.9.1989) 62/255 (only employees subject to requirement in industrial dispute to make payment into court); Grepne v UK (1.10.1990) 66/268 (payment into court for appeal); Lindén and Others v S (Rep 8.1.1991) 68/116 (tenement assignment proceedings); Myrdal v S (Rep 15.4.1991) 69/157 (access regarding building dispute); Gesellschaft S v A (Rep 4.7.1991) 70/5 (employment dispute); Wasagrillen, Nyland v S (Rep 4.7.1991) 71/5 (proceedings concerning refusal to grant alcoholic beverages licence); Dujardin and Others v F (2.9.1991) 72/236 (gendarmes killed in New Caledonia); X v CH (12.1.1994) 76A/44 (inability to comment on documentation before court concerning refusal of registration in commercial register); Iskcon and Others v UK (8.3.1994) 76A/90 (enforcement proceedings in respect of Manor occupied by International Society for Krishna Consciousness Ltd); Näss v S (6.4.1994) 77A/37 (refusal of authorities to grant access to security police documents, right to have conviction reviewed by higher tribunal); Englund and Others v S (8.4.1994) 77A/10 (lack of State protection against industrial action); GL v I (9.5.1994) 77B/5 (fine imposed following dismissal of Cassatino appeal); Hava v CZ (29.6.1994) 78B/139 (Czech national resident in Switzerland unable to claim restitution of property); Reeve v UK (30.11.1994) 79A/146 (complainant unable to bring claim against health authority for failing to identify her congenital disability which would have enabled her parents to abort her); Bengtsson v S (7.12.1994) 79A/11 (expropriation of land); Mecili v F (15.5.1995) 81B/102 (application to join criminal proceedings as civil party); Mahaut v F (6.7.1995) 82B/31 (applicant's sister forced to take early retirement); EM v N (26.10.1995) 83A/5 (examination by Appeals Selection Committee of application for new fraud trial); MN v BG (4.9.1996) 88A/163 (inability to recover money paid into private financial pyramid scheme); Logan v UK (6.9.1996) 86A/74 (challenge to maintenance assessment of Child Support Agency); Danini v I (14.10.1996) 87B/24 (lack of protection for daughters against mentally ill murderer); Nordström-Janzon & Nordström-Lehtinen v NL (27.11.1996) 87A/112 (proceedings concerning arbitral award); Rebai v F (25.2.1997) 88B/72 (failure of prison authorities to protect prisoner from dangerous cell-mate); Stedman v UK (9.4.1997) 89A/104 (dismissal for refusing to work on Sundays); Dubowska & Skup v PL (18.4.1997) 89A/156 (failure of State to provide protection against publication of picture causing religious offence); Krickl v A (21.5.1997) 89A/5 (proceedings concerning building demolition order); Hofer v A (21.5.1997) 89A/56 (property proceedings); Stewart-Brady v UK (2.7.1997) 90A/45 (media stories of applicant detained in mental hospital); MM v BG (Rep 9.7.1997) 90A/56 (custody of child given to father and not to mother who was member of 'Warriors of Christ'); Isiyok v TR (Rep 31.10.1997) 91A/5 (bombing of village by security forces); Venot v F (14.1.1998) 92B/50 (refusal of Court of Cassation to relist case as applicant not fully executed judgment against which he was appealing); SCI Le Livron v F (14.1.1998) 92/B85 (inability of applicant company who had not executed judgment under appeal to have case restored to the list of Court of Cassation); Christian Association of Jehovah's Witnesses v BG (Rep 9.3.98) 92A/44 (refusal of authorisation for registration of religious association); Grof v A (14.4.1998) 93A/29 (proceedings concerning maternity leave payments); Varnava and Others v TR (14.4.1998) 93A/5 (applicants taken into custody by Turkish army following invasion of Cyprus); Martins Coelho v P (16.4.1998) 93B/116 (court interpretation of domestic law regarding time for lodging appeal).

Court Judgments

Fairness of proceedings: Delcourt v B 69/3 (equality of arms); Winterwerp v NL 79/4 (procedure in psychiatric detention); Colozza v I 85/1 (trial in absence); Feldbrugge v NL 86/2 (access to reports); Schenk v CH 88/11 (unlawfully obtained phone recording); Unterpertinger v A 86/13 (statements read at court); H v B 87/25 (procedure for restoration to roll); Barberà, Messegué and Jarbardo v

to allow lawyer to appear for absent client); Zielinski & Pradal & Gonzalez and Others v F 99/71 (passing of legislation affecting outcome of pending proceedings); Brumarescu v RO 99/72 (nationalised property); T v UK 99/121 (juvenile proceedings in adult court); V v UK 99/122 (juvenile proceedings in adult court); Quadrelli v I 00/2 (applicant's submission on appeal not considered); Slimane-Kaïd v F 00/11 (draft judgment communicated to AG but not to applicant); Stefanelli v RSM 00/58 (sentence without oral hearing); Voisine v F 00/65 (submissions of AG not communicated to applicant); Fitt v UK 00/82 (non-disclosure of prosecution evidence); Rowe and Davis v UK 00/83 (non-disclosure of prosecution evidence); Jasper v UK 00/84 (non-disclosure of prosecution evidence); Krèmáø v CZ 00/88 (non-disclosure of evidence); Dulaurans v F 00/99 (appeal dismissed as result of error); Georgiadis v GR 00/104 (failure of authorities to comply with final judgment); Kuopila v SF 00/130(non-disclosure of evidence to accused; Rotaru v RO 00/145 (lack of opportunity to amend details on investigation services file); Elsholz v D 00/180 (family proceedings).

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W, X, Y, Z v A (27.9.1976) 7/148 (obligation on employers to withhold taxes and other contributions of employees); X v NL (13.12.1976) 7/161 (suspension of unemployment benefits for refusal of offer of job not forced labour); X v D (13.12.1979) 18/216 (obligation on notaries to reduce fees in certain

cases); X v CH (14.12.1979) 18/238 (work in course of juvenile detention); X v D (17.7.1981) 26/97 (lawyer's complaint of little remuneration); X v NL (3.5.1983) 32/180 (professional footballer prevented from entering another club on renouncing of contract); S v D (4.10.1984) 39/90 (requirement that holder of shooting rights participate in gassing of foxholes); Ackerl, Grötzback, Glawischnig, Schwalm, Klein, Sladecek & Limberger v A (29.6.1994) 78A/116 (judges complaint of under-staffing and obligation to take on work of other judges with no supplementary payment for overtime); Spöttl v A (15.5.1996) 85A/58 (obligation on conscientious objector to perform civilian service); Varnava and Others v TR (14.4.1998) 93A/5 (applicants taken into custody by Turkish army following invasion of Cyprus); Doyen v F (9.9.1998) 94B/151 (Bar Chairman requiring lawyers to be on 24 hour police custody call).

Hindrance in exercise of individual petition: Article 34 (formerly 25)

Court Judgments

Campbell v UK 92/41; Akdivar v TR 96/34; Aksoy v TR 96/64; Aydin v TR 97/71; Kurt v TR 98/39; Ergi v TR 98/53; Petra v RO 98/83; Tanrikulu v TR 99/39; Cooke v A 00/67; Salman v TR 00/170.

Commission Decisions and Reports

Campbell v UK (13.7.1988) 57/148 (solitary confinement and treatment of prisoner); Mansi v S (Rep 9.3.1990) 64/253 (deportation of Jordanian citizen of Palestinian origin); Tsovolas v GR (14.5.1996) 85B/21 (Presidential pardon following conviction by Special Court for violating law on Ministerial responsibility); Urrutikoetxea v F (5.12.1996) 87B/151 (expulsion to Spain of Basque).

Homosexuality: Articles 8, 14

Court Judgments

Dudgeon v UK 81/4 (legislation penalising homosexual acts in private between consenting adults); Norris v IRL 88/14 (criminalisation of homosexual acts in private between consenting adult males); Modinos v CY 93/17 (prohibition on homosexual relations between consenting adults); Laskey, Jaggard and Brown v UK 97/4 (prosecution for assault in course of consensual sado-masochistic activities between adult males); Smith & Grady v UK 99/52 (dismissal of homosexuals from armed forces); Lustig-Prean & Beckett v UK 99/53 (dismissal of homosexuals from armed forces); ADT v UK 00/198 (prosecution for gross indecency in respect of video of consensual homosexual acts).

Commission Decisions and Reports

X v D (30.9.1975) 3/46 (conviction for homosexual conduct); X Ltd & Y v UK (7.5.1982) 28/77 (publisher and editor prosecuted for poem depicting homosexual Christ); X & Y v UK (3.5.1983) 32/220 (deportation of Malaysian homosexual in stable relationship with UK citizen); B v UK (12.10.1983) 34/68 (prohibition on soldier's homosexual conduct); S v UK (14.5.1986) 47/274 (relationship of homosexual of couple); Johnson v UK (17.7.1986) 47/72 (homosexual party raided by police); F v CH (10.3.1988) 55/178 (professional homosexual relations amounting to prostitution not within Article 8); Morissens v B (3.5.1988) 56/127 (disciplinary sanction on school employee following statement during television broadcast); Boitteloup v F (12.12.1988) 58/126 (dismissal of police officer for living off immoral earnings of transvestite); B v UK (10.2.1990) 64/278 (deportation of Cypriot in homosexual relationship); Röösli v D (15.5.1996) 85A/149 (homosexual partner refused succession to tenancy of late partner's apartment).

Ill-treatment (inhuman, degrading and torture): Articles 3, 8

(see also Asylum, deportation, expulsion, immigration and Detention and liberty)

Court Judgments

De Wilde, Ooms & Versyp v B 71/1 (vagrancy cases); Ireland v UK 78/1 (treatment by security forces, five techniques); Tyrer v UK 78/2 (birching as punishment); Marckx v B 79/2 (rights of illegitimate children); Guzzardi v I 80/3 (detention on Asinara island); Buchholz v D 81/1 (length of proceedings); Campbell and Cosans v UK 82/1 (corporal punishment in State schools); Albert and Le Compte 83/1 (medical disciplinary proceedings); Olsson v S 88/2 (children in public care); Berrehab v NL 88/9 (refusal to grant residence permit); Soering v UK 89/15 (expulsion to US death row); Nyberg v S 90/19 (care proceedings); Djeroud v F 91/1 (deportation order); Cruz Varas and Others v S 91/26 (expulsion to Chile); Vilvarajah and Others UK 91/46 (expulsion to Sri Lanka); Tomasi v F 92/53 (treatment by prison authorities); Vijayanathan and Pusparajah v F 92/54 (expulsion to Sri Lanka); Herczegfalvy v A 92/58 (psychiatric detention); Y v UK 92/68 (corporal punishment in private school); Costello-Roberts v UK 93/14 (corporal punishment in private school); Klaas v D 93/39 (treatment during arrest); Hurtado v CH 94/1 (treatment by police); Diaz Ruano v E 94/17 (treatment by security forces); Lopez Ostra v E 94/47 (treatment by authorities); Nasri v F 95/21 (expulsion to Algeria); Ribitsch v A 95/50 (treatment by police); Yagiz v TR 96/27 (treatment by security forces); Chahal v UK 96/54 (expulsion to India); Nsona v NL 96/57 (removal of Zairean asylum seekers); Ahmed v A 96/63 (expulsion to Somalia); Aksoy v TR 96/64 (treatment by security forces); Valsamis v GR 96/65 (suspension of Jehovah's witness from school); Efstratiou v GR 96/66 (suspension of Jehovah's witness from school); HLR v F 97/23 (expulsion to Colombia); D v UK 97/24 (expulsion of AIDS sufferer to St Kitts); Tsirlis and Kouloumpas v GR 97/27 (military service for Jehovah's Witness); Aydin v TR 97/71 (treatment by security forces); Sur v TR 97/75 (treatment by security forces); Erdagöz v TR 97/82 (treatment by security forces); Paez v S 97/85 (expulsion to Iran); Mentes and Others v TR 97/93 (treatment by security forces); Raninen v SF 97/96 (treatment of conscientious objector); Dalia v F 98/3 (expulsion to Algeria); Bahaddar v NL 98/9 (expulsion to Bangladesh); Selçuk and Asker v TR 98/30 (treatment by security forces); Gündem v TR 98/38 (treatment by security forces); Kurt v TR 98/39 (treatment by security forces); LCB v UK 98/44 (lack of information regarding risks of presence near nuclear test site); Tekin v TR 98/48 (treatment by security forces); Aerts v B 98/58 (conditions in psychiatric detention); BB v F 98/75 (expulsion to Zaire); A v UK 98/80 (chastisement of child by stepfather); Hatami v S 98/87 (expulsion to Peru); Assenov v BG 98/88 (treatment by police); Çakici v TR 99/40 (treatment by security forces); Selmouni v F 99/48 (treatment by police); T v UK 99/121 (trial of juvenile in adult court); V v UK 99/122 (trial of juvenile in adult court); Mahmut Kaya v TR 00/110 (shooting by unidentified perpetrators); Labita v I 00/125 (ill-treatment in prison); Sevtap Veznedaroglu v TR 00/128 (ill-treatment in police custody); Timurtas v TR 00/161 (disappearance of detainee); Salman v TR 00/170 (ill-treatment in police custody); Ilhan v TR 00/171 (ill-treatment by gendarmes); Dikme v TR 00/175 (ill-treatment in custody); Jabari v TR 00/179 (deportation to Iran); Scozzari & Giunta v I 00/181 (children in care); Caloc v F 00/186 (ill-treatment in custody).

Commission Decisions and Reports

East African Asians v UK (14.12.1973) 78A/5 (restrictions on admission to UK of Asian UK citizens and commonwealth residents); X v UK (30.9.1974) 1/54 (length of sentence for arson,); X v D (30.9.1974) 1/73 (expulsion of Algerian); X v D (8.10.1974) 1/77 (extradition of Syrian with German wife); X v NL (19.12.1974) 1/87 (deprivation of right to vote following conviction for un-citizenlike behaviour); X v B (10.7.1975) 3/83 (exercise time in detention); X v UK (29.9.1975) 3/5 (category A prisoner in solitary confinement); Becker v DK (3.10.1975) 4/215 (collective expulsion of Vietnamese children); Donnelly and six others v UK (15.12.1975) 4/4 (treatment following arrest); Hilton v UK (5.3.1976) 4/177 (solitary confinement and treatment in prison); X v D (13.5.1976) 6/62 (ill-treatment after

Warwick v UK (Rep 18.7.1986) 60/5 (corporal punishment of 16 year pupil in presence of another man, degrading); Lukka v UK (16.10.1986) 50/268 (deportation of Asian South African married to UK citizen); Kilic v CH (17.10.1986) 50/280 (expulsion of failed asylum seeker to Turkey); B v F (22.1.1987) 51/165 (extradition of Moroccan); M v F (23.1.1987) 51/232 (expulsion of Sri Lankan); Dhoest v B (Rep 14.5.1987) 55/5 (conditions of detention of mentally ill offender); Kalema v F (7.7.1987) 53/254 (expulsion to Zaire); Family A v UK (Rep 16.7.1987) 52/150 (corporal punishment at State school); B v D (10.3.1988) 55/271 (treatment in detention, denial of medication, applicant suffering depression as result of detention in Nazi concentration camp); Kontakt-Information-Therapie & Hagen v A (12.10.1988) 57/81 (drug rehabilitation therapists compelled to give evidence in criminal proceedings); El-Makhour v D (Rep 10.7.1989) 61/305 (woman residing with husband and children subject to deportation to Lebanon because of criminal conviction); BH & L v A (5.12.1989) 64/264 (extradition to US); Mansi v S (Rep 9.3.1990) 64/253 (deportation of Jordanian citizen of Palestinian origin); Aldrian v A (7.5.1990) 65/337 (reduction in life sentence but refusal of conditional release); Wakefield v UK (1.10.1990) 66/251 (refusal of authorities to transfer prisoner to Scottish prison to be nearer fiancée); Abbott v UK (10.12.1990) 67/290 (conditions of detention of juvenile offender); A & FBK v TR (12.1.1991) 68/188 (expulsion to Iran); Y v NL (16.1.1991) 68/299 (expulsion of foreigner convicted of drug offences); A v F (27.2.1991) 68/319 (expulsion to Zaire); Kozlov v SF (28.5.1991) 69/321 (extradition to Soviet Union); V & P v F (4.6.1991) 70/298 (expulsion of Sri Lankan); Fadele v UK (Rep 4.7.1991) 70/159 (refusal to allow Nigerian applicant to settle with British children in UK); Treholt v N (9.7.1991) 71/168 (length of sentence following espionage conviction and conditions of confinement); H v N (19.5.1992) 73/155 (abortion without consent of potential father); Hazar, Hazar & Acik v TR (Rep 10.12.1992) 73/111 (treatment in custody); Voulfovitch, Oulianova & Voulfovitch v S (13.1.1993) 74/199 (expulsion to Russia); D and Others v S (15.2.1993) 74/252 (expulsion to Peru); SM & MT v A (5.4.1993) 74/179 (conditions of asylum seekers in transit at Vienna airport, expulsion to Lebanon); L v F (7.4.1993) 74/162 (expulsion to Iran following conviction for drugs offences); Chrysostomos, Papachrysostomou, Loizidou v TR (Rep 8.7.1993) 86A/4 (Turkish invasion of Northern Cyprus); D and Others (No 2) v S (Rep 8.9.1993) 75/257 (adequate redress at domestic level regarding expulsion of Peruvian asylum seeker); L v S (8.9.1993) 75/264 (expulsion to Iran); Gürdogan, Müstal and Others v TR (Rep 20.1.1994) 76B/9 (treatment by security forces); Aylor-Davis v F (20.1.1994) 76B/164 (extradition to US and exposure to death row phenomenon); DR v F (10.3.1994) 76B/174 (expulsion to Algeria to face death penalty); Peters v NL (6.4.1994) 77A/75 (obligation to give urine sample to prison authorities for drug test and procedures for testing); Grice v UK (14.4.1994) 77A/90 (refusal of authorities to grant early release on compassionate grounds to prisoner suffering from AIDS); Dreshaj v SF (19.5.1994) 77A/126 (expulsion of part of family of Kosovo Albanians); Tanko v SF (19.5.1994) 77A/133 (expulsion of Ghanaian with glaucoma eye condition); EGM v L (20.5.1994) 77B/144 (extradition of Colombian); M-AV v F (31.8.1994) 79B/54 (treatment in police custody resulting in suicide on release); Çinar v TR (5.9.1994) 79B/5 (exposure to death row phenomenon following death penalty imposed); Hippin v A (5.9.1994) 79A/23 (treatment in police custody following arrest at Opera Ball demonstration); H v S (5.9.1994) 79A/85 (expulsion to Syria of military deserter); AN v F (20.1.1994 and 12.10.1994) 79B/76, 138 (deportation of Angolan); AB v CH (22.2.1995) 80B/66 (obligation to provide urine samples to be tested for drugs); Raidl v A (4.9.1995) 82A/134 (extradition to Russia); Remer v D (6.9.1995) 82A/117 (conviction and imprisonment of 80 year old for incitement to hatred); Lwanga & Sempungo v S (14.9.1995) 83A/91 (expulsion of minors in psychiatric care to Uganda); AG and Others v S (26.10.1995) 83A/101 (expulsion of Kurdish families to Turkey); Tauira & 18 others v F (4.12.1995) 83B/112 (French Polynesians complaints of French President decision to resume nuclear tests on Mururoa and Fangataufa atolls in French Polynesia); CJ, JJ & EJ v PL (16.1.1996) 84A/46 (timetabling of religious instruction classes in school); Mehiar v GR (10.4.1996) 85A/47 (ill-treatment in prison and no medical assistance); Slepcik v NL (2.9.1996) 86A/176 (expulsion to Czech Republic of Roma gypsies); Ayala v P (Rep 21.10.1996) 87B/38 (conditions of detention and medical care of HIV prisoner and interference with correspondence); Venezia v I

(21.10.1996) 87B/140 (extradition to Florida to face death penalty); Kareem v S (25.10.1996) 87A/173 (detention pending expulsion to Iraq and separation from wife); Tepe v TR (25.11.1996) 87A/90 (detention, torture and killing of journalist); Urrutikoetxea v F (5.12.1996) 87B/151 (expulsion to Spain of Basque); Laginha de Mator v P (7.4.1997) 89B/98 (applicant shot by game warden who was found by national court to be acting in self-defence); Stewart-Brady v UK (2.7.1997) 90A/45 (media stories of applicant detained in mental hospital); Isiyok v TR (Rep 31.10.1997) 91A/5 (bombing of village by security forces); Iruretagoyena v F (12.1.1998) 92B/99 (expulsion of convicted Basque to Spain); Venetucci v I (2.3.1998) 92A/113 (refusal to suspend sentence of unwell applicant convicted of aggravated murder); Sarialtun and Others v D (Rep 18.9.1998) 94A/113 (deportation of Kurdish family).

Marriage and founding a family: Articles 12, 14

Court Judgments

Marckx v B 79/2 (rights of illegitimate children); Buchholz v D 81/1 (length of proceedings); Rees v UK 86/9 (change of sex); Johnston and Others v IRL 86/15 (consequences of divorce); F v CH 87/26 (temporary prohibition on remarriage); Cossey v UK 90/20 (change of sex); Sheffield & Horsham 98/60 (change of sex).

Commission Decisions and Reports

X v D (18.12.1974) 1/64 (authorities refusal to register marriage on applicant's claim marriage concluded on intercourse after reading Moses Ch 22); X v UK (21.5.1975) 2/105 (long term prisoner deprived of conjugal rights); X v B (10.7.1975) 7/75 (adoption by unmarried person not included in A 12); X v CH (12.7.1976) 6/124 (expulsion of German national, Swiss wife remaining); X v D (12.7.1976) 6/138 (Indian living in Berlin complained refusal of residence permit preventing him marrying); X v B and NL (10.7.1975) 7/75 (relation between adoptive parents and child); Hamer v UK (Rep 13.12.1979) 24/5 (prisoner refused temporary release to marry); Draper v UK (Rep 10.7.1980) 24/72 (prisoner refused permission for leave to marry); X v CH (5.10.1981) 26/207 (Argentine national prevented from remarriage as could not show that it would be accepted in Argentina); J and Others v IRL (7.10.1983) 34/131 (cohabiting couple unable to marry as State did not recognise divorce); M v D (13.12.1984) 41/259 (authorities refusal of applicant's request to marry deceased person); Kleine Staarman v NL (16.5.1985) 42/162 (loss of disability benefit on marriage); Khan v UK (7.7.1986) 48/253 (Muslim prevented from marrying girl under 16); Lindsay v UK (11.11.1986) 49/181 (UK tax legislation concerning married couples); W v UK (Rep 7.3.1989) 63/34 (refusal of authorities to amend birth certificate following sex change or to allow same biological sex marriage); Eriksson & Goldschmidt v S (9.11.1989) 63/213 (transsexual prohibited from marrying same biological sex); Benes v A (6.1.1992) 72/271 (court annulment of marriage of convenience); Senine Vadbolski & Demonet v F (12.10.1994) 79B/79 (Ukrainian national unable to obtain birth certificate and therefore unable to marry French national); Sanders v F (16.10.1996) 87B/160 (difficulties of Turkish citizen and French citizen obtaining certificate of capacity to marry); Di Lazzaro v I (10.7.1997) 90B/134 (unmarried woman unable to adopt child); ELH and PBH v UK (22.10.1997) 91A/61 (denial to prisoner of conjugal visits for procreation); Klip & Krüger v NL (3.12.1997) 91A/66 (investigation into motives for marriage of Dutch and German couple); Varnava and Others v TR (14.4.1998) 93A/5 (applicants taken into custody by Turkish army following invasion of Cyprus).

Mental health: Articles 3, 5 8

Court Judgments

Winterwerp v NL 79/4 (psychiatric detention); X v UK 81/5 (psychiatric detention); Luberti v I 84/3 (psychiatric confinement) ; Ashingdane v UK 85/6 (confinement in secure accommodation); Nielsen

v DK 88/16 (hospitalisation of 12 year old); Van der Leer v NL 90/1 (psychiatric confinement without informing patient); E v N 90/16 (preventive detention); Wassink v NL 90/21 (enquiries leading to psychiatric confinement); Keus v NL 90/28 (extension psychiatric confinement in absence of applicant); Megyeri v D 92/49 (no lawyer in proceedings for psychiatric release); Herczegfalvy v A 92/58 (detention and psychiatric treatment); Kremzow v A 93/38 (murder of lawyer by judge); Silva Rocha v P 96/55 (detention in psychiatric institution); Eriksen v N 97/25 (interim detention); Johnson v UK 97/84 (detention in psychiatric institution); Aerts v B 98/58 (psychiatric wing of prison); Erkalo v NL 98/72 (extension of psychiatric placement); Musial v PL 99/17 (psychiatric detention); Matter v SK 99/28 (legal capacity, psychiatric examination) ; Prinz v A 00/68 (no hearing in person for applicant in mental institution).

Commission Decisions and Reports

X v D (10.12.1975) 3/92 (psychiatric detention for observation); X v NL (30.9.1975) 5/35 (temporary admission to home for mentally ill following request by wife); X v UK (14.5.1977) 8/106 (psychiatric detention); A v UK (Rep 6.7.1980) 20/5 (treatment of offender in psychiatric hospital); X v D (7.5.1981) 24/103 (lawyer applicant forced by criminal court to submit to psychiatric examination); Jespers v B (Rep 14.12.1981) 27/61 (failure to produce documents); C v UK (Rep 13.7.1983) 40/5 (detention of person of unsound mind); Barclay-Maguire v UK (Rep 9.12.1983) 35/5 (lawfulness of detention); D v B (12.7.1984) 38/164 (conditions of detention at institutions for insane); Schuurs v NL (Rep 7.3.1985) 41/186 (detention of mentally ill applicant without being heard); Waltén v S (16.5.1985) 43/184 (restriction on mentally ill access to court); Roux v UK (18.7.1986) 48/263 (mental patient refused unescorted leave from mental hospital by Secretary of State); Dhoest v B (Rep 14.5.1987) 55/5 (conditions of detention of mentally ill offender); Krol v S (Rep 5.7.1988) 56/186 (removal of child at birth from mentally ill mother to social welfare authorities); Merkier v B (Rep 13.10.1988) 57/38 (defence rights before Mental Health Review Board of psychiatric detainee); W v S (9.12.1989) 59/158 (lawfulness of psychiatric detention); Boucheras & Groupe Information Asiles v F (11.4.1991) 69/236 (review of compulsory placement in mental hospital); H v NL (Rep 4.7.1991) 70/190 (psychiatric detention ordered by judge without hearing applicant); Chave née Jullien v F (9.7.1991) 71/141 information in central records regarding confinement in psychiatric institution); C v UK (3.7.1992) 73/27 (refusal to allow access to daughter, elective mute in care); Martin v UK (28.2.1996) 84A/169 (denial of access to medical records of mentally ill applicant); O'Reilly v IRL (Rep 3.12.1996) 87A/58 (committal to psychiatric hospital without examination).

Movement, freedom of: Protocol 4, Article 2

Court Judgments

Raimondo v I 94/3 (preventive measures applied to mafia member); Labita v I 00/125 (detention on island of Pianosa under special police supervision).

Commission Decisions and Reports

X v B (16.10.1980) 23/237 (applicant convicted of running brothel precluded from selling on premise liquors and residing with her husband); S v S (6.5.1985) 42/224 (freedom of tax debtor to leave country with his possessions); Schmid v A (9.7.1985) 44/195 (continuing bail conditions); Paramanathan v D (1.12.1986) 51/237 (applicant convicted in respect of breach of limitation on residence permit); Aygün v S (9.10.1989) 63/195 (expulsion of Turkish citizen); Ciancimino v I (27.5.1991) 70/103 (special supervision & compulsory residence orders); Reyntjens v B (9.9.1992) 73/136 (obligation to carry identification card); A v RSM (9.7.1993) 75/245 (revocation of residence permit); Peltonen v SF (20.2.1995) 80A/38 (refusal to issue appellant who had failed to attend military service call-up with passport); Van Den Dungen v NL (22.2.1995) 80A/147 (prohibition of leaflets and photographs regarding abortion); KS v SF (24.5.1995) 81A/42 (prolongation of military service and refusal of

authorities to issue passport); Brezny v SK (4.3.1996) 85B/65 (no restitution of property for applicants resident abroad); Riener v BG (11.4.1997) 89A/83 (confiscation of passport and prohibition on Austrian-Bulgarian national leaving the country on account of unpaid taxes).

Prisoners' rights: Articles 3, 8, 9, 10, 11

Court Judgments

Golder v UK 75/1 (censorship of correspondence); Silver and Others v UK 83/2 (interference with correspondence); Campbell & Fell v UK 84/8 (disciplinary proceedings, interference with correspondence); Boyle & Rice v UK 88/3 (restrictions on visits and correspondence); Schönenberger & Dumaz v CH 88/8 (interference with correspondence); McCallum v UK 90/18 (restrictions on correspondence); Pfeifer & Plankl v A 92/2 (interference with correspondence); Campbell v UK 92/41 (interference with mail); Herczegfalvy v A 92/58 (detention and treatment); Messina v I 93/13 (interference with correspondence); Calogero Diana v I 96/51 (censorship of correspondence); Domenichini v I 96/52 (censorship of correspondence); Petra v RO 98/83 (interference with mail); Demirtepe v F 99/126 (interference with correspondence); Labita v I 00/125 (suspension of voting rights); Foxley v UK 00/164 (interception of correspondence).

Commission Decisions and Reports

X v UK (20.12.1974) 1/41 (prisoner prohibited from sending out articles for publication in Buddhist magazine); X v UK (13.3.1975) 2/50 (prisoner unable to study technology in prison); X v UK (21.5.1975) 2/105 (prisoner deprived of conjugal visits and access to his children); Baader, Meins, Meinhof, Grundmann v D (30.5.1975) 2/58 (restrictions of Baader-Meinhof group prisoners); X v UK (29.9.1975) 3/5 (classification of prisoners); Hilton v UK (5.3.1976) 4/177 (black prisoner in solitary confinement, interference with correspondence); X v UK (5.3.1976) 5/8 (lack of Jewish services or kosher food in prison); X v UK (18.5.1976) 5/100 (Russian Orthodox prisoner, converted to Sikh and then to Tai Buddhism deprived of 'Tai Chi Ch'uan and I Ching' book); Kotälla v NL (6.5.1978) 14/238 (treatment, including medical treatment, in custody); Hamer v UK (Rep 13.12.1979) 24/5 (prisoner refused temporary release to marry); Draper v UK (Rep 10.7.1980) 24/72 (prisoner refused permission for leave to marry); Vanderlinden v B (14.10.1980) 23/127 (interference with prisoners' correspondence); McVeigh, O'Neill & Evans v UK (Rep 18.3.1981) 25/15 (lawfulness of detention, questioning, photographing, fingerprinting and denial of access to wives); Reed v UK (Rep 12.12.1981) 25/5 (treatment in prison, interference with correspondence); X v DK (16.12.1981) 27/50 (solitary detention); Kröcher & Möller v CH (Rep 16.12.1982) 34/24 (solitary detention); X v I (17.12.1981) 27/200 (detained convict suffering from hereditary obesity); X v UK (6.3.1982) 28/5 (refusal to wear prison clothes, treatment in prison); X v UK (8.10.1982) 30/113 (refusal by prison authorities to grant visit order to Citizens Commission on Human Rights); Chartier v I (Rep 8.12.1982) 33/41 (detainee with hereditary obesity); F, N, DK, S, NL v TR (6.12.1983) 35/143 (practice of torture on prisoners); S v UK (13.3.1984) 36/41 (transfer of prisoner without notifying family); R, S, A and C v P (15.3.1984) 36/200 (hunger strike prisoners); R v DK (11.3.1985) 41/149 (solitary confinement while in detention on remand); Farrant v UK (Rep 18.10.1985) 50/5 (restrictions on prisoner correspondence); Byrne, McFadden, McCluskey & McLanon v UK (Rep 3.12.1985) 51/5 (refusal to allow prisoners to consult with solicitors); Lant v UK (10.12.1985) 45/236 (prison authorities refusal to use previous new name); McQuirton and Others v UK (4.3.1986) 46/182 (policy of integrating loyalist and republican prisoners in Northern Ireland); Vereniging Rechtswinkels Utrecht v NL (13.3.1986) 46/200 (withdrawal of associations providing legal information access to prison); Seale v UK (Rep 15.5.1986) 50/70 (transfer of prisoner and censorship of letters); McComb v UK (Rep 15.5.1986) 50/81 (inspection of correspondence between prisoner and solicitor); Pelle v F (10.10.1986) 50/263 (prison disciplinary sanction); Ross v UK (11.12.1986) 50/179 (failure of prison authorities to provide legal texts and materials); Dhoest v B (Rep 14.5.1987) 55/5 (conditions of detention of mentally ill offender); B v D (10.3.1988) 55/271

(treatment in detention, denial of medication, applicant suffering depression as result of detention in Nazi concentration camp); Campbell v UK (13.7.1988) 57/148 (handcuffing through hearing, restrictions imposed on solicitor visits); Lowes v UK (9.12.1988) 59/244 (refusal of prison authorities to allow applicant to receive anti-Semitic magazine 'Gothic Ripples'); Grace v UK (Rep 15.12.1988) 62/22 (interference with prisoner's correspondence); Ouinas v F (12.3.1990) 65/265 (right of access of prisoner to daughter); Chester v UK (Rep 17.5.1990) 68/65 (interference with prisoner's correspondence); Wakefield v UK (1.10.1990) 66/251 (refusal of authorities to transfer prisoner to Scottish prison to be nearer fiancée); G v A (9.10.1991) 71/45 (interference with correspondence between prisoner and lawyer); Peters v NL (6.4.1994) 77A/75 (obligation to give urine sample to prison authorities for drug test and procedures for testing); Grice v UK (14.4.1994) 77A/90 (refusal of authorities to grant early release on compassionate grounds to prisoner suffering from AIDS); AB v CH (22.2.1995) 80B/66 (obligation to provide urine samples to be tested for drugs); Mehiar v GR (10.4.1996) 85A/47 (ill-treatment in prison and no medical assistance); Sawicki v PL (Rep 14.1.1997) 88A/42 (interference with prisoner's correspondence); Rebai v F (25.2.1997) 88B/72 (failure of prison authorities to protect prisoner from dangerous cell-mate); ELH and PBH v UK (22.10.1997) 91A/61 (denial to prisoner of conjugal visits for procreation); Holland v IRL (14.4.1998) 93A/15 (interference with correspondence of prisoner, inability to vote in prison).

Privacy and family life: Article 8

Court Judgments

Correspondence/telephone: Golder v UK 75/1; Silver and Others v UK 83/2; Campbell & Fell v UK 84/8; Malone v UK 84/10; Boyle & Rice 88/3; Schönenberger & Dumaz v CH 88/8; Schenk v A 88/11; Kruslin v F 90/8; Huvig v F 90/9; McCallum v UK 90/18; Pfeifer & Plankl v A 92/2; Campbell v UK 92/41; Lüdi v CH 92/50; Herczegfalvy v A 92/58; Funke v F 93/3; Messina v I 93/13; A v F 93/49; Calogero Diana v I 96/51; Domenichini v I 96/52; Halford v UK 97/31; Kopp v CH 98/16; Valenzuela Contreras v E 98/57; Lambert v F 98/66; Petra v RO 98/83; Demirtepe v F 99/126; Amann v CH 00/81; Labita v I 00/125; Foxley v UK 00/164; Niedbala v PL 00/175. *Detention*: De Wilde, Ooms, Versyp v B 71/1; Guzzardi v I 80/3; Dikme v TR 00/175. *Education*: Kjeldsen, Busk Madsen & Pedersen v DK 76/4. *Environment*: Powell & Rayner v UK 90/3; López Ostra v E 94/47; Guerra and Others v I 98/8; Botta v I 98/13. *Family/married life*: Marckx v B 79/2; Airey v IRL 79/3; Rasmussen v DK 84/15; Johnston and Others v IRL 86/15; O v UK 87/12; H v UK 87/13; W v UK 87/14; B v UK 87/15; R v UK 87/16; Olsson v S 88/2; Eriksson v S 89/10; Nyberg v S 90/17; Vermeire v B 91/54; Andersson 92/1; Rieme v S 92/46; Olsson (No 2) v S 92/73; Hoffman v A 93/24; Boyle v UK 94/9; Keegan v IRL 94/18; Hokkanen v SF 94/32; Kroon and Others v NL 94/34; McMichael v UK 95/7; Johansen v N 96/28; Nsona v NL 96/57; X, Y, Z v UK 97/20; Petrovic v A 98/18; Bronda v I 98/47; Söderbäck v S 98/93; Buscemi v I 99/51; EP v I 99/86; Salgueira Da Silva Mouta v P 99/125; Ignaccolo-Zenide v RO 00/12; K & T v SF 00/131; L v SF 00/132; Nuutinen v SF 00/169; Ciliz v NL 00/177; Elsholz v D 00/180; Scozzari & Giunta v I 00/181. *Health*: McGinley & Egan v UK 98/43; LCB v UK 98/44; Matter v SK 99/28. *Home/premises/property*: Gillow v UK 86/12; Chappell v UK 89/5; Niemietz v D 92/76; Funke v F 93/3; Crémieux v F 93/4; Miailhe v F 93/5; Loizidou v TR 95/9; Velosa Barreto v P 95/46; Akdivar v TR 96/34; Buckley v UK 96/35; Mentes and Others v TR 97/93; v CH 97/98; Selçuk & Asker v TR 98/30; Gündem v TR 98/38; McLeod v UK 98/82; Larkos v CY 99/9; ADT v UK 00/198. *Homosexuality*: Dudgeon v UK 81/4; Norris v IRL 88/14; Modinos v CY 93/17; Smith & Grady v UK 99/52; Lustig-Prean & Beckett v UK 99/53. *Immigration*: Abdulaziz, Cabales & Balkandali v UK 85/7; Berrehab v NL 88/9; Djeroud v F 91/1; Moustaquim v B 91/3; Cruz Varas and Others v S 91/26; Beldjoudi v F 92/42; Olsson (No 2) v S 92/73; Lamguindaz v UK 93/27; Nasri v F 95/21; Gül v CH 96/5; Boughanemi v F 96/18; C v B 96/25; Nsona v NL 96/57; Ahmut v NL 96/58; Bouchelkia v F 97/1; D v UK 97/24; Mehemi v F 97/72; El Boujaïdi v F 97/73; Boujlifa v F 97/80; Dalia v F 98/3; Baghli v F 99/93; Ciliz v NL 00/177. *Languages*: Belgian Linguistics 68/1.

Names: Burghartz v CH 94/2; Stjerna v SF 94/42; Guillot v F 96/44. *Privacy*: Buchholz v D 81/1; X & Y v NL 85/4; Langborger v S 89/9; Herczegfalvy v A 92/58; Funke v F 93/3; Klaas v D 93/39; Stubbings and Others v UK 96/40; Laskey, Jaggard & Brown v UK 97/4; Z v SF 97/10; Mentes and Others v TR 97/93; Raninen v SF 97/96; Osman v UK 98/91; Matter v SK 99/28; ADT v UK 00/198 *Punishment*: Costello-Roberts v UK 93/14. *Records/registers:* Leander v S 87/4; Gaskin v UK 89/14; Murray v UK 94/35; Friedl v A 95/1; MS v S 97/46; McGinley & Egan v UK 98/43; Amann v CH 00/81; Rotura v RO 00/145. *Surveillance*: Klass and Others v D 78/4; Khan v UK 00/148. *Transsexuals*: Van Oosterwijck v B 80/4; Rees v UK 86/9; Cossey v UK 90/20; B v F 92/40; X, Y, Z v UK 97/20; Sheffield & Horsham v UK 98/60.

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East African Asians v UK (14.12.1973) 78A/5 (restrictions on admission to UK of Asian UK citizens and commonwealth residents); X v D (8.10.1974) 1/77 (extradition of Syrian with German wife); X v D (19.12.19974) 1/91 (restrictions on access to daughter); X & Y v NL (19.12.1974) 2/118 (forced return of minor to parent); X v UK (20.12.1974) 1/41 (prisoner prohibited from sending out articles for publication in Buddhist magazine); X v NL (16.3.1975) 1/66 (authorities refusal of permission for applicant to live in his house); X v UK (21.5.1975) 2/105 (long term prisoner deprived of conjugal rights); Baader, Meins, Meinhof, Grundmann v D (30.5.1975) 2/58 (restrictive measures on Red Army Faction members); X v B and NL (10.7.1975) 7/75 (relation between adoptive parents and child); X v D (30.9.1975) 3/46 (conviction for homosexual conduct); Hilton v UK (5.3.1976) 4/177 (solitary confinement and interference with correspondence of prisoner); X v ISL (18.5.1976) 5/86 (prohibition on keeping a dog in Reykjavik); Brüggemann, Scheuten v D (19.5.1976) 5/103 (sexual life, pregnancy, abortion); X v CH (12.7.1976) 6/124 (expulsion of German national and consequent forced separation from his Swiss wife); X v DK (29.9.1976) 7/81 (failure of authorities to retrieve child from 'Children's Power' organisation); Agee v UK (17.12.1976) 7/164 (extradition of US citizen, Brazilian common-law wife resident in UK); Wiggins v UK (8.2.1978) 13/40 (licence for residence in Guernsey); Bertrand Russell Peace Foundation Ltd v UK (2.5.1978) 14/117 (interference of correspondence by Soviet authorities); X v NL (4.12.1978) 16/184 (breath test requirement for drink drivers); Sutter v CH (1.3.1979) 16/166 (obligation on part-time soldiers to cut hair); X v D (Rep 11.10.1979) 17/21 (refusal to recognise new sex of transsexual); X v UK (Rep 12.10.1979) 19/66 (homosexual conduct between men aged 18 to 21); Reed v UK (6.12.1979) 19/113 (treatment following prison riot including withholding mail); X v A (13.12.1979) 18/154 (forced blood test in paternity proceedings); X v B (13.12.1979) 18/255 (obligation on driver and front seat passenger to wear seat belts); X v D (14.3.1980) 20/193 (forced medicine to mentally ill prisoner in psychiatric hospital); X v UK (13.5.1980) 19/244 (husband seeking to prevent abortion); McFeeley and Others v UK (15.5.1980) 20/44 (protest by prisoners); Kamal v UK (14.5.1980) 20/168 (refusal of entry clearance for wife and child); Uppal, Singh and Others v UK (Rep 9.7.1980) 20/29 (deportation of Indian family); Deklerck v B (11.7.1980) 21/116 (prosecution of hotel keeper for selling alcohol); Widén v S (Rep 10.10.1980) 48/93 (child placed with foster parents denied contact with mother); Vanderlinden v B (14.10.1980) 23/127 (interference with prisoners' correspondence); X v B (16.10.1980) 23/237 (applicant convicted of running brothel precluded from selling on premise liquors and residing with her husband); X v CH (9.12.1980) 24/205 (extradition of Indian to Dubai, applicant unwell unable to contact wife); YH v D (10.12.1980) 51/258 (expulsion to Lebanon and thus separation from husband); X v D (10.3.1981) 24/137 (applicant's wish to have ashes scattered on own land and not in cemetery with Christian symbols); X v CH (10.3.1981) 24/183 (family life between grandmother and grandson); X v B (10.3.1981) 24/198 (control of bankruptcy correspondence); X v D (5.5.1981) 24/131 (obligation to submit to medical examination in guardianship proceedings); X v DK (5.5.1981) 24/239 (deportation of Egyptian married to Dane); X v UK (6.5.1981) 24/98 (deportation of Indian spouses with British citizen children); X v D (7.5.1981) 24/103 (lawyer applicant forced by criminal court to submit to psychiatric examination); X v D (8.12.1981) 27/243 (ability of family members to follow deportee); Reed v UK (Rep 12.12.1981)

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75/223 (sickness insurance fund refusing to reimburse cost of treatment by applicant's chosen doctor); AS v A (Rep 15.10.1993) 75/30 (gathering and storing of information following surveillance by police); Vella v M (Rep 20.1.1994) 76A/29 (entry and search of home); AD v NL (11.1.1994) 76A/157 (interference with correspondence by police); Durini v I (12.1.1994) 76B/76 (proceedings concerning will restricting right of succession to male line only); SF v CH (2.3.1994) 76B/13 (Italian prohibited from entry to Swiss territory); TV v SF (2.3.1994) 76A/140 (disclosure of HIV status to prison authorities); Whiteside v UK (7.3.1994) 76A/80 (failure of State to provide remedy against harassment); Peters v NL (6.4.1994) 77A/75 (obligation to give urine sample to prison authorities for drug test and procedures for testing); MB v UK (6.4.1994) 77A/108 (paternal responsibility and contact proceedings); Dreshaj v SF (19.5.1994) 77A/126 (expulsion of part of family of Kosovo Albanians); Tanko v SF (19.5.1994) 77A/133 (expulsion of Ghanaian with glaucoma eye condition); GF v D (9.6.1994) 78A/111 (maintenance proceedings by child against father's Benedictine Order); Christie v UK (27.6.1994) 78A/119 (complaint of interference with correspondence from East European trade unions); KD v NL (30.11.1994) 79A/31 (telephone tapping of probation officer suspected of drug offences); Hacisüleymanoglu v I (20.10.1994) 79B/121 (refusal of authorities to transfer Turkish applicant to Turkey to serve remainder of sentence); Ijspeerd v NL (20.2.1995) 80A/175 (sending of unsolicited advertising brochures regarding travel passes); AB v CH (22.2.1995) 80B/66 (obligation to provide urine samples to be tested for drugs); BC v CH (27.2.1995) 80A/101 (surveillance and search in respect of use of wireless telephone); JR, GR, RR, & YR v CH (5.4.1995) 81A/61 (complaint regarding compulsory dental treatment for children); Martin v CH (5.4.1995) 81B/136 (refusal by police to disclose full extent of file or to destroy file); El Maziani v F (5.4.1995) 81B/142 (expulsion of Moroccan with close family in France); Mahaut v F (6.7.1995) 82B/31 (applicant's sister forced to take early retirement); Raidl v A (4.9.1995) 82A/134 (extradition to Russia); Waldberg v TR (6.9.1995) 82B/25 (confiscation of address book and documents relating to PKK activities); Reiss v A (6.9.1995) 82A/51 (conviction for pornography, no witnesses for prosecution heard by court); Manoutcheri & SKG v F (13.9.1995) 82B/36 (tapping and interception of phone conversations of drug dealers); Tauira & 18 others v F (4.12.1995) 83B/112 (French Polynesians complaints of French President decision to resume nuclear tests on Mururoa and Fangataufa atolls in French Polynesia); CJ, JJ & EJ v PL (16.1.1996) 84A/46 (timetabling of religious instruction classes in school); Young v IRL (17.1.1996) 84A/122 (Parliamentary privilege in relation to alleged defamation of neurosurgeon); Klöpper v CH (18.1.1996) 84A/101 (provisions for married couple's contributions to Social Insurance); Schaller Volpi v CH (28.2.1996) 84B/106 (covert surveillance by federal police); Martin v UK (28.2.1996) 84A/169 (denial of access to medical records of mentally ill applicant); Fidler v A (16.4.1996) 85A/84 (proceedings for access to great-grandchildren); Röösli v D (15.5.1996) 85AA/149 (homosexual partner refused succession to tenancy of late partner's apartment); ALH, ESH, DCL, BML & ME v H (20.5.1996) 85A/88 (children given up for adoption placed under state custody and confined to children's home); Rogl v D (20.5.1996) 85A/153 (following divorce from her mother, applicant's daughter's surname changed to that of her step-father); Logan v UK (6.9.1996) 86A/74 (challenge to maintenance assessment of Child Support Agency); Ayala v P (Rep 21.10.1996) 87B/38 (conditions of detention and medical care of HIV prisoner and interference with correspondence); MP & ML v E (21.10.1996) 87B/100 (paternity proceedings); Kareem v S (25.10. 1996) 87A/173 (detention pending expulsion to Iraq and separation from wife); Sawicki v PL (Rep 14.1.1997) 88A/42 (interference with prisoner's correspondence); Minardo v I (25.2.1997) 88B/5 (failure of City Council to provide alternative to dangerous accommodation); Andre v F (7.4.1997) 89B/71 (inability to rectify erroneous intelligence service files); Scientology Kirche Deutschland eV v D (7.4.1997) 89A/163 (complaint of discrimination, intolerance, exclusion against association condoned by authorities); Stedman v UK (9.4.1997) 89A/104 (dismissal for refusing to work on Sundays); Riener v BG (11.4.1997) 89A/83 (confiscation of passport and prohibition on Austrian-Bulgarian national leaving the country on account of unpaid taxes); Stewart-Brady v UK (2.7.1997) 90A/45 (media stories of applicant detained in mental hospital); Salonen v SF (2.7.1997) 90A/60 (parents prevented from naming their child Ainut Vain Marjaana, The One and Only

Marjaana); Miliani v F (2.7.1997) 90B/161 (medical disciplinary body); MM v BG (Rep 9.7.1997) 90A/56 (custody of child given to father and not to mother who was member of 'Warriors of Christ'); Di Lazzaro v I (10.7.1997) 90B/134 (unmarried woman unable to adopt child); ELH and PBH v UK (22.10.1997) 91A/61 (denial to prisoner of conjugal visits for procreation); Roetzheim v D (23.10.1997)91A/40 (refusal to recognise transsexual's changed identity); Isiyok v TR (Rep 31.10.1997) 91A/5 (bombing of village by security forces); Klip & Krüger v NL (3.12.1997) 91A/66 (investigation into motives for marriage of Dutch and German couple); IF v F (11.12.1997) 91B/10 (Senegalese father facing expulsion and thus separation from seriously ill son); Aboikonie & Read v NL (12.1.1998) 92A/23 (expulsion of Surinamese national with criminal convictions and wife and children resident in Netherlands); Herbecq & the Association 'Ligne Des Droits De L'Homme' v B (14.1.1998) 92B/92 (absence of legislation regarding surveillance): Boffa & 13 others v RSM (15.1.1998) 92B/27 (law requiring compulsory vaccination of children against hepatitis B); Spencer v UK (16.1.1998) 92A/56 (inability to prevent publication of details of private affairs of Earl and Countess); Quintana Zapata v E (4.3.1998) 92B/139 (refusal to grant widow's pension to applicant who had lived with partner for 65 years and had 5 children by him); Varnava and Others v TR (14.4.1998) 93A/5 (applicants taken into custody by Turkish army following invasion of Cyprus); Holland v IRL (14.4.1998) 93A/15 (interference with correspondence of prisoner, inability to vote in prison); Wöckel v D (16.4.1998) 93A/82 (complaint about exposure to smoking in public buildings); Drissi v N (27.5.1998) 93A/91 (presence of press in applicant's home without her knowledge or consent during police search); Passannante v I (1.7.1998) 94A/91 (complaint of 5 month wait for reduced fee paying visit to hospital but only 4 days for paying visit); Sarialtun and Others v D (Rep 18.9.1998) 94A/113 (deportation of Kurdish family).

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practising architecture); Prince v UK (13.3.1986) 46/222 (disciplinary suspension of barrister for attacking reputation of court official); Houart v B (Rep 8.7.1986) 53/5 (medical disciplinary proceedings); Blochmann v D (18.7.1986) 48/204 (right to continue practising medicine); Houart v B (Rep 8.7.1986) 53/5) (medical disciplinary proceedings); Saussez v B (Rep 11.10.1986) 48/5 (absence of publicity in proceedings against doctor); Cavalin v F (7.10.1987) 53/28 (medical disciplinary proceedings); Karni v S (8.3.1988) 55/157 (exclusion of doctor from social security system); Ginikanwa v UK (9.3.1988) 55/271 (Bar disciplinary proceedings); Nyström v B (7.11.1988) 58/48 (right to continue to practise medicine); Association of General Practitioners v DK (12.7.1989) 62/226 (legislation limiting increase in fees); Revert and Legallais v F (8.9.1989) 62/309 (obligation on architects to join Association); A v A (2.4.1990) 65/290 (disciplinary proceedings against lawyer); Dimitriades v GR (17.5.1990) 65/279 (disciplinary proceedings against civil servants); Guenoun v F (2.7.1990) 66/181 (lack of publicity of medical disciplinary proceedings); A and Others v E (2.7.1990) 66/188 (suspension of Young Lawyers' Group by Bar Council and prohibition against setting up or joining other associations); Rouit & Navarro v F (7.1.1991) 68/167 (dental surgeons complaint of access to civil service); Imberechts v B (25.2.1991) 69/312 (medical disciplinary proceedings in camera); Hempfing v D (7.3.1991) 69/272 (remand of lawyer for breaching Bar Association advertising rules); Ackerl, Grötzback, Glawischnig, Schwalm, Klein, Sladecek & Limberger v A (29.6.1994) 78A/116 (judges complaint of under-staffing and obligation to take on work of other judges with no supplementary payment for overtime); Ergül v TR (17.1.1996) 84B/69 (dismissal of applicant who had engaged in political activities from national judicial service); Busch v L (12.4.1996) 85B/98 (proceedings before Conseil D'Etat concerning authorisation to practise an architect); Leiningen-Westerburg v A (20.1.1997) 88A/85 (disciplinary proceedings against judge following comments made to journalist); Milhaud v F (3.3.1997) 88B/25 (medical disciplinary proceedings); Miliani v F (2.7.1997) 90B/161 (medical disciplinary body); Manzanares Mayandia v E (1.12.1997) 91B/46 (imprecise legislation in proceedings against doctor); Doyen v F (9.9.1998) 94B/151 (Bar Chairman requiring lawyers to be on 24 hour police custody call).

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Handyside v UK 76/5 (seizure of books considered obscene); Marckx v B 79/2 (rights of illegitimate children); Sporrong & Lönnroth v S 82/5 (expropriation permits); Van der Mussele v B 83/6 (pupil barrister); James and Others v UK 86/1 (acquisition of freeholds by leaseholders); Van Marle and Others v NL 86/4 (registration of accountancy professionals); Lithgow and Others v UK 86/5 (compensation for nationalised property); AGOSI v UK 86/11 (customs seizure); Erkner & Hofauer v A 87/6 (agricultural land consolidation proceedings); Poiss v A 87/7 (land consolidation proceedings); Inze v A 87/23 (inheritance rights); Langborger v S 89/9 (rent dispute); Tre Traktörer Aktiebolag v S 89/13 (revocation of licence to serve alcohol); Allan Jacobsson v S 89/17 (building prohibitions); Mellacher and Others 89/24 (rent reductions); Håkansson & Sturesson v S 90/2 (permit refusal and compulsory sale of agricultural land); Darby v S 90/23 (obligation to pay tax to church); Fredin v S 91/2 (revocation of gravel extraction permit); Wiesinger v A 91/44 (land consolidation proceedings); Pine Valley Developments Ltd and Others v IRL 91/53 (planning permission); Papamichalopoulos and Others v GR 93/26 (state occupation of land); Raimondo v I 94/3 (confiscation of property); Venditelli v I 94/22 (sealing of flat); Hentrich v F 94/28 (pre-emption of property); Katte Klitsche de la Grange v I 94/33 (restrictions on property rights); The Holy Monasteries v GR 94/43 (expropriation of property); Stran Greek Refineries Stratis Andreadis v GR 94/44 (annulment of arbitral award); Gasus Dosier-und Fördertechnik GmbH v NL 95/6 (tax authorities seizure of property); Loizidou v TR 95/9 (restrictions on access to property in North Cyprus); Air Canada v UK 95/14 (seizure of aircraft on discovery of drugs); Spadea & Scalabrino v I 95/30 (execution of eviction order); Scollo v I 95/31 (execution of eviction order); Agrotexim and Others v GR 95/40 (plans for sites) ; British-

American Tobacco Co Ltd V NL 95/43 (cigarette patent application); Pressos Compania Naviera SA and Others v B 95/44 (retrospective legislation extinguishing compensation); Velosa Barreto v P 95/46 (execution of eviction order); Phocas v F 96/16 (planning application); Gustafsson v S 96/19 (industrial action protection); Zubani v I 96/30 (expropriation of land); Matos e Silva, Lda and Others v P 96/31 (land proceedings); Gaygusuz v A 96/32 (refusal of retirement pension); Akdivar and Others v TR 96/34 (destruction of homes by security forces); Katikaridis and Others v GR 96/47 (expropriation of property); Tsomtsos and Others v GR 96/48 (expropriation of property); Prötsch v A 96/53 (lack of compensation in land proceedings); Guillemin v F 97/5 (expropriation of land); Van Raalte v NL 97/6 (exemption from child benefit contribution payments for certain women); Akkus v TR 97/42 (expropriation of land); National & Provincial Building Society and Others v UK 97/83 (retrospective legislative validation of tax orders); Selçuk & Asker v TR 98/30 (destruction of homes and property); Vasilescu v RO 98/36 (seizure of gold coins by national bank); Gündem v TR 98/38 (alleged destruction of homes and property); Avis Enterprises v GR 98/61 (expropriation of property); Aka v TR 98/78 (delayed compensation for expropriation); Papachelas v GR 99/13 (expropriation of property); Iatridis v GR 99/15 (occupation by authorities of cinema building); Chassagnou and Others v F 99/18 (obligation to allow hunting on land); Immobiliare Saffi v I 99/47 (enforcement of eviction order); Varipati v GR 99/70 (property rights proceedings); Brumarescu v RO 99/72 (deprivation of property); Spacek sro v CZ 99/79 (preparation of business account regulations); Antonakopoulos, Vortsela & Antonakopoulos v GR 99/101 (non-payment of sums after judgment); Beyeler v I 00/1 (pre-emption of overseas sale of Van Gogh); Almeida Garrett, Mascarenhas Falcão and Others v P 00/3 (expropriation of land); Mazurek v F 00/42 (inheritance rights of illegitimate children); Georgiadis v GR 00/104 (failure of authorities to comply with final judgment of court); AO v I 00/153 (recovery of possession of private accommodation); Carbonara & Ventura v I 00/154 (expropriation of land); Belvedere Alberghiera Srl v I 00/155 (expropriation of land); Antonetto v I 00/185 (failure to enforce court decision in respect of planning permission).

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President decision to resume nuclear tests on Mururoa and Fangataufa atolls in French Polynesia); Thors v ISL (17.1.1996) 84A/89 (compulsory sale); Klöpper v CH (18.1.1996) 84A/101 (provisions for married couple's contributions to Social Insurance); Mayer and Others v D (4.3.1996) 85A/5 (expropriation of land); Brezny v SK (4.3.1996) 85B/65 (no restitution of property for applicants resident abroad); Kustannus Oy Vapaa Ajattelija AB and Others v SF (15.4.1996) 85A/29 (obligation to pay church tax); Lupulet v RO (17.5.1996) 85B/126 (deprivation of land by State); Koltsidis & 1158 others, Fountis & 39 others, Andoutsos & 109 others v GR (1.7.1996) 85A/83 (expropriation of property); MN v BG (4.9.1996) 88A/163 (inability to recover money paid into private financial pyramid scheme); Casotti v I (16.10.1996) 87A/63 (reform of tax litigation); Firma 'Brauerei Feldschlösschen Ferdinand Geidel' and Others v D (24.4.1997) 88A/12 (refusal of authorities to return confiscated property to brewery); Krickl v A (21.5.1997) 89A/5 (proceedings concerning building demolition order); Panikian v BG (10.7.1997) 90A/109 (state repossession of property); A AG v P (8.9.1997) 90B/120 (expropriation of land); FS v I (Rep 15.1.1998) 94B/39 (expropriation of land); Institut de Prêtres François and Others v TR (19.1.1998) 92B/15 (court ruling that land of applicants (aka Augustinians of the Assumption) to be registered in the name of the Treasury & the Department of Foundations); Abraini Leschi and Others v F (22.4.1998) 93B/120 (French-Russian co-operation treaty); MacGregor v UK (Rep 1.7.1998) 94A/86 (refusal to grant tax exemption to married woman with child and disabled husband); Vesterby v EST (1.7.1998) 94A/91 (expropriation of land); RC and Others v UK (1.7.1998) 94A/119 (loss of leisure activity following change in legislation prohibiting possession of handguns); Lenzing AG v UK (9.9.1998) 94A/136 (operation of Patent Act in respect of application for patent for process for making cotton-like fabric from wood); Jasinskij and Others v LT (9.9.1998) 94A/147 (refusal of Lithuania to buy back USSR bonds); New Horizons and Others v CY (10.9.1998) 94A/158 (denial of State assistance to applicant political party).

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Kjeldsen, Busk Madsen and Pedersen v DK 76/4 (right to chose children's education); Guzzardi v I 80/3 (restrictions under detention on island); Darby v S 90/23 (duty to pay tax to church); Kokkinakis v GR 93/18 (proselytism of Jehovah's Witness); Hoffman v A 93/24 (refusal of parental rights to divorced Jehovah Witness mother); The Holy Monasteries v GR 94/43 (transfer of property from church to State); Manoussakis and Others v GR 96/37 (proselytism of Jehovah's Witness); Valsamis v GR 96/65 (suspension of Jehovah's Witness child from school); Efstratiou v GR 96/66 (suspension of Jehovah's Witness child from school); Pentidis and Others v GR 97/30 (Jehovah's Witness establishing place of worship without authorisation); Kalaç v TR 97/39 (early retirement of military judge due to his fundamentalist opinions); Larissis and Others v GR 98/12 (proselytism of Pentecostal Air Force officers); Buscarini and Others v RSM 99/8 (Members of Parliament obliged to swear oath on Gospels); Serif v GR 99/103 (Muslim leader usurping functions of Minister of known religion); Thlimmenos v GR 00/123 (Jehovah's Witness excluded from accountancy profession); Cha'are Shalom Ve Tsedek v F 00/167 (refusal of permit for ritual slaughters).

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X v D (18.12.1974) 1/64 (refusal to register marriage on applicant's claim that marriage concluded on intercourse after reading Moses chapter 22); X v UK (20.12.1974) 1/41 (prisoner prohibited from sending out articles for publication in Buddhist magazine); X v UK (5.3.1976) 5/8 (lack of Jewish services or kosher food in prison); X v DK (8.3.1976) 5/157 (clergyman warned by Church Ministry to abandon his condition for christenings that parents attend five religious lessons); X v UK (18.5.1976) 5/100 (retention by prison authorities of Tai Chi Ch'uan and I Ching' book with chapter on martial arts); X v I (21.5.1976) 5/83 (prosecution against Italian fascist party); X v UK (12.7.1978) 14/234 (compulsory wearing of crash helmet applied to turban wearer); Arrowsmith v UK (Rep 12.10.1978)

19/5 (pacifist convicted and sentenced for leafleting Northern Ireland soldiers inciting them to disobedience); Company X v UK (27.2.1979) 16/85 (corporate body relying on A 9); X and Church of Scientology v S (5.5.1979) 16/68 (injunction on advert for sale of E-meter); Church of Scientology & 128 members v S (14.7.1980) 21/109 (refusal of State to allow church to bring action for defamation); X v UK (12.3.1981) 22/27 (absence of Muslim teacher on Fridays to attend Mosque); Swami Omkarananda & The Divine Light Zentrum v CH (19.3.1981) 25/105 (expulsion and detention regarding criminal proceedings against applicants); Demeester v B (8.10.1981) 25/210 (lawyer priest denied judicial appointment as incompatible with ecclesiastical status); X v A (15.10.1981) 26/89 (follower of Moon sect prohibited from forming association); D v F (6.12.1983) 35/199 (refusal of Jewish man to give wife the Guett (letter of repudiation) after divorce); C v UK (15.12.1983) 37/142 (Quaker wishing to divert proportion of his taxes to peaceful purposes); A v CH (9.5.1984) 38/219 (refusing military service, no violation); E & GR v A (14.5.1984) 37/42 (levy of church contribution on Roman Catholics); N v S (11.10.1984) 40/203 (military service exemption for conscientious objectors belonging to religious community); Gottesmann v CH (4.12.1984) 40/284 (requirement to pay tax for belonging to specific church); V v NL (5.12.1984) 39/267 (refusal to participate in pension scheme); Knudsen v N (8.3.1985) 42/247 (loss of office of vicar protesting against Abortion Act); Vereniging Rechtswinkels Utrecht v NL (13.3.1986) 46/200 (withdrawal of associations providing legal information access to prison); Khan v UK (7.7.1986) 48/253 (Muslim prevented from marrying girl under 16); Angeleni v S (3.12.1986) 51/41 (atheist not exempt from religious teaching in school); Le Cour Grandmaison & Fritz v F (6.7.1987) 53/150 (pacifists inciting soldiers to disobey orders); Chappell v UK (14.7.1987) 53/241 (closure of Stonehenge preventing Druid from practising summer solstice ceremony); Karlsson v S (8.9.1988) 57/172 (applicant opposed to ordination of woman not accepted as candidate for post as vicar); Kontakt-Information-Therapie & Hagen v A (12.10.1988) 57/81 (drug rehabilitation therapists compelled to give evidence in criminal proceedings); Revert and Legallais v F (8.9.1989) 62/309 (obligation on architects to join Association); Chauhan v UK (Rep 16.5.1990) 65/41 (dismissal of Hindu electrician for refusing to join union); Autio v SF (6.12.1991) 72/245 (conscientious objector); Ortega Moratilla v E (11.1.1992) 72/256 (property tax on premises of evangelical Protestant Church); H v N (19.5.1992) 73/155 (abortion without consent of potential father); Hazar, Hazar & Acik v TR (Rep 10.12.1992) 73/111 (imprisonment for membership of Turkish Communist Party); Yanasik v TR (6.1.1993) 74/14 (expulsion from Military Academy for participating in Muslim fundamentalist movement); Karaduman v TR (3.5.1993) 74/93 (requirement to dress without headscarf for identity photograph to be fixed to degree certificate); BC v CH (30.8.1993) 75/223 (sickness insurance fund refusing to reimburse cost of treatment by applicant's chosen doctor); Bernard and Others v L (8.9.1993) 75/57 (authorities' rejection of request for exemption from moral and social education lessons for children of applicants); Iskcon and Others v UK (8.3.1994) 76A/90 (enforcement proceedings in respect of Manor occupied by International Society for Krishna Consciousness Ltd); Van Den Dungen v NL (22.2.1995) 80A/147 (prohibition of leaflets and photographs regarding abortion); CJ, JJ & EJ v PL (16.1.1996) 84A/46 (timetabling of religious instruction classes in school); Ergül v TR (17.1.1996) 84B/69 (dismissal of applicant who had engaged in political activities from national judicial service); Finska Förssamlingen I Stockholm & Hautaiemi v S (11.4.1996) 85A/94 (prohibition on use of liturgy of Finnish Evangelical-Lutheran Church in applicant parish); Kustannus Oy Vapaa Ajattelija AB and Others v SF (15.4.1996) 85A/29 (obligation to pay church tax); Logan v UK (6.9.1996) 86A/74 (burden of maintenance payments interfering with applicant's practice of Buddhism); Konttinen v SF (3.12.1996) 87A/68 (dismissal from State Railway of Seventh Day Adventist unable to work on Sabbath, sunset Friday through Saturday); Scientology Kirche Deutschland eV v D (7.4.1997) 89A/163 (complaint of discrimination, intolerance, exclusion against association condoned by authorities); Stedman v UK (9.4.1997) 89A/104 (dismissal for refusing to work on Sundays); Dubowska & Skup v PL (18.4.1997) 89A/156 (failure of State to provide protection against publication of picture causing religious offence); Luksch v I (21.5.1997) 89B/76 (German citizen living in Italy not permitted to vote in local Italian elections); Luksch v I (21.5.1997) 89B/175

(German citizen living in Italy not permitted to vote in German Federal Parliamentary elections); Salonen v SF (2.7.1997) 90A/60 (parents prevented from naming their child Ainut Vain Marjaana, The One and Only Marjaana); MM v BG (Rep 9.7.1997) 90A/56 (custody of child given to father and not to mother who was member of 'Warriors of Christ'); ELH and PBH v UK (22.10.1997) 91A/61 (denial to prisoner of conjugal visits for procreation); Boffa & 13 others v RSM (15.1.1998) 92B/27 (law requiring compulsory vaccination of children against hepatitis B); Institut de Prêtres François and Others v TR (19.1.1998) 92B/15 (court ruling that land of applicants (aka Augustinians of the Assumption) to be registered in the name of the Treasury & the Department of Foundations); Christian Association of Jehovah's Witnesses v BG (Rep 9.3.98) 92A/44 (refusal of authorisation for registration of religious association); HN v I (27.10.1998) 94A/21 (editor convicted of defamation).

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Swedish Engine Drivers' Union v S 76/1 (trade union rights); Klass and Others v D 78/4 (secret surveillance); Silver and Others v UK 83/2 (interference with prisoners' correspondence); Abdulaziz, Cabales & Balkandali v UK 85/7 (immigration); James and Others v UK 86/1 (acquisition of freeholds); Lithgow and Others v UK 86/5 (nationalisation of industries); Leander v S 87/4 (information on secret police register); Olsson v S 88/2 (care proceedings); Boyle & Rice v UK 88/3 (visits and correspondence restrictions on prisoners); Plattform 'Ärtze für das Leben' v A 88/10 (disruption of demonstrations); Soering v UK 89/15 (extradition); Powell & Rayner v UK 90/3 (disturbance from aircraft noise); Nyberg v S 90/19 (care proceedings); Vilvarajah and Others v UK 91/46 (removal of failed asylum seekers); The Observer and The Guardian v UK 91/47 (injunctions restraining publication of details of unauthorised memoir); Pine Valley Developments Ltd and Others v IRL 91/53 (planning permission); Y v UK 92/68 (corporal punishment in independent school); Costello-Roberts v UK 93/14 (corporal punishment in independent school); The Holy Monasteries v GR 94/43 (transfer of property from church to State); Friedl v A 95/1 (details of demonstrators stored in police file); Agrotexim and Others v GR 95/40 (changes of development plans); Putz v A 96/10 (fairness of bankruptcy proceedings); Gustafsson v S 96/19 (industrial action); Calogero Diana v I 96/51 (censorship of correspondence); Domenichini v I 96/52 (censorship of correspondence); Chahal v UK 96/54 (deportation); Valsamis v GR 96/65 (suspension of Jehovah's Witness from school); Efstratiou v GR 96/66 (suspension of Jehovah's Witness from school); D v UK 97/24 (deportation of AIDS sufferer); Halford v UK 97/31 (interception of phone calls); Andersson v S 97/45 (disclosure of confidential information); MS v S 97/46 (disclosure of medical record); Aydin v TR 97/71 (ill-treatment by authorities); Mentes and Others v TR 97/93 (burning of homes); Camenzind v CH 97/98 (search of house); Kaya v TR 98/11 (death by security forces, effective investigation); Gündem v TR 98/38 (search of houses and destruction of property); Kurt v TR 98/39 (disappearance of son, effectiveness of investigation); Tekin v TR 98/48 (ill-treatment in custody, effectiveness of investigation); Ergi v TR 98/53 (killing by security forces, effectiveness of investigation); Yasa v TR 98/71 (death and effectiveness of investigation); Iatridis v GR 99/15 (refusal to return property to tenant); Tanrikulu v TR 99/39 (investigation into killing); Smith & Grady v UK 99/52 (dismissal of homosexuals from armed forces); Willie v FL 99/73 (public statement of Prince not to appoint applicant to public office); Amann v CH 00/81 (storing of personal data, recording of phone calls); Kilic v TR 00/109 (shooting by unidentified perpetrators); Kaya v TR 00/110 (shooting by unidentified perpetrators); K & T v SF 00/131 (care proceedings); L v SF 00/132 (care proceedings); Rotaru v RO 00/145 (storage of personal details); Khan v UK 00/148 (covert surveillance); Velikova v BG 00/150 (death of gypsy in custody); Timurtas v TR 00/161 (disappearance of son from custody); Salman v TR 00/170 (death as result of ill-treatment in custody); Ilhan v TR 00/171 (ill-treatment by gendarmes); GHH v TR 00/176 (deportation of asylum seekers); Jabari v TR 00/179 (deportation of asylum seeker).

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X & Y v NL (19.12.1974) 2/118 (forced return of minor to parents); Cyprus v TR (Rep 4.10.1983) 72/5 (Turkish invasion of Cyprus); Scotts' of Greenock (Est'd 1711) Ltd & Lithgow Ltd v UK (Rep 17.12.1987) 58/5 (nationalisation proceedings); K v UK (Rep 15.4.1988) 56/138 (restriction in access to father for child in care of social authorities); Frederiksen and Others v DK (3.5.1988) 56/237 (dismissal following refusal to join particular trade union); Campbell v UK (Rep 13.5.1988) 56/108 (restrictions on access to child taken into care); Crook, National Union of Journalists v UK (15.7.1988) 56/148 (prohibition on publishing name of witness referred to in court); Hodgson, D Woolf Productions Ltd, NUJ, Channel Four Television Co Ltd v UK (Rep 15.7.1988) 56/156 (press order made in respect of Ponting secret service case); Kanthak v D (11.10.1988) 58/94 (search without warrant of camping car parked on public road); Wasa Liv Ömsesidigt, Försäkringsbolaget Valands Pensionsstiftelse & a group of approximately 15,000 individuals v S (14.12.1988) 58/163 (once and for all property tax); Vearncombe, Herbst, Clemens & Spielhagen v UK and D (18.1.1989) 59/186 (nuisance caused by shooting range in West Berlin under British control); Hewitt & Harman v UK (Rep 9.5.1989) 67/88 (secret surveillance and gathering of information by Security Service); Habsburg-Lothringen v A (14.12.1989) 64/210 (prohibition on son and grandson of last Emperor of Austria from running for Federal President); Atkinson, Crook & The Independent v UK (3.12.1990) 67/244 (sentencing proceedings held in camera); Fadele v UK (Rep 4.7.1991) 70/159 (refusal to allow Nigerian applicant to settle with British children in UK); H v NL (Rep 4.7.1991) 70/190 (psychiatric detention ordered by judge without hearing applicant); Smith Kline & French Laboratories Ltd v NL (Rep 10.7.1991) 70/137 (grant of compulsory licence by Patent Office); Times Newspapers Ltd & Neil v UK (Rep 8.10.1991) 73/41 (order for costs and account of profits against paper and editor in respect of publication of security service agent book); G v A (9.10.1991) 71/45 (interference with correspondence between prisoner and lawyer); H v N (19.5.1992) 73/155 (abortion without consent of potential father); Botka & Paya v A (29.3.1993) 74/48 (search of law office and bank safe, court appointment of psychiatric expert); Chrysostomos, Papachrysostomou, Loizidou v TR (Rep 8.7.1993) 86A/4 (Turkish invasion of Northern Cyprus); Borrelli v CH (2.9.1993) 75/139 (disciplinary proceedings before Military Court); D and Others (No 2) v S (Rep 8.9.1993) 75/257 (adequate redress at domestic level regarding expulsion of Peruvian asylum seeker); Iskcon and Others v UK (8.3.1994) 76A/90 (enforcement proceedings in respect of Manor occupied by International Society for Krishna Consciousness Ltd); Sygounis, Kotsis & Union of Police Officers v GR (18.5.1994) 78B/71 (police officers dismissed following their formation of union); AB v CH (22.2.1995) 80B/66 (obligation to provide urine samples to be tested for drugs); Loersch & Nouvelle Association du Courrier v CH (24.2.1995) 80B/162 (refusal to grant accreditation to journalist); BC v CH (27.2.1995) 80A/101 (surveillance and search in respect of use of wireless telephone); Greek Federation of Customs Officers, Gialouris, Christopoulos and 3,333 other custom officers v GR (6.4.1995) 81B/123 (economic loss suffered as a result of Greek ratification of internal market provisions of Single European Act); Rappaport v F (6.4.1995) 81B/108 (time limit); Mecili v F (15.5.1995) 81B/102 (application to join criminal proceedings as civil party); Tugar v I (18.10.1995) 83A/26 (supply of indiscriminate weapon (mine) to Iraq by Italy causing applicant injury); Schaller Volpi v CH (28.2.1996) 84B/106 (covert surveillance by federal police); Martin v UK (28.2.1996) 84A/169 (denial of access to medical records of mentally ill applicant); Hins & Hugenholtz v NL (8.3.1996) 84A/135 (refusal to grant licence for installation and operation of television transmitter); Tepe v TR (25.11.1996) 87A/90 (detention, torture and killing of journalist); Urrutikoetxea v F (5.12.1996) 87B/151 (expulsion to Spain of Basque); Andre v F (7.4.1997) 89B/71 (inability to rectify erroneous intelligence service files); Scientology Kirche Deutschland eV v D (7.4.1997) 89A/163 (complaint of discrimination, intolerance, exclusion against association condoned by authorities); Stedman v UK (9.4.1997) 89A/104 (dismissal for refusing to work on Sundays); Stewart-Brady v UK (2.7.1997) 90A/45 (media stories of applicant detained in mental hospital); Salonen v SF (2.7.1997) 90A/60 (parents prevented from naming their child Ainut Vain Marjaana, The One and Only Marjaana); Anderson & nine others v UK (27.10.1997) 91A/79 (exclusion of youths from shopping

complex); Isiyok v TR (Rep 31.10.1997) 91A/5 (bombing of village by security forces); Kaukonen v SF (8.12.1997) 91A/14 (private prosecution against judge and police); Herbecq & the Association 'Ligne Des Droits De L'Homme' v B (14.1.1998) 92B/92 (absence of legislation regarding surveillance): Varnava and Others v TR (14.4.1998) 93A/5 (applicants taken into custody by Turkish army following invasion of Cyprus); BH v UK (Rep 30.6.1998) 94A/82 (automatic exclusion from bail of applicant charged with serious offence who has previous serious offence).

Right to life: Article 2

Court Judgments

Diaz Ruano v E 94/17 (death in police custody); McCann and Others v UK 95/28 (Gibraltar killing of terrorist suspects by soldiers); Andronicou and Constantinou v CY 97/76 (killing by rescue unit); Mentes and Others v TR 97/93 (treatment by security forces); Kaya v TR 98/11 (killing in exchange of gunfire); Kurt v TR 98/39 (disappearance of detainee); LCB v UK 98/44 (participation in nuclear tests); Tekin v TR 98/48 (ill-treatment and death threats in custody); Güleç v TR 98/52 (death following firing at demonstrators); Ergi v TR 98/53 (death following security operation); Yasa v TR 98/71 (death following attack o newspaper seller); Aytekin v TR 98/79 (death at gendarmerie checkpoint); Osman v UK 98/91 (effectiveness of police operation); Ogur v TR 99/25 (death during military operation); Tanrikulu v TR 9/39 (effectiveness of investigation into death); Çakici v TR 99/40 (disappearance of detainee); Kiliç v TR 00/109 (shooting by unidentified perpetrators); Mahmut Kaya v TR 00/110 (shooting by unidentified perpetrators); Ertak v TR 00/146 (effectiveness of investigation into death by security forces); Velikova v BG 00/150 (effectiveness of investigation into death in police custody); Timurtas v TR 00/161 (disappearance of detainee); Salman v TR 00/170 (death in police custody); Ilhan v TR 00/171 (treatment by gendarmes); Ekinci v TR 00/183 (treatment by authorities).

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X v UK (14.7.1975) 3/147 (shooting by soldier in Belfast); X v IRL (4.10.1976) 7/78 (free medical treatment of severely disabled child); X v IRL (4.10.1976) 7/78 (lack of free medical care for child with larynx deformity); X v A (10.12.1976) 7/87 (termination of pregnancy); Brüggeman and Scheuten v D (Rep 12.7.1977) 10/100 (termination of pregnancy); X v A (13.12.1979) 18/154 (forced blood test in paternity proceedings); X v UK (13.5.1980) 19/244 (husband seeking to prevent abortion); Farrell v UK (11.12.1982) 30/96 (lethal shooting by soldiers); W v UK and IRL (28.2.1983) 32/190, 32/211 (death of husband, member of Ulster Defence Regiment); Kirkwood v UK (12.3.1984) 37/158 (extradition of US citizen in respect of capital offences and uncertainty of appeal procedures, death row phenomenon); Stewart v UK (10.7.1984) 39/162 (killing by soldiers in Northern Ireland with plastic baton rounds); Farrell v UK (Rep 2.10.1984) 38/44 (fatal shooting by soldiers); Knudsen v N (8.3.1985) 42/247 (loss of office of vicar protesting against Abortion Act); Hughes v UK (18.7.1986) 48/258 (complaint that husband did not receive prompt medical attention following collapse at a school); Wolfgang v D (6.10.1986) 49/213 (death of son during arrest by police); Naddaf v D (10.10.1986) 50/259 (wife complained that husband's imprisonment for fraud would induce her to commit suicide); Dujardin and Others v F (2.9.1991) 72/236 (gendarmes killed in New Caledonia); H v N (19.5.1992) 73/155 (abortion without consent of potential father); Kelly v UK (13.1.1993) 74/139 (killing of joyriding boy by soldiers at army checkpoint in Northern Ireland); Grice v UK (14.4.1994) 77A/90 (refusal of authorities to grant early release on compassionate grounds to prison suffering from AIDS); M-AV v F (31.8.1994) 79B/54 (treatment in police custody resulting in suicide on release); Taylor, Crampton, Bigson & King families v UK (30.8.1994) 79A/127 (refusal of authorities to set up public inquiry following death and serious injury of children in public hospital caused by mentally ill nurse Beverly Allitt); Isiltan v TR (22.5.1995) 81B/35 (surgeons not found criminally liable for death of patient following operation); Cagirga v TR (Rep 7.7.1995) 82A/20 (killing of family members

and destruction of house by security forces); Tugar v I (18.10.1995) 83A/26 (supply of indiscriminate weapon (mine) to Iraq by Italy causing applicant injury); Tauira & 18 others v F (4.12.1995) 83B/112 (French Polynesians complaints of French President decision to resume nuclear tests on Mururoa and Fangataufa atolls in French Polynesia); Danini v I (14.10.1996) 87B/24 (lack of protection for daughters against mentally ill murderer); Kareem v S (25.10.1996) 87A/173 (detention pending expulsion to Iraq and separation from wife); Tepe v TR (25.11.1996) 87A/90 (detention, torture and killing of journalist); Rebai v F (25.2.1997) 88B/72 (failure of prison authorities to protect prisoner from dangerous cell-mate); Laginha de Mator v P (7.4.1997) 89B/98 (applicant shot by game warden who was found by national court to be acting in self-defence); Isiyok v TR (Rep 31.10.1997) 91A/5 (bombing of village by security forces); Boffa & 13 others v RSM (15.1.1998) 92B/27 (law requiring compulsory vaccination of children against hepatitis B); Varnava and Others v TR (14.4.1998) 93A/5 (applicants taken into custody by Turkish army following invasion of Cyprus); Wöckel v D (16.4.1998) 93A/82 (complaint about exposure to smoking in public buildings).

Sentence and punishment: Articles 3, 8, Protocol 1, Article 2

Court Judgments

Tyrer v UK 78/2 (corporal punishment of juvenile offender); Campbell and Cosans v UK 82/1 (disciplinary proceedings in prison); Y v UK 92/68 (corporal punishment in independent school); Costello-Roberts 93/14 (corporal punishment in independent school); A v UK 98/80 (chastisement by step-father).

Commission Decisions and Reports

X v UK (30.9.1974) 1/54 (length of sentence –4 years for arson,); X v A (5.3.1976) 5/130 (attachment of wages); X v D (13.5.1976) 6/127 (length of sentence –8 years for trying to poison husband); Mrs X v UK (12.7.1978) 14/205 (corporal punishment on 14 year old school girl); Santschi and Others v CH (Rep 13.10.1981) 31/5 (arrest under Swiss military code, corporal punishment); X, Y, Z v UK (13.10.1982) 31/50 (corporal punishment); Mrs X & Miss X v UK (13.3.1984) 36/49 (corporal punishment on schoolgirl by headmaster); Warwick v UK (18.7.1986) 60/5 (16 year old schoolgirl caned on hand); Townend Sr & Jr v UK (Rep 23.1.1987) 50/36 (suspension of son from school due to father's refusal to allow corporal punishment on son); Durairaj & Baker v UK (Rep 16.7.1987) 52/13 (suspension of son from school on account of parent's refusal to allow corporal punishment on him); Brant v UK (Rep 16.7.1987) 52/21 (suspension of son from school on account of mother's refusal to allow corporal punishment on him); Grant v UK (8.3.1988) 55/218 (Court of Appeal increase of sentence and refusal to allow abandonment of appeal); Jarman v UK (11.5.1988) 56/181 (corporal punishment in schools); Treholt v N (9.7.1991) 71/168 (length of sentence following espionage conviction); Nielsen v DK (9.9.1992) 73/239 (review of conviction and sentence by higher court); RM v UK (14.4.1994) 77A/98 (sentencing policy and treatment as an AIDS sufferer); Venetucci v I (2.3.1998) 92A/113 (refusal to suspend sentence of unwell applicant convicted of aggravated murder).

Victims: Article 34 (formerly 25)

Court Judgments

Klass and Others v D 78/4 (secret surveillance); Marckx v B 79/2 (unmarried mothers and of children born out of wedlock); Eckle v D 82/4 (mitigation of sentence and discontinuation of proceedings); Corigliano v I 82/8 (length of proceedings acquittal of applicant); De Jong, Baljet & Van den Brink v NL 84/5 (deduction from sentence); Van der Sluijs, Zuiderveld & Klappe v NL 84/6 (deduction from sentence); Johnston and Others v IRL 86/15 (prohibition on divorce illegitimacy of child); Nölkenbockhoff v D 87/20 (widow and deceased's heir); Inze v A 87/23 (judicial settlement); Norris v IRL 88/14 (active homosexual and campaigner); Neves e Silva v P 89/6 (minority shareholder);

Groppera Radio AG and Others v CH 90/5 (ban on retransmission not formally directed to applicants); Pine Valley Developments Ltd and Others v IRL 91/53 (property owners); Lüdi v CH 92/50 (mitigation of sentence, undercover agent); Vijayanathan & Pusparajah v F 92/54 (no expulsion order on applicants); Open Door & Dublin Well Woman v IRL 92/67 (abortion advice); Funke v F 93/3 (house searches); Otto Preminger Institut v A 94/25 (seizure and forfeiture of film); Holy Monasteries v GR 94/43 (non governmental institutions); López Ostra v E 94/47 (environmental complaint); Prager & Oberschlick v A 95/11 (criminal proceeding for publication); Nsona v NL 96/57 (grant of residence permit); Guillemin v F 97/5 (court's acknowledgement of applicant's right to compensation); Yasa v TR 98/71 (deceased's nephew); Dalban v RO 99/54 (applicant's widow, discontinuance of proceedings); Öztürk v TR 99/55 (publishers); Spacek sro v CZ 99/79 (bankruptcy proceedings); Freedom & Democracy Party (ÖZDEP) v TR 99/96 (dissolution of political party); Labita v I 00/125 (payment for time spent in detention); Rotaru v RO 00/145 (personal details on file); Timurtas v TR 00/161 (complaint on behalf of son); Constantinescu v RO 00/168 (statements in teacher's dispute); Ilhan v TR 00/171 (complaint on behalf of brother); GHH and Others v TR 00/176 (applicants moved to United States); Jecius v LT 00/200 (applicant's widow).

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X v A (8.7.1975) 1/44 (acquittal in case involving overseas witnesses in concentration camp crimes); Times Newspaper Ltd, Sunday Times, Evans v UK (21.3.1975) 2/90 (press injunction); X v D (10.7.1975) 3/98 (German national born in Bohemia (CZ Republic) applying on behalf of 3_ million Sudeten Germans); X v B (13.12.1976) 8/220 (applicant brother of war victim in psychiatric confinement); Alliance of Belgians within the EC (10.5.1979) 15/259; Preikhzas v D (13.12.1978) 16/5 (employment dispute); JB & 361 parents (8.7.1980) 20/230 (priest concerned with educating children of Italian immigrants); The Liberal Party, Mrs R & Mr P v UK (18.12.1980) 21/211 (majority system over proportional representation system); Verband Deutscher Flugleiter ev v D (10.7.1981) 25/252 (agreement between parties not to execute civil judgment but to settle); Yarrow plc, Yarrow, M & G Securities Ltd, Augustin-Normand v UK (28.1.1983) 30/155 (minority shareholders in inter-related company); X Union v F (4.5.1983) 32/261 (professional union); 19 Chilean nationals & S Association v S (14.3.1984) 37/87 (expulsion of Chileans); Leigh, Guardian Newspapers, The Observer, v UK (11.5.1984) 38/74 (access to documents produced in court, journalist/editor victim); Winer v UK (10.7.1986) 48/154 (South African refugee journalist complaint of book 'Inside Boss'); Wolfgang v D (6.10.1986) 49/213 (death of son during arrest by police); H v UK (3.12.1986) 50/90 (adequate redress received at domestic level therefore not victim); Company S and T v S (11.12.1986) 50/121 (minority share holders); Jordebo Foundation of Christian Schools v S (6.3.1987) 51/125 (State refusal to allow private school to run over-16 classes); Conrad v D (13.4.1988) 56/264 (criminal proceedings discontinued on account of length); Frederiksen and Others v DK (3.5.1988) 56/237 (compensation awarded for dismissal following refusal to join particular trade union); Hitton v UK (6.7.1988) 57/108 (collection of personal data by BBC and security service); Kontakt-Information-Therapie & Hagen v A (12.10.1988) 57/81 (private association running drug rehabilitation centre for young drug addicts); Wasa Liv Ömsesidigt, Försäkringsbolaget Valands Pensionsstiftelse & a group of approximately 15,000 individuals v S (14.12.1988) 58/163 (once and for all property tax); Rothenthurm Commune v CH (14.12.1988) 59/251 (local government commune); 37 members of the committee against the setting up of approved municipal hunting associations in the department of Allier v F (6.3.1989) 60/172 (municipilisation of hunting rights); N v UK (Rep 9.5.1989) 67/123 (collection of personal data in relation to application for post); Hewitt & Harman v UK (Rep 9.5.1989) 67/88 (secret surveillance and gathering of information by Security Service); Pitarque v E (7.9.1989) 62/258 (suspension of enforcement of conviction for defamation); Björkgren & Ed v S (7.1.1990) 68/104 (husband and sole heir in prohibition on building proceedings); Mendes Godinho e Filhos v P (5.2.1990) 64/72 (legal personality of company); Times Newspapers Ltd v UK (5.3.1990) 65/307 (defamation case); Purcell and Others v IRL (16.4.1991) 70/262 (broadcasting restrictions involving certain Irish organisations);

V & P v F (4.6.1991) 70/298 (expulsion of Sri Lankan); Dujardin and Others v F (2.9.1991) 72/236 (gendarmes killed in New Caledonia); Byttebier v B (12.11.1991) 68/200 (role of auditeur militaire in case in which applicant's father sentenced to death in 1946 for collaboration with the enemy); H v N (19.5.1992) 73/155 (locus of putative father of foetus of unmarried woman); Voulfovitch, Oulianova & Voulfovitch v S (13.1.1993) 74/199 (expulsion to Russia); Byrn v DK (Rep 16.2.1993) 74/5 (acquitted defendant); L v F (7.4.1993) 74/162 (expulsion to Iran following conviction for drugs offences); Özgüden & Tugsasul v TR (28.6.1993) 75/167 (applicants obtained domestic redress); Spandre & Fabri v B (30.8.1993) 75/179 (settlement reached in proceedings); Bernard and Others v L (8.9.1993) 75/57 (authorities' rejection of request for exemption from moral and social education lessons for children of applicants); D and Others (No 2) v S (Rep 8.9.1993) 75/257 (adequate redress at domestic level regarding expulsion of Peruvian asylum seeker); Beer v A (12.1.1994) 76A/34 (successful appeal against defamation conviction); IZ v GR (28.2.1994) 76A/65 (electoral conditions); Iskcon and Others v UK (8.3.1994) 76A/90 (International Society for Krishna Consciousness Ltd); Peters v NL (6.4.1994) 77A/75 (obligation to give urine sample to prison authorities for drug test and procedures for testing); Sygounis, Kotsis & Union of Police Officers v GR (18.5.1994) 78B/71 (police officers dismissed following their formation of union); M-AV v F (31.8.1994) 79B/54 (mother bringing proceedings in respect of son's treatment in police custody resulting in suicide on release); Travers & 27 others v I (16.1.1995) 80B/5 (levying of taxes); JR, GR, RR, & YR v CH (5.4.1995) 81A/61 (complaint regarding compulsory dental treatment for children); Greek Federation of Customs Officers, Gialouris, Christopoulos and 3,333 other custom officers v GR (6.4.1995) 81B/123 (economic loss suffered as a result of Greek ratification of internal market provisions of Single European Act); Mecili v F (15.5.1995) 81B/102 (application to join criminal proceedings as civil party); Isiltan v TR (22.5.1995) 81B/35 (surgeons not found criminally liable for death of patient following operation); KS v SF (24.5.1995) 81A/42 (prolongation of military service and refusal of authorities to issue passport); Mahaut v F (6.7.1995) 82B/31 (applicant's sister forced to take early retirement); Lonsejo General de Colegios Oficiales De Economistas De España v E (28.6.1995) 82B/150 (public law corporation); Tauira & 18 others v F (4.12.1995) 83B/112 (French Polynesians complaints of French President decision to resume nuclear tests on Mururoa and Fangataufa atolls in French Polynesia); British Broadcasting Corporation v UK (18.1.1996) 84A/129 (witness summons for broadcaster to produce film material of Broadwater Farm riot); Mayer and Others v D (4.3.1996) 85A/5 (expropriation of land); Finska Förssamlingen I Stockholm & Hautaiemi v S (11.4.1996) 85A/94 (prohibition on use of liturgy of Finnish Evangelical-Lutheran Church in applicant parish); Kustannus Oy Vapaa Ajattelija AB and Others v SF (15.4.1996) 85A/29 (obligation to pay church tax); Fidler v A (16.4.1996) 85A/84 (proceedings for access to great-grandchildren); Tsovolas v GR (14.5.1996) 85B/21 (Presidential pardon following conviction by Special Court for violating law on Ministerial responsibility); Rogl v D (20.5.1996) 85A/153 (following divorce from her mother, applicant's daughter's surname changed to that of her step-father); MN v BG (4.9.1996) 88A/163 (inability to recover money paid into private financial pyramid scheme); Danini v I (14.10.1996) 87B/24 (lack of protection for daughters against mentally ill murderer); Könkämä & 38 other Saami villages v S (25.11.1996) 87A/78 (proceedings in relation to restrictions on game hunting and fishing); Scientology Kirche Deutschland eV v D (7.4.1997) 89A/163 (complaint of discrimination, intolerance, exclusion against association condoned by authorities); Khristiansko Sdruzhenie 'Svideteli Na Iehova' v BG (3.7.1997) 90A/77 (Christian Association of Jehovah's Witnesses); RENFE v E (8.9.1997) 90B/179 (national railway company); JW v PL (11.9.1997) 90A/69 (fall in value of shareholders' shares); CC v I (21.10.1997) 91B/37 (criminal appeal resulting in acquittal); IF v F (11.12.1997) 91B/10 (Senegalese father facing expulsion and thus separation from seriously ill son); Herbecq & the Association 'Ligne Des Droits De L'Homme' v B (14.1.1998) 92B/92 (absence of legislation regarding surveillance): Boffa & 13 others v RSM (15.1.1998) 92B/27 (law requiring compulsory vaccination of children against hepatitis B); Institut de Prêtres François and Others v TR (19.1.1998) 92B/15 (court ruling that land of applicants (aka Augustinians of the Assumption) to be registered in the name of the Treasury & the Department of

Foundations); Credit and Industrial Bank & Moravec v CZ (20.5.1998) 93A/72 (Bank and President of Board of Directors); Stankov & United Macedonian Organisation 'Ilinden' v BG (29.6.1998) 94A/68 (authorities refusal to register association); Association des Amis De Saint-Rapha'l et de Fréjus and Others v F (1.7.1998) 94B/124 (developmental plans resulting in reduction of land).

SECTION IV

COUNTRIES OF THE COUNCIL OF EUROPE

AS AT 22 MAY 2000

	Convention	Protocol No 1	Protocol No 4	Protocol No 6	Protocol No 7
Albania (AL)					
	02.10.1996	02.10.1996	02.10.1996	–	02.10.1996
Andorra (AND)					
	22.01.1996	–	–	22.01.1996	–
Austria (A)					
	03.09.1958	03.09.1958	18.09.1969	05.01.1984	14.05.1986
Belgium (B)					
	14.06.1955	14.06.1955	21.09.1970	10.12.1998	–
Bulgaria (BG)					
	07.09.1992	07.09.1992	–	29.09.1999	–
Croatia					
	05.11.1997	05.11.1997	05.11.1997	05.11.1997	05.11.1997
Cyprus (CY)					
	06.10.1962	06.10.1962	03.10.1989	–	–
Czech Republic (CZ)					
	18.03.1992	18.03.1992	18.03.1992	18.03.1992	18.03.1992
Denmark (DK)					
	13.04.1953	13.04.1953	30.09.1964	01.12.1983	18.08.1988
Estonia (EST)					
	16.04.1996	16.04.1996	16.04.1996	17.04.1998	16.04.1996
Finland (SF)					
	10.05.1990	10.05.1990	10.05.1990	10.05.1990	10.05.1990
France (F)					
	03.05.1974	03.05.1974	03.05.1974	17.02.1986	17.02.1986
Georgia (G)					
	20.05.1999	–	13.04.2000	13.04.2000	13.04.2000
Germany (D)					
	05.12.1952	13.02.1957	01.06.1968	05.07.1989	–
Greece (GR)					
	28.11.1974	28.11.1974	–	08.09.1998	29.10.1987
Hungary (H)					
	05.11.1992	05.11.1992	05.11.1992	05.11.1992	05.11.1992
Iceland (ISL)					
	29.06.1953	29.06.1953	16.11.1967	22.05.1987	22.05.1987
Ireland (IRE)					
	25.02.1953	25.02.1953	29.10.1968	24.06.1994	–

Italy (I)					
	26.10.1955	26.10.1955	27.05.1982	29.12.1988	07.11.1991
Latvia (LV)					
	27.06.1997	27.06.1997	27.06.1997	07.05.1999	27.06.1997
Liechtenstein (FL)					
	08.09.1982	14.11.1995	–	15.11.1990	–
Lithuania (LT)					
	20.06.1995	24.05.1996	20.06.1995	08.07.1999	20.06.1995
Luxembourg (L)					
	03.09.1953	03.09.1953	02.05.1968	19.02.1985	19.04.1989
Malta (M)					
	23.01.1967	23.01.1967	–	26.03.1991	–
Moldova (MD)					
	12.09.1997	12.09.1997	12.09.1997	12.09.1997	12.09.1997
Netherlands (NL)					
	31.08.1954	31.08.1954	23.06.1982	25.04.1986	–
Norway (N)					
	15.01.1952	18.12.1952	12.06.1964	25.10.1988	25.10.1988
Poland (PL)					
	19.01.1993	10.10.1994	10.10.1994	–	–
Portugal (P)					
	09.11.1978	09.11.1978	09.11.1978	02.10.1986	–
Romania (RO)					
	20.06.1994	20.06.1994	20.06.1994	20.06.1994	20.06.1994
Russia					
	05.05.1998	05.05.1998	05.05.1998	–	05.05.1998
San Marino (RSM)					
	22.03.1989	22.03.1989	22.03.1989	22.03.1989	22.03.1989
Slovak Republic (SK)					
	18.03.1992	18.03.1992	18.03.1992	18.03.1992	18.03.1992
Slovenia (SLO)					
	28.06.1994	28.06.1994	28.06.1994	28.06.1994	28.06.1994
Spain (E)					
	04.10.1979	27.11.1990	–	14.01.1985	–
Sweden (S)					
	04.02.1952	22.06.1953	13.06.1964	09.02.1984	08.11.1985
Switzerland (CH)					
	28.11.1974	–	–	13.10.1987	24.02.1988
*TFYR Macedonia **					
	10.04.1997	10.04.1997	10.04.1997	10.04.1997	10.04.1997

Turkey (TR)					
	18.05.1954	18.05.1954	–	–	–
Ukraine (U)					
	11.09.1997	11.09.1997	11.09.1997	–	11.09.1997
United Kingdom (UK)					
	08.03.1951	03.11.1952	–	20.05.1999	–

* *The former Yugoslav Republic of Macedonia*

SECTION V

COMPOSITION OF THE EUROPEAN COURT OF HUMAN RIGHTS 1959–2000

Precedence Order	Name	Country	Appointment	History*
1.	Lord McNair	UK	1959–66	A, J
2.	Mr René Cassin	F	1959–76	A
3.	Baron Frederik Mari Van Asbeck	NL	1959–66	A
4.	Mr Ake Ernest Vilhelm Holmbäck	S	1959–71	A
5.	Mr Alfred Verdross	A	1959–77	A
6.	Mr Georges S Maridakis	GR	1959–70	A, J, P
7.	Mr Henri Rolin	B	1959–73	A, J, L, P
8.	Mr Eugène Rodenbourg	L	1959–75	J
9.	Mr Alf Niels Christian Ross	DK	1959–71	A
10.	Mr Terje Wold	N	1959–72	J, P
11.	Mr Richard McGonical	IRL	1959–64	L
12.	Count Giorgio Balladore-Pallieri	I	1959–80	A
13.	Mr Einar Arnalds	ISL	1959–67	J
14.	Mr Hermann Mosler	D	1959–80	A, J, L
15.	Mr Kemal Fikret Arik	TR	1959–65	A
16.	Mr Mehmed Zekia	CY	1961–84	J
17.	Mr Antoine Favre	CH	1963–74	J
18.	Mr Conor Alexander Maguire	IRL	1965–71	J
19.	Mr John Cremona	M	1965–74	A
20.	Sir Humphrey Waldock	UK	1966–74	A, L
21.	Mr Suat Bilge	TR	1966–72	A
22.	Mr Gérard J Wiarda	NL	1966–85	J
23.	Mr Sigurgeir Sigurjonsson	ISL	1967–71	J, L
24.	Mr Philip O'Donoghue	IRL	1971–80	J
25.	Mrs Inger Helga Pedersen	DK	1971–80	J, P
26.	Mr Thór H Vilhjálmson	ISL	1971–98	A
27.	Mr Sture Petrén	S	1971–76	J
28.	Mr Rolv Einar Ryssdal	N	1972–98	J, L
29.	Mr Ali Bozer	TR	1972–77	A, J

* **Key:** A Academic
J Judicial post
L Lawyer in practise
P Political post

30.	Mr Walter Ganshof van der Meersch	B	1973–86	A, J
31.	Sir Gerald Fitzmaurice	UK	1974–80	J, L
32.	Mrs Denise Bindschedler-Robert	CH	1975–91	A
33.	Mr Dimitrios J Evrigenis	GR	1975–86	A
34.	Mr Henri Delvaux	L	1976–77	P
35.	Mr Pierre-Henri Teitgen	F	1976–80	A, P
36.	Mr Gunnar Lagergren	S	1977–88	J
37.	Mr Léon Liesch	L	1977–85	A
38.	Mr Feyyaz Gölcüklü	TR	1977–98	A
39.	Mr Franz Matscher	A	1977–98	A, P
40.	Mr João de Pinheiro Farinha	P	1977–91	J,
41.	Mr Eduardo Garcia de Enterria	E	1978–86	A
42.	Mr Louis-Edmond Pettiti	F	1980–98	L
43.	Mr Brian Walsh	IRL	1980–98	L
44.	Mr Max Sørensen	DK	1980–81	A
45.	Sir Vincent Evans	UK	1980–90	L, P
46.	Mr Ronald St John MacDonald QC	Canadian (for FL)	1980–98	A
47.	Mr Carlo Russo	I	1981–98	L, P
48.	Mr Rudolph Bernhardt	D	1981–98	A
49.	Mr Jorgen Gersing	DK	1982–89	J
50.	Mr Alphonse Spielmann	L	1985–98	L
51.	Mr André M Donner	NL	1986–87	A
52.	Mr Jan De Meyer	B	1986–98	A, L
53.	Mr Juan Antonio Carrillo Salcedo	E	1986–89	A, P
54.	Mr Nicolaos Valticos	GR	1986–98	A, L
55.	Mr Sibrand Karel Martens	NL	1988–98	J
56.	Mrs Elisabeth Palm	S	1988–98	J
57.	Mr Isi Foighel	DK	1988–98	A, P
58.	Mr Raimo Oskari Pekkanen	SF	1989–98	A, J, P
59.	Mr Andreas Nicolas Loizou	CY	1990–98	J
60.	Mr José Maria Morenilla Rodriguez	E	1990–98	J
61.	Mr Federico Bigi	RSM	1991–96	L, P
62.	Sir John Freeland	UK	1991–98	L
63.	Mr András Baka	H	1991–98	A
64.	Mr Manuel Antonio Lopes Rocha	P	1991–98	A, P
65.	Mr Luzius Wildhaber	CH	1991–98	J

66.	Mr Giuseppe Mifsud Bonnici	M	1992–98	A, J
67.	Mr Bohumil Repik	CZ 1992/ SK 1993–98		A
68.	Mr Jerzy Makarczyk	PL	1992–98	A, P
69.	Mr Dimitar Gotchev	BG	1992–98	J
70.	Mr Peter Jambrek	SLO	1993–98	A
71.	Mr Karel Jungwiert	CZ	1993–98	J, L
72.	Mr Pranas Kûris	LT	1994–98	A
73.	Mr Uno Lôhmus	EST	1994–98	L, P
74.	Mr Egils Levits	LV	1995–98	L, P
75.	Mr Josep Casadevall Medrano	AND	1996–98	A
76.	Mr Petrus Van Dijk	NL	1996–98	A
77.	Mr Tudor Pantiru	MD	1996–98	P
78.	Mr Marin Voicu	RO	1996–98	J
79.	Mr Volodymyr Butkevytch	U	1996–98	
80.	Mr Vladimir Toumanov	RUS	1997–98	A, J

Ad hoc Judges

Baron L Fredericq	(De Becker v B 62/1)
Mr A Mast	(Belgian Linguistics 68/1)
Mr H Schima	(Neumeister v A 68/3)
Mr A Vanwelkenhuyzen	(Le Compte, Van Leuven & De Meyere v B 81/2)
Sir Robert Jennings	(X v UK 81/5)
Mr C W Dubbink	(Benthem v NL 85/10)
Mr W Ganshof Van der Meersch	(Mathieu-Mohin & Clerfayt v B 87/1)
Mr J Melo Franco	(Baraona v P 87/17)
Mr S K Martens	(Berrehab v NL 88/9)
Mr B Gomard	(Nielsen 88/6, Barfod 89/2, Hauschildt 89/7 v DK)
Mr L Torres Boursault	(Barberà, Messegué & Jabardo v E 88/18)
Mr J L J Roelvink	(Wassink v NL 90/21)
Mr M Storme	(Borgers 91/45, Van Orshoven 97/32 v B)
Mr J Blayney	(Pine Valley Developments Ltd and Others 91/53, Open Door and Dublin Well Woman 92/67, Keegan 94/18 v IRL)
Mr G Lagergren	(Margareta & Roger Andersson v S 92/1)
Mr J A Carrillo Salcedo	(Castells 92/48, Drozd & Janousek 92/52 v E)
Mr G Gislason	(Thorgeir Thorgeirson v ISL 92/51)
Mr G Pikis	(Modinos 93/17, Andronicou & Constantinou 97/76 v CY)
Mr D Ruiz-Jarabo Colomer	(Ruiz-Mateos v E 93/23)

Mr A Philip	(Jersild v DK 94/31)
Mr J Van Compernolle	(Vermeulen v B 96/7)
Mr E Klein	(Beer and Regan 99/5, Waite and Kennedy 99/6 v D)
Mr A N Loizou	(Larkos v CY 99/9)
Sir John Freeland	(Hood 99/10, Cable and Others 99/11v UK)
Mr Valticos	(Papachelas v GR 99/13)
Mr C Yeraris	(Iatridis v GR 99/15)
Mr F Gölcüklü	(Ceylan 99/29, Gerger 99/31, Polat 99/32, Baskaya and Okçuoglu 99/35, Okçuoglu 99/36, Sürek and Özdemir 99/37, Sürek (Nos 1-4) 99/38, Tanrikulu 99/39, Çakici 99/40, Öztürk 99/55, Freedom and Democracy Party (*ÖZDEP*) 99/96, Özgür Gündem 00/91, Kiliç 00/109, Mahmut Kaya 00/110, Sevtap Veznedaroglu 00/128, Ertak 00/146, Timurtas 00/161, Erdogdu 00/163, Salman 00/170, Ilhan 00/171, Dikme 00/175, GHH and Others 00/176, Jabari 00/179, Ekinci 00/183, Sener 00/184 v TR)
Mrs R Be Teliu	(Dalban v RO 99/54)
Sir Rupert Jackson	(Perks and Others v UK 99/62)
Mr A Bacquet	(Zielinski and Pradal & Gonzalez and Others v F 99/71)
Mr L Mihai	(Brumãrescu v RO 99/72)
Lord Reed	(Hashman and Harrup 99/90, T and V 99/121 and 122 v UK)
Mr A De Sousa Inês	(Almeida Garrett, Mascarenhas Falcão and Others v P 00/3)
Mrs A Diculescu- ova	(Ignaccolo-Zenide v RO 00/12)
Sir John Laws	(McGonnell 00/66, Fitt 00/82, Rowe and Davis 00/83, Jasper 00/84 v UK)
Sir Robert Carnwarth	(Caballero v UK 00/69)
Mr G Stavropoulos	(Academy Trading Ltd and Others v GR 00/115)
Mr G Koumantos	(Thlimmenos v GR 00/123)
Mr S Evju	(Bergens Tidende and Others v N 00/144)
Mrs R Weber	(Rotaru v RO 00/145)
Mr I Beligradeanu	(Constantinescu v RO 00/168)
Mr R Pekkanen	(Nuutinen v SF 00/169)
Mr C Russo	(Scozzari and Giunta 00/181, Mattoccia 00/188 v I)

(Numbers represent judges)

1959

Lord McNair President, Mr R Cassin Vice President

3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15

1961–62

Lord McNair President, Mr R Cassin Vice President

3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

1963–64

Lord McNair President, Mr R Cassin Vice President

3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

1965

Mr R Cassin, President, Mr H Rolin Vice President

1, 3, 4, 5, 6, 8, 9, 10, 12, 13, 14, 16, 17, 18, 19

1966

Mr R Cassin, President, Mr H Rolin Vice President

4, 5, 6, 8, 9, 10, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22

1967

Mr R Cassin, President, Mr H Rolin Vice President

4, 5, 6, 8, 9, 10, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23

1968–70 (except withdrawal of Greece from Council of Europe in 1970)

Mr H Rolin, President, Sir H Waldock Vice President

2, 4, 5, 6, 8, 9, 10, 12, 14, 16, 17, 18, 19, 21, 22, 23

1971

Sir H Waldock President, Mr G Balladore-Pallieri Vice President

2, 5, 7, 8, 10, 14, 16, 17, 19, 21, 22, 24, 25, 26, 27

1972

Sir H Waldock President, Mr G Balladore-Pallieri Vice President

2, 5, 7, 8, 14, 16, 17, 19, 22, 24, 25, 26, 27, 28 29

1973

Sir H Waldock President, Mr G Balladore-Pallieri Vice President

2, 5, 8, 14, 16, 17, 19, 22, 24, 25, 26, 27, 28, 29, 30

1974

Mr G Balladore-Pallieri President, Mr H Mosler Vice President

2, 5, 8, 16, 19, 22, 24, 25, 26, 27, 28, 29, 30, 31

1975

Mr G Balladore-Pallieri President, Mr H Mosler Vice President

2, 5, 16, 19, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

1976

Mr G Balladore-Pallieri President, Mr H Mosler Vice President

5, 16, 19, 22, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35

1977

Mr G Balladore-Pallieri President, Mr G J Wiarda Vice President

14, 16, 19, 24, 25, 26, 28, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40

1978–79

Mr G Balladore-Pallieri President, Mr G J Wiarda Vice President

14, 16, 19, 24, 25, 26, 28, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41

1980

Mr G J Wiarda President, Mr H Mosler Vice President

16, 19, 26, 28, 30, 32, 33, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46

1981

Mr G J Wiarda President, Mr R Ryssdal Vice President

16, 19, 26, 30, 32, 33, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48

1981–84

Mr G J Wiarda President, Mr R Ryssdal Vice President

16, 19, 26, 30, 32, 33, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49

1985

Mr R Ryssdal President Mr W Ganshof van der Meersch

19, 22, 26, 32, 33, 36, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50

1986–87

Mr R Ryssdal President, Mr J Cremona Vice President

26, 32, 36, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54

1988

Mr R Ryssdal President, Mr J Cremona Vice President

26, 32, 38, 39, 40, 42, 43, 45, 46, 47, 48, 50, 52, 53, 54, 55, 56, 57

1989

Mr R Ryssdal President, Mr J Cremona Vice President

26, 32, 38, 39, 40, 42, 43, 45, 46, 47, 48, 50, 52, 53, 54, 55, 56, 57, 58

1990

Mr R Ryssdal President, Mr J Cremona Vice President

26, 32, 38, 39, 40, 42, 43, 45, 46, 47, 48, 50, 52, 54, 55, 56, 57, 58, 59, 60

1991

Mr R Ryssdal President, Mr J Cremona Vice President

26, 38, 39, 42, 43, 45, 46, 47, 48, 50, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65

1992

Mr R Ryssdal President, Mr R Bernhardt Vice President

26, 38, 39, 42, 43, 46, 47, 50, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69

1993

Mr R Ryssdal President, Mr R Bernhardt Vice President

26, 38, 39, 42, 43, 46, 47, 50, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70 71

1994

Mr R Ryssdal President, Mr R Bernhardt Vice President

26, 38, 39, 42, 43, 46, 47, 50, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73

1995

Mr R Ryssdal President, Mr R Bernhardt Vice President

26, 38, 39, 42, 43, 46, 47, 50, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74

1996

Mr R Ryssdal President, Mr R Bernhardt Vice President

26, 38, 39, 42, 43, 46, 47, 50, 52, 54, 55, 56, 57, 58, 59, 60, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79

1997

Mr R Ryssdal President, Mr R Bernhardt Vice President

26, 38, 39, 42, 43, 46, 47, 50, 52, 54, 55, 56, 57, 58, 59, 60, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80

THE NEW COURT OF HUMAN RIGHTS FROM 1 NOVEMBER 1998

COMPOSITION OF THE COURT

(in order of precedence 31 December 2000)

Mr Luzius WILDHABER, President (Swiss)

Mrs Elisabeth PALM, Vice-President (Swedish)

Mr Christos ROZAKIS, Vice-President (Greek)

Mr Georg RESS, Section President (German)

Mr Jean-Paul COSTA, Section President (French)

Mr Benedetto CONFORTI (Italian)

Mr Antonio PASTOR RIDRUEJO (Spanish)

Mr Luigi FERRARI BRAVO (Italian)[Elected as the judge in respect of San Marino]

Mr Gaukur JÖRUNDSSON (Icelandic)

Mr Giovanni BONELLO (Maltese)

Mr Lucius CAFLISCH (Swiss)[Elected as the judge in respect of Liechtenstein]

Mr Loukis LOUCAIDES (Cypriot)

Mr Jerzy MAKARCZYK (Polish)

Mr Pranas KURIS (Lithuanian)

Mr Ireneu CABRAL BARRETO (Portuguese)

Mr Riza TÜRMEN (Turkish)

Mrs Françoise TULKENS (Belgian)

Mrs Viera STRÁZNICKÁ (Slovakian)

Mr Corneliu BÎRSAN (Romanian)

Mr Peer LORENZEN (Danish)

Mr Willi FUHRMANN (Austrian)

Mr Karel JUNGWIERT (Czech)

Sir Nicolas BRATZA (British)

Mr Marc FISCHBACH (Luxemburger)

Mr Volodymyr BUTKEVYCH (Ukrainian)

Mr Josep CASADEVALL (Andorran)

Mr Boštjan ZUPANCIC (Slovenian)

Mrs Nina VAJIC (Croatian)

Mr John HEDIGAN (Irish)

Mrs Wilhelmina THOMASSEN (Dutch)

Mr Matti PELLONPÄÄ (Finnish)

Mrs Margarita TSATSA-NIKOLOVSKA (citizen of 'the Former Yugoslav Republic of Macedonia')

Mr Tudor PANTIRU (Moldovian)

Mrs Hanne Sophie GREVE (Norwegian)

Mr András BAKA (Hungarian)

Mr Rait MARUSTE (Estonian)

Mr Egils LEVITS (Latvian)

Mr Kristaq TRAJA (Albanian)

Mrs Snejana BOTOUCHAROVA (Bulgarian)

Mr Mindia UGREKHELIDZE (Georgian)

Mr Anatoly KOVLER (Russian, from 1999)